

1 MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING
2 APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY
3 ADMINISTRATION BUILDING IN THE GOVERNMENT CENTER AT PARHAM
4 AND HUNGARY SPRING ROADS, ON THURSDAY SEPTEMBER 24, 2015 AT
5 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-
6 DISPATCH SEPTEMBER 8, 2015, AND SEPTEMBER 14, 2015.

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

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

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

Thank you. Mr. Blankinship, would you read our rules, please.

Mr. Blankinship - Good morning, Mr. Chair, members of the Board, ladies and gentlemen. The rules for this meeting are as follows: Acting as secretary, I will call each case. And then we will ask everyone who intends to speak to that case to stand and be sworn in. Then a member of the Planning Department staff will give a brief presentation. Then the applicant will speak. And then anyone else who wishes to speak will be given the opportunity. After everyone has had a chance to speak, the applicant, and only the applicant, will have an opportunity for rebuttal.

After the Board has heard all the evidence and asked all their questions, they will proceed to the public hearing on the next case. They will render all of their decisions at the end of the meeting. So if you wish to hear their decision on a specific case, you can either stay until the end of the meeting, or you can check the Planning Department website—we usually get it updated within the hour after the meeting ends—or you can call the Planning Department this afternoon.

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

35 That's it for the rules, Mr. Chairman; would you like me to proceed to the
36 deferral?

37
38 Mr. Bell - Yes, do that, since we've got some.

39
40 Mr. Blankinship - We have requests for deferral this morning. The first
41 is CUP2015-00030. Is anyone here for that case? All right.

42
43 CUP2015-00030 BILL PHILLIPS requests a conditional use permit
44 pursuant to Section 24-95(i) (4) of the County Code to build a detached garage in
45 the side yard at 9516 Arrowdel Court (RIVER ROAD FARMS) (Parcel 744-738-
46 7017) zoned One-Family Residence District (R-1) (Tuckahoe).

47
48 Mr. Phillips - I wish to defer, not withdraw, at this time, as we've
49 come up with another plan that we feel will fall within the acceptable rules of the
50 County.

51
52 Mr. Bell - Can I get your name?

53
54 Mr. Phillips - Bill Phillips.

55
56 Mr. Bell - Thank you.

57
58 Mr. Blankinship - A motion would be in order.

59
60 Mr. Baka - At this time, I'd make a motion that we defer case
61 CUP2015-00030, for one month to allow the applicant time to modify plans.

62
63 Mr. Bell - Do I hear a second?

64
65 Ms. Harris - Second the motion. That would be October the 22nd.

66
67 Mr. Blankinship - Yes ma'am.

68
69 Mr. Bell - Any discussion? All those in favor of the motion say
70 aye. All those opposed? Hearing none, the ayes have it.

71
72 After an advertised public hearing and on a motion by Mr. Baka seconded by
73 Ms. Harris, the Board deferred application CUP2015-00030, BILL PHILLIPS, to
74 the October 22, 2015 meeting.

75
76
77 Affirmative: Baka, Bell, Berman, Harris, Romers 5
78 Negative: 0
79 Absent: 0

81 Mr. Blankinship - The other request is CUP2015-00033, Cooke
82 Properties, LLC. Is there anybody here with respect to that case?

83
84 **CUP2015-00033** **COOKE PROPERTIES LLC** requests a conditional
85 use permit pursuant to Sections 24-12(c) and 24-66(a) of the County Code to
86 allow a renewable energy facility at 2701 Meadow Road (Parcel 842-716-0583)
87 zoned Light Industrial District (M-1C) (Varina).

88
89 Mr. Blankinship - All right. Mr. Chairman, we do have a written request
90 for deferral on that case.

91
92 Mr. Bell - Yes, I saw the letter in there.

93
94 Ms. Harris - I move that we defer the case until December 17th as
95 requested.

96
97 Mr. Romers - I second.

98
99 Mr. Bell - Any discussion? Hearing none, all in favor say aye.
100 All those opposed? Hearing none, motion carries.

101
102
103 Affirmative: Baka, Bell, Berman, Harris, Romers 5
104 Negative: 0
105 Absent: 0

106
107
108 Mr. Bell - New applications.

109
110 **CUP2015-00027** **ROBERT AND JEANMARIE MILES** request a
111 conditional use permit pursuant to Section 24-95(i)(4) of the County Code to
112 allow a pool in the side yard at 11540 Sadler Grove Road (SADLER PLACE)
113 (Parcel 745-766-1252) zoned One-Family Residence District (R-3C) (Three
114 Chopt).

115
116 Mr. Blankinship - Would everyone who intends to speak to this case
117 please stand and be sworn in. Do you swear the testimony you're about to give is
118 the truth, the whole truth, and nothing but the truth so help you God? Thank you.
119 You can be seated. Mr. Madrigal, if you would begin.

120
121 Mr. Madrigal - Mr. Chair, members of the Board. The request before
122 you is to allow an in-ground swimming pool in the side yard of a single-family
123 dwelling. The subject property is located in the Sadler Place subdivision, which
124 was established in 2005. The lot is approximately 16,500 square feet in area and
125 is located at the end of a cul-de-sac. It is improved with a 3,700-square-foot

126 dwelling constructed in 2006, and the rear yard is fenced in by a six-foot-tall solid
127 wood privacy fence.

128
129 Although the lot has a large rear yard, there is a thirty-foot-wide utility easement
130 that bisects it from side to side. Due to the size and location of the easement, the
131 applicants are proposing to place an eighteen-foot-diameter swimming pool in
132 the northern side yard in between their home and the side property line. It's
133 visible right here.

134
135 In order to maximize the use of their available yard space and maintain privacy,
136 they will be moving a portion of their fence from its current location forward so
137 that it will sit at the end of their driveway. The fence is visible here, and they're
138 going to be relocating that to about right there.

139
140 The property is zoned R-3C, and is designated as SR-2 on the 2026 Land Use
141 Plan. Both the principal and proposed accessory use of the property is consistent
142 with the zoning and Comprehensive Plan designations.

143
144 Staff does not anticipate any substantial or detrimental impacts from the
145 proposed location of the pool since ample screening from the street and
146 neighbors is provided by way of landscaping and a tall privacy fence. The pool
147 will be adjacent to the side elevation of the neighbor's home at 11536 Sadler
148 Grove Road, located to the right of the subject lot. This side of the neighbor's
149 house is void of windows facing the pool with the exception of a small transom
150 window on the second floor and an added window, which appears to be a bonus
151 room on the third floor of the home. You can view the transom window there on
152 the photo.

153
154 In conclusion, the proposed pool appears to be consistent with the
155 Comprehensive Plan, the Zoning Ordinance, and the surrounding residential
156 development pattern. The privacy fence and the existing landscaping should
157 provide adequate screening of a pool. Staff recommends approval of the request
158 subject to the recommended conditions.

159
160 This concludes my staff presentation. I stand ready to answer any questions.

161
162 Mr. Bell - Any questions?

163
164 Ms. Harris - Mr. Madrigal, I didn't know if I should ask this question
165 of you or the applicants. I think in the report it says there are two houses with
166 swimming pools, but I wanted to know are they also located in a cul-de-sac.

167
168 Mr. Madrigal - There's one here, and there's one on the adjacent lot.
169 Here's the one that's adjacent, and there's one that's one house removed.

170
171 Ms. Harris - Thank you.

- 172
173 Mr. Bell - Any other questions? Anybody else who wishes to
174 speak to this matter?
- 175
176 Mr. Blankinship - Please come on up so the Board has an opportunity
177 to address you.
- 178
179 Mr. Miles - My name is Robert Miles—M-i-l-e-s. One of the
180 reasons we're petitioning for the side yard, of course, is the large easement with
181 the sewer. We've looked at putting it on the other side, but we would have to
182 remove five fifty-foot trees that the contractor left. And there are spots of these
183 trees throughout the subdivision. It would cost us a lot of money to remove those
184 trees to fit this pool in on the other side of the yard. Everything that we have,
185 including the exit off the deck, is justified to that side of the yard, so it would be
186 convenient. In addition, I would like to add that my wife suffered a small stroke
187 about two months ago. And the reason we're putting this pool in—and I'm not a
188 big pool fan—is that so she can get aquatic exercise and rehabilitate.
- 189
190 Mr. Bell - Any questions?
- 191
192 Ms. Harris - Have you had any complaints or concerns from your
193 neighbors in reference to this swimming pool?
- 194
195 Mr. Miles - Not at all. As a matter of fact, our neighbor has a pool
196 next to us, and we don't even know it's there.
- 197
198 Ms. Harris - And it is impossible for you to put the pool on the
199 other side? I know the trees are there, but you don't have enough room outside
200 of the trees.
- 201
202 Mr. Miles - The trees and the easement create a problem. On top
203 of that, the exiting sewer pipe from our house goes right from the middle of the
204 house out to the back. So we'd have to have that relocated too. It would be a
205 large expense.
- 206
207 Ms. Miles - I'm Jeanmarie Miles. To answer your question, the
208 way our yard is situated, it's not going to impede any of our neighbors in that we
209 back up to the expressway. The way the yard is, the only neighbor—you saw the
210 house with the window. We don't see each other. Our yards are very private, and
211 we're not loud people.
- 212
213 Mr. Miles - The back of the yard is a green space backed up
214 against 295. The way the yard is situated, we can sit on our deck and we don't
215 see either neighbor's deck.
- 216
217 Ms. Miles - That's my father in the pictures.

218
219 Mr. Bell - Any other questions?
220
221 Mr. Baka - When we drove by the house, it was difficult to see
222 the area where the pool would be because it is really screened. There are some
223 trees on the side and the fence that Miguel said would be forward. That would
224 also provide screening. It appeared to be low impact and very compatible.
225
226 Mr. Bell - Thank you. Thank you, Mr. and Mrs. Miles.
227
228 Mr. Blankinship - Would anyone else like to speak to this case? All
229 right.
230
231 [After the conclusion of the public hearings, the Board discussed the case
232 and made its decision. This portion of the transcript is included here for
233 convenience of reference.]
234
235 Mr. Bell - Do I hear a motion on this case?
236
237 Mr. Baka - I move we recommend approval of CUP2015-00027,
238 the Miles family for the pool in the side yard. This pool will not unreasonably or
239 adversely impact the surrounding neighbors or property owners and it has
240 screening provided.
241
242 Mr. Bell - Do I hear a second on this motion?
243
244 Mr. Berman - I second.
245
246 Mr. Bell - Any discussion?
247
248 Mr. Baka - With the conditions as presented in the staff report
249 unchanged.
250
251 Mr. Bell - All those in favor of this motion, say aye. All those
252 opposed say nay. The ayes have it; the motion is passed.
253
254 After an advertised public hearing and on a motion by Mr. Baka, seconded by Mr.
255 Berman, the Board **approved** application **CUP2015-00027, ROBERT AND**
256 **JEANMARIE MILES'** request for a conditional use permit pursuant to Section 24-
257 95(i)(4) of the County Code to allow a pool in the side yard at 11540 Sadler
258 Grove Road (SADLER PLACE) (Parcel 745-766-1252) zoned One-Family
259 Residence District (R-3C) (Three Chopt). The Board approved the conditional
260 use permit subject to the following conditions:
261

262 1. This conditional use permit applies only to the accessory structure location
263 requirement. All other applicable regulations of the County Code shall remain in
264 force.

265

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

271

272 3. Before beginning any clearing, grading, or other land disturbing activity, the
273 applicant shall submit an environmental compliance plan to the Department of
274 Public Works.

275

276

270

277 Affirmative: Baka, Bell, Berman, Harris, Romers 5
278 Negative: 0
279 Absent: 0

280

281

281
282 [At this point, the transcript continues with the public hearing on the next
283 case.]

284

285 **CUP2015-00028** SM SAUNDERS STATION, LLC requests a
286 conditional use permit pursuant to Section 24-116(d)(1) of the County Code to
287 allow a temporary sales trailer at 4350 Bon Secours Parkway (Saunders Station
288 at Broad Hill Centre) (Parcel 730-766-6366) zoned Conservation District (C-1C),
289 General Residence District (R-6C) and West Broad Street Overlay (WBSO)
290 (Three Chopt).

291

292 Mr. Blankinship - Would anyone who intends to speak to this case
293 please stand and raise your right hand. Do you swear the testimony you're about
294 to give is the truth, the whole truth, and nothing but the truth so help you God?
295 Thank you. You can be seated. Mr. Gidley, if you would begin.

296

297 Mr. Gidley - Thank you, Mr. Secretary. Good morning,
298 Mr. Chairman, members of the Board of Zoning Appeals.

299

This is a request for a temporary sales trailer at the Broadhill Centre development, which is located at the northwest corner of Broad Street and the Goochland County border. Pictured here is the overall Broadhill Centre development. And as you can see, part of it is known as Saunders Station, which is a proposed 166-unit residential condominium complex. The applicant is requesting approval of a temporary sales trailer for a period of one year, at which time a permanent sales office is expected to be completed.

308 Access to the site is off of West Broad Street. This is the Bon Secours Parkway.
309 As you can see, it is paved, so access for prospective homeowners should not
310 be a problem.

311
312 This is the proposed site plan. It calls for seven gravel parking spaces; however,
313 if the applicant has six or more parking spaces, they are required to be paved,
314 which is noted in condition #5 of the staff report. I'll also point out the plans call
315 for a twenty-foot ADA ramp to provide access to the trailer for those who need it.

316
317 This is a photo of the trailer here. As you can see, it's slated to be 24 feet by 44
318 feet. The proposed condominium development is consistent with the site's R-6C
319 zoning. It is also consistent with the Comprehensive Plan designation of an
320 Urban Mixed Use district. The temporary sales trailer would also be consistent
321 with the property's zoning. As a result, staff is able to recommend approve of this
322 request, subject to the conditions in your staff report.

323
324 That concludes my presentation, and I'll be happy to answer any questions you
325 may have.

326
327 Mr. Bell - Any questions? Hearing none, thank you.

328
329 Mr. Gidley - Yes sir.

330
331 Mr. Bjelstrand - Good morning, Mr. Chairman, members of the Board,
332 Mr. Blankinship. My name is Kenneth Bjelstrand, and I will spell that for you. It's
333 B-j-e-l-s-t-r-a-n-d.

334
335 I'm here on behalf of SM Saunders Station LLC. They're requesting a temporary
336 sales trailer to be used during the process of construction of a model home. We
337 don't anticipate it to take a year, but that's just sort of an outside worst-case
338 scenario. And it is truly temporary. It will be removed as soon as the model is
339 complete and has a certificate of occupancy. It is landscaped and pretty nicely
340 done. It's a new unit.

341
342 One of the conditions that we saw is really a miscommunication with our
343 engineer. The parking area was intended to be paved all along. I do have a sheet
344 showing that we have corrected that already. We do want to keep the seven
345 spaces. We were going to do it anyway; it just kind of fell through the cracks in
346 the drawing.

347
348 If there's anything I can answer for you, I'd be happy to try.

349
350 Mr. Bell - Any questions?

351
352 Ms. Harris - You have reviewed the conditions?

- 354 Mr. Bjelstrand - Yes ma'am. We've actually already altered the
355 building location as well to just incorporate that setback requirement. And I have
356 drawings if anybody wants to see them.
- 357
- 358 Ms. Harris - One of those parking spaces is for the handicap?
- 359
- 360 Mr. Bjelstrand - Yes ma'am.
- 361
- 362 Ms. Harris - Okay. Thank you.
- 363
- 364 Mr. Bjelstrand - And there is also a handicap-accessible ramp going
365 right to the front door.
- 366
- 367 Mr. Bell - Any other questions?
- 368
- 369 Mr. Baka - Does the asphalt need to be in a separate condition
370 since the applicant is willing to do that to provide better access for the handicap
371 parking space?
- 372
- 373 Mr. Blankinship - The way we worded condition #5 in the draft was that
374 any parking lot for six or more vehicles shall be paved, which are the words in the
375 code. So they can either go with five gravel or seven paved. Either one would be
376 consistent.
- 377
- 378 Mr. Baka - All right. Thank you.
- 379
- 380 Ms. Harris - I had wondered why you need a port-a-john for an
381 office trailer. But then in reading this, I see that this is a construction site, so
382 that's why.
- 383
- 384 Mr. Bjelstrand - Yes ma'am. The water and sewer have not been
385 hooked up yet. Otherwise, we would have gladly used that. It's a small
386 inconvenience. We'll make it look nice. So there will be water available inside the
387 trailer as well as the port-a-john outside.
- 388
- 389 Mr. Bell - Any more questions? Thank you, sir.
- 390
- 391 Mr. Bjelstrand - Thank you. Appreciate your time.
- 392
- 393 Mr. Blankinship - Would anyone else like to speak to this application?
- 394
- 395 Mr. Bell - Then we'll go ahead and call the next conditional use
396 permit.
- 397

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

401
402 Mr. Bell - Do I hear a motion on this case?

403
404 Mr. Berman - I move that we approve this case under the conditions
405 stated, that it meets all the conditional use permit guidelines.

406
407 Mr. Bell - Do I hear a second on this motion.

408
409 Ms. Harris - Second. This is temporary. I think the request is for
410 one year until the construction is completed of this subdivision.

411
412 Mr. Bell - Is there any discussion?

413
414 Mr. Romers - I think the trailer use was, as I understood it, only for
415 the period of time necessary to have the sales home or the model home, not the
416 neighborhood itself, which is expected to be less than one year.

417
418 Mr. Blankinship - Yes sir.

419
420 Mr. Berman - The final condition stipulates the end date, as Ms.
421 Harris stated, of one year.

422
423 Mr. Bell - Any other discussion? Hearing none, all those in favor
424 of this motion say aye. All those opposed say nay. The ayes have it; the motion
425 passes.

426
427 After an advertised public hearing and on a motion by Mr. Berman, seconded by
428 Ms. Harris, the Board **approved** application CUP2015-00028, **SM SAUNDERS**
429 **STATION, LLC** request for a conditional use permit pursuant to Section 24-
430 116(d)(1) of the County Code to allow a temporary sales trailer at 4350 Bon
431 Secours Parkway (Saunders Station at Broad Hill Centre) (Parcel 730-766-6366)
432 zoned Conservation District (C-1C), General Residence District (R-6C) and West
433 Broad Street Overlay (WBSO) (Three Chopt). The Board approved the
434 conditional use permit subject to the following conditions:

- 435
436 1. This conditional use permit only allows one temporary sales trailer. All other
437 applicable regulations of the County Code shall remain in force.
- 438
439 2. Only the improvements shown on the plot plan and building design filed with
440 the application, as amended by these conditions, may be constructed pursuant to
441 this approval. Any additional improvements shall comply with the applicable
442 regulations of the County Code. Any substantial changes or additions to the

443 design or location of the improvements shall require a new conditional use
444 permit.

445
446 3. Before beginning any clearing, grading, or other land disturbing activity, the
447 applicant shall submit an environmental compliance plan to the Department of
448 Public Works.

449
450 4. The trailer shall be set back at least 35 feet from the right-of-way of Bon
451 Secours Boulevard.

452
453 5. A certificate of occupancy will not be approved until the entrance driveway
454 and parking lot have been constructed. The entrance and parking shall be
455 constructed as shown on the plan filed with the application except that any
456 parking lot for six or more vehicles shall be paved. The accessible parking space
457 shall be designed, constructed, and indicated by pavement markings and signs
458 as required by the Americans with Disabilities Act.

459
460 6. A permanent certificate of occupancy will not be approved until all
461 landscaping has been installed as shown on the plan filed with the application.
462 Landscaping shall be maintained in a healthy condition. Dead plant materials
463 shall be removed within a reasonable time and replaced during the normal
464 planting season. All exterior lighting shall be shielded to direct light away from
465 adjacent property and streets. The portable toilet shall be located behind the
466 building and screened from view as shown on the plan filed with the application.

467
468 7. Hours of operation shall be limited to 9:00 am to 9:00 pm.

469
470 8. The trailer shall be removed from the property on or before October 1, 2016,
471 at which time this permit shall expire.

472
473
474 Affirmative: Baka, Bell, Berman, Harris, Romers 5
475 Negative: 0
476 Absent: 0

477
478
479 [At this point, the transcript continues with the public hearing on the next
480 case.]

481
482 **CUP2015-00029 DUANE AND LESLIE GALLIMORE** request a
483 conditional use permit pursuant to Sections 24-12(e) and 24-52(a) of the County
484 Code to allow a noncommercial kennel at 7824 Curtisdale Road (OLD MILL
485 ESTATES) (Parcel 818-689-7438) zoned Agricultural District (A-1) (Varina).

486
487 Mr. Blankinship - Would anyone who intends to speak to this
488 application, please stand and be sworn in. Would you raise your right hands,

489 please? Do you swear the testimony you're about to give is the truth, the whole
490 truth, and nothing but the truth so help you God? Mr. Madrigal?

491
492 Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chair, members of the
493 Board. This is a request to allow a private non-commercial kennel at a one-family
494 residence. The property is located in the eastern end of the County in the Old Mill
495 Estates subdivision, which was established in 1985.

496
497 The property is approximately one acre in size and is improved with a two-story,
498 2,340-square-foot residence built in 1986. The property is served by an attached
499 two-car garage and a small shed located in the rear yard. The rear yard is
500 approximately one-third of an acre in size and is fenced in. In addition to the
501 fencing, the applicant has installed a 128-square-foot dog pen adjacent to the
502 garage and behind the existing home. The applicants purchased the home in
503 August of this year and relocated from Charlotte, North Carolina. They own a
504 total of six dogs and two cats, exceeding the County's limit of not more than three
505 pets per household.

506
507 Here's a few of the dogs. All the dogs are poodles and range in age between 8
508 and 15 years old and are kept primarily in the residence. The two cats are kept
509 exclusively in the home, as per the applicant. The dogs are let out daily into the
510 dog pen for exercise and to relieve themselves. All of the animals are pets and
511 are not used for breeding or for show.

512
513 Mrs. Gallimore became aware of the need for a conditional use permit when she
514 tried to license her animals. Staff is not aware of any formal complaints against
515 the property for excessive barking or the keeping of animals.

516
517 The property is zoned A-1 and is designated SR-2 on the Comprehensive Plan.
518 The keeping of pets is a customary and accessory use to a single-family
519 dwelling. Although the applicant exceeds the maximum number of pets allowed,
520 the use is consistent with both the zoning and the Comprehensive Plan
521 designations.

522
523 While it is customary to keep animals more so in an agricultural district, six small
524 dogs is not an insignificant number. It is difficult for staff to quantify the amount of
525 barking that occurs when the dogs are let out and how much of an impact this
526 situation has on neighboring property owners. However, the applicants voluntarily
527 requested the conditional use permit upon learning that they exceeded the
528 County standard, and the request is not the result of a complaint-based code
529 enforcement action. The property is quite large, it is moderately wooded, and it
530 appears to be well cared for. It is located in an established large-lot residential
531 subdivision. The dogs are limited to the rear yard and are contained in a dog pen
532 when let out. The applicant does not intend to add any more pets, and the
533 number of animals will be reduced by natural attrition over time. No significant or
534 lasting detrimental impacts are anticipated by staff.

535
536 In conclusion, the applicant's request is consistent with the zoning designation
537 and the Comprehensive Plan. There appear to be no lasting or substantial
538 detrimental impacts associated with the request; specific conditions of approval
539 have been prepared to mitigate any adverse impacts on the adjacent property
540 owners.

541
542 Just for the record, we did get one e-mail with respect to the request, and it was
543 from an adjacent property owner. They're essentially protesting the number of
544 dogs. The e-mail didn't say anything about barking or excessive noise or odors or
545 anything to that effect. You have a copy of the e-mail.

546
547 For the above-mentioned reasons, staff recommends approval of the request
548 subject to the recommended conditions. This concludes my presentation. I stand
549 ready to answer any questions.

550
551 Mr. Berman - You said it was an adjacent. By this map up here,
552 7810 is actually two doors down.

553
554 Mr. Madrigal - I'm sorry. Close proximity, I guess.

555
556 Mr. Bell - Any other questions?

557
558 Ms. Gallimore - Leslie Gallimore—G-a-l-l-i-m-o-r-e. Thank you for
559 hearing this.

560
561 As Mr. Madrigal said, when we moved here, unfortunately I did not check it
562 before we moved here because Charlotte didn't have any of the zoning. We
563 always licensed our dogs. They were always vet checked and everything was
564 kept up to date. So I didn't think anything of it. I actually checked into licensing
565 my dogs before I checked into licensing myself because I wanted to comply.
566 When I found out that there was a problem with the number, I immediately began
567 action to try to rectify that situation. Questions?

568
569 Mr. Bell - Any questions?

570
571 Mr. Berman - Yes ma'am. Are the dogs all spayed and neutered?

572
573 Ms. Gallimore - Yes.

574
575 Mr. Bell - How long have you lived in this house?

576
577 Ms. Gallimore - Since August.

578
579 Mr. Bell - August?

580

581 Ms. Gallimore - We settled on the house August 11th.
582
583 Mr. Bell - How often do you let your dogs out?
584
585 Ms. Gallimore - They go out every few hours during the day. And if I'm
586 out there, they may be in the yard. If we're not out there, there are two that will
587 roam in the yard. The rest of them go in the pen. We do not leave them out very
588 long because they don't like to be out very long. They really protest that. So I try
589 very hard to keep them from barking. I have a couple of them that bark a lot. I try
590 to keep that inside the house as much as possible.
591
592 Mr. Bell - Have you had any complaints?
593
594 Ms. Gallimore - Not that I know of.
595
596 Mr. Bell - Yes, Mark.
597
598 Mr. Romers - When you take them out, do you do that very early in
599 the morning or after dark late at night or is it during normal hours?
600
601 Ms. Gallimore - The earliest they're out is 7:00 a.m.; usually it's 7:30
602 a.m. or 8:00 a.m. And the last time we take them out we're always with them and
603 that is between 10:00 p.m. and 10:30 p.m.
604
605 Mr. Romers - Thank you.
606
607 Mr. Bell - Any other questions?
608
609 Ms. Harris - How old are your cats?
610
611 Ms. Gallimore - One of them is ten and the other one is five.
612
613 Ms. Harris - And should we decide that you must comply with the
614 County ordinance, do you have an alternate plan for taking care of the dogs or
615 the cats?
616
617 Ms. Gallimore - Not at this point.
618
619 Ms. Harris - You don't have an alternate location.
620
621 Ms. Gallimore - No.
622
623 Mr. Berman - Have you considered any of the barking cessation
624 collars that are available?
625

626 Ms. Gallimore - They're little dogs. The largest dog is ten pounds, but
627 the rest of them are seven pounds or less. So the barking collars are really too
628 big and have too much of an impact on them. Yes, I have some different things
629 with them. Some successful, some not so.

630
631 Ms. Harris - One more questions, Ms. Gallimore. Do you have
632 problems with wild animals? I know the dogs are very tiny. But you do live in
633 Henrico County where we've been known to have raccoons.

634
635 Ms. Gallimore - Which is why we stay outside with them. Truly, when
636 my dogs are outside, I am either right outside with them or right in the kitchen
637 where I can see them. So yes, I'm aware of that. We had some of that trouble in
638 Charlotte as well.

639
640 Mr. Berman - When we drove by and inspected the property, we
641 didn't hear anything. Of course I'm not sure if the dogs were out or not; it's hard
642 to tell. But I did notice that the breezeway, which is in this picture just to the right
643 of the screened-in porch, will allow the noise from the pen to travel forward of the
644 house. Is that a concern? You said there were no complaints of barking noise?

645
646 Ms. Gallimore - Again, I try to be considerate of that both early
647 morning and late in the evening. I don't know any other way to take care of that
648 except I try to be considerate.

649
650 Mr. Berman - Thank you.

651
652 Mr. Bell - Any other questions?

653
654 Ms. Harris - Have you read the conditions knowing that if we
655 approve this you cannot replace the dogs, you have to allow the numbers to
656 decrease until you're in compliance?

657
658 Ms. Gallimore - Honestly, the reason I have all of these dogs comes
659 from thirteen years ago when my son died. And I breed once a year for a short
660 period of time. A couple of the dogs are mine that had health problems because I
661 would not sell them if they had health problems. So I have all of these dogs. It's
662 more than I want now, but I have them, and I'm responsible for them. So that's
663 the reason that I have them all. Honestly, they served a nurturing need for me.

664
665 Mr. Blankinship - So that condition does not bother you then.

666
667 Ms. Gallimore - It does not.

668
669 Mr. Bell - Any other questions? Thank you, Ms. Gallimore.
670 Anybody else wish to speak to this? Please come forward.

671

672 Mr. Blackburn - Hello. My name is Greg Blackburn. That's B-l-a-c-k-b-
673 u-r-n. I live at 7809 Woodmill Drive, which is fifty feet from this location.

674
675 My main concern—I've just paid off my house. I hope to work maybe five more
676 years and retire at this location. The noise concerns me. The previous owner of
677 the house had one dog. He was a good friend of mine. We have an adjoining
678 fence that I actually put up, a six-foot stockade fence, because every time I came
679 out onto my deck, the dog would come running up and you know how they run
680 back and forth along the fence and bark at you. Well, the fence helped some, but
681 it still didn't stop the barking. And that was just one dog. I feel six dogs is
682 excessive.

683
684 I've gotten two or three other neighbors putting—I don't know how many of these
685 notices you send when this type of request is asked. But they had copied the
686 article in the newspaper. They wouldn't sign it, but they just put "We're appalled
687 somebody would move in without reading the ordinances." They were certainly
688 there when I moved in.

689
690 I don't want to be a bad neighbor, but I don't want to have to sit on my deck and
691 listen to dogs barking, and I have heard them.

692
693 I'll be glad to answer any questions.

694
695 Mr. Berman - Mr. Blackburn, your home is across the street and two
696 doors down?

697
698 Mr. Blackburn - No sir. My home is right next door.

699
700 Mr. Berman - I apologize. Can you please put the map up?

701
702 Mr. Blackburn - I'm on the corner of Curtisdale and Woodmill.

703
704 Mr. Berman - Okay, I apologize. I was looking at Old Mill Estates.

705
706 Mr. Blackburn - The one right to the left of yours—yes sir, there.

707
708 Mr. Berman - Okay. Thank you for clearing that up.

709
710 Mr. Romers - This notice that you're referring to, what is that
711 notice? I think you pulled it out of your—

712
713 Mr. Blackburn - This is what the County sent me when they went, I
714 guess, for a special use permit. I don't know if you just send those to the
715 immediate neighbors. Evidently, the people that put the newspaper in my mailbox
716 and said, "Have you heard of this. We are appalled," I don't really know why they
717 wouldn't have signed that and come here themselves.

718
719 Mr. Romers - This article that was placed in your mailbox was since
720 August?
721
722 Mr. Blackburn - It was just in the recent newspaper. I believe you all
723 also have to list that—
724
725 Mr. Blankinship - The advertisement of the cases.
726
727 Mr. Blackburn - Yes sir.
728
729 Mr. Romers - Okay. I guess I have one more question. Your
730 previous neighbor with the dog, was that a large dog?
731
732 Mr. Blackburn - Medium sized.
733
734 Mr. Romers - And a large bark when he was talking to you from his
735 yard when you were on your deck. That's what was going on, why you put the
736 fence up?
737
738 Mr. Blackburn - Yes sir.
739
740 Mr. Romers - At that point in time?
741
742 Mr. Blackburn - Yes sir.
743
744 Mr. Romers - And how would you compare the barking or level of
745 noise from these six dogs—compared to that?
746
747 Mr. Blackburn - Much smaller yipping noise, but very prevalent.
748
749 Mr. Romers - Okay. Constant while they're out? Or occasional.
750
751 Mr. Blackburn - It's been occasional.
752
753 Mr. Romers - Okay. Fair enough.
754
755 Mr. Blackburn - And I also wondered if they've been kept inside—and
756 again, I'm not trying to be a bad neighbor—but have they been kept inside to
757 prevent any complaints before? Let's say she gets what she wants. And I think
758 the lady down here answered one of my questions—how long would this permit
759 be allowed. Again, I just think six dogs is excessive, and I don't want to hear the
760 noise for the rest of my life or the rest of the dogs' lives.
761
762 Ms. Harris - You said you put up a fence when the other neighbor
763 had the larger dog.

764
765 Mr. Blackburn - Yes ma'am.
766
767 Ms. Harris - How tall is that fence and what type of fence?
768
769 Mr. Blackburn - Six feet tall.
770
771 Ms. Harris - Okay. It's a wooden fence?
772
773 Mr. Blackburn - Yes ma'am.
774
775 Ms. Harris - Thank you.
776
777 Mr. Bell - Any other questions?
778
779 Mr. Baka - I just have a comment. I'm sensitive to the concern of
780 Mr. Blackburn, the next door neighbor. I notice in the staff report there are six
781 dogs, ages approximately age 8 through age 15-1/2. So at least one is middle
782 aged and at least one is older. My first thought is three dogs of any size would be
783 noisy. And I'm sensitive to your concerns, especially your property and the shape
784 of the actual parcel is close. A mitigating factor for the Board to consider here
785 today is that it is a fairly large lot, a one-acre lot. I think it's a beautiful
786 neighborhood. I was telling the other gentleman when I drove through.
787
788 Mr. Blackburn - It is a very nice neighborhood.
789
790 Mr. Baka - It has moderate woods, which probably do not
791 mitigate the sound entirely, but at least gives some visual separation. The way
792 the conditions are written in the staff report, if the Board were to approve this
793 case the applicant would no longer be able to have six dogs if the older dogs
794 were to perish one day. I realize she has put a small pen in the backyard.
795
796 Mr. Blackburn - That's very close to my property line.
797
798 Mr. Baka - Yes sir. You're adjacent. From what I heard the owner
799 say, this type of dog, also smaller dogs, prefer to be indoor dogs as opposed to
800 being outdoors. But they need to be out from time to time. I just wanted to take a
801 minute and kind of clarify the condition that this is for only the life span of these
802 six dogs. Correct?
803
804 Mr. Blankinship - Yes sir, that's correct. And the two cats, of course.
805
806 Mr. Baka - And the two cats. Okay.
807
808 Mr. Blankinship - I would also add, Mr. Baka, that condition #3 requires
809 that the applicant maintain the property so that noise and odors are controlled.

810 So if we started to get complaints about the dogs not being kept in an orderly
811 way—of course we don't expect them to be silent. But if there was something
812 that generated complaints, we could have an additional hearing before this Board
813 and this permit could be revoked.

814
815 Mr. Baka - Okay.

816
817 Mr. Romers - Is it possible to zoom up on these two properties to
818 maybe fill the screen and see them a little more carefully? I guess what I'm
819 looking for at the moment is where the pen is located currently.

820
821 Mr. Blackburn - I can show it to you.

822
823 Mr. Romers - If we could hover the mouse over that location.

824
825 Mr. Blankinship - That shows you where it is relative to the buildings.

826
827 Mr. Romers - Right there. The garage is somewhat in the way as a
828 barrier, as I'm seeing it here. Okay. So it's somewhat surrounded by the house
829 itself. And I guess that's a garage on the left side

830
831 Mr. Baka - It's fair to say the garage provides some visual
832 barrier.

833
834 Mr. Romers - Visual and sound as well, I would think. To the
835 property to the left of that, I would think.

836
837 Mr. Blackburn - That's the opposite side.

838
839 Mr. Baka - Right there.

840
841 Mr. Blackburn - That's my side.

842
843 Mr. Romers - Yes. We're looking towards your home at the
844 moment. Past that garage, I guess?

845
846 Mr. Blackburn - Yes.

847
848 Mr. Romers - Okay.

849
850 Ms. Harris - Mr. Bell, I wondered if Ms. Gallimore would relocate
851 the pen if that would alleviate some of the barking noise. Mr. Blackburn, do you
852 think that might help your complaint?

853

854 Mr. Blackburn - If I heard right, there are only a few of them in the
855 pen, and the others roam the backyard. So I don't think making them go to the
856 expense would make any difference.

857
858 Mr. Romers - Could we go back to the picture that shows the pen
859 that we were looking at in the direction of this gentleman's home? Right there.
860 Okay.

861
862 Mr. Blackburn - If you see the air conditioner and that garage, to the
863 right, to the corner of the garage, that is probably twenty-five feet to my property
864 line where I put my fence up. It is true, in that neighborhood everybody—when it
865 was built, Kenny Wilburn built the first twenty houses in there. And everyone had
866 to have an acre or larger to build a house. While that does sound like a lot, you
867 only have fifteen pine trees between us which, as most people know, all the
868 brush on the pine tree is at the top, and all you have at the bottom is the trunk.
869 So it's not a lot of blockage for sound.

870
871 Mr. Bell - Any other questions?

872
873 Ms. Harris - Yes. I'm debating whether to ask this. Are you aware
874 there is a group home in the neighborhood?

875
876 Mr. Blackburn - Yes ma'am.

877
878 Ms. Harris - Is that near your property?

879
880 Mr. Blackburn - That's five or six homes up.

881
882 Ms. Harris - Okay. Does that disturb your entitlement to—

883
884 Mr. Blackburn - It scared me when I didn't know it when I moved
885 there. I don't even remember how I found out. But I see the kids up and down the
886 street, and that hasn't been a problem at all.

887
888 Ms. Harris - Okay.

889
890 Mr. Bell - No more questions? Is there anyone else who would
891 like to speak to this issue? Thank you, sir.

892
893 Mr. Blankinship - Ms. Gallimore, you have time for rebuttal, if you feel
894 the need.

895
896 Mr. Blackburn - Thank you for your time.

897
898 Mr. Bell - Thank you, sir.

900 Ms. Gallimore - Greg, I just want to say—
901
902 Mr. Blackburn - I met your husband.
903
904 Ms. Gallimore - Right, you did. And it was my understanding that he
905 talked to you about it, and that you were understanding about that. So I'm a little
906 confused here.
907
908 Mr. Blankinship - Ma'am? Maybe you all can do that at another time.
909
910 Ms. Gallimore - I'm sorry. All I can say is I did try to be considerate.
911 They do bark because they are dogs. If I take barkers out, there have been times
912 that I would do that. You can't do that. I have one dog that barks when I come to
913 get her, so it's not that she's outside barking. It's because I'm coming to her, and
914 that's her response. Again, there will not be more. I have a 15-1/2-year old. I
915 have two 13-year-olds, one 10-year-old, one 9-year-old, and one 8-year-old. So
916 they're not young dogs anymore. Thank you.
917
918 Mr. Baka - One quick question, if I may. We usually don't get in
919 this type of detail, I suppose. Do you typically take all six dogs out at one time or
920 do you take two or three out at once?
921
922 Ms. Gallimore - Generally, I take them all out at one time, then all
923 back in at the same time.
924
925 Mr. Baka - Okay. Thanks.
926
927 Mr. Bell - Thank you.
928
929 Ms. Harris - What's the life expectancy of these toy poodles?
930
931 Ms. Gallimore - It can be ten to eighteen years. Two of them had
932 health problems at birth, so I don't know. Anything else?
933
934 Mr. Berman - Is there any reaction from the neighbor next door,
935 7816?
936
937 Ms. Gallimore - Not that I've heard. I went over there a couple of
938 times to try to talk to them and just let them know what was going on, but there
939 was nobody home. I don't know of any.
940
941 Mr. Berman - Okay. Thank you.
942
943 Mr. Bell - Any other questions? Thank you, Ms. Gallimore.
944

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

948
949 Mr. Bell - Mr. Blankinship just told me that Mr. Blackburn on the
950 kennel case, number 29, withdrew his complaint.
951

952 Mr. Madrigal - Yes sir, Mr. Chair. I spoke to Mr. Blackburn with
953 respect to the question that he raised at the end. He basically wanted to know
954 what his rights were with respect to the case if it gets approved. I basically
955 explained he has a right to appeal. And if he doesn't exercise that right, then he
956 could complain and eventually that case could come back to the Board if it arose
957 to that issue. So once I explained that, he basically said, "Well then I withdraw
958 my complaint."

959
960 Mr. Bell - Thank you. We'll go ahead and continue with the vote
961 of the Board of Zoning Appeal agenda.

962
963 Mr. Bell - Do I hear a motion on this case?

964
965 Mr. Romers - I make a motion to approve it as per the County's
966 recommendations.

967
968 Mr. Bell - Do I hear a second on this motion?

969
970 Mr. Baka - Second. Is there any discussion?

971
972 Ms. Harris - Yes. Realizing the ages of the toy poodles, we may
973 not have to deal with this violation for too long. In view of the fact that the
974 neighbor who did appear, the adjacent neighbor who did appear and complain,
975 he withdrew his complaint. So I see we have not much opposition to this case.

976
977 Mr. Bell - All those in favor of this motion say aye. All those
978 opposed say nay. The ayes have it; the motion passes.

979
980 After an advertised public hearing and on a motion by Mr. Romers, seconded by
981 Mr. Baka, the Board **approved** application CUP2015-00029, DUANE AND
982 LESLIE GALLIMORE's request for a conditional use permit pursuant to Sections
983 24-12(e) and 24-52(a) of the County Code to allow a noncommercial kennel at
984 7824 Curtisdale Road (OLD MILL ESTATES) (Parcel 818-689-7438) zoned
985 Agricultural District (A-1) (Varina). The Board approved the conditional use
986 permit subject to the following conditions:

987
988 1. This approval is only for the keeping of six toy poodles and two cats owned by
989 the property owners. The approval is not for the boarding or breeding of dogs or
990 cats at any time.

991
992 2. No new or replacement animals may be added, so that the number of animals
993 will be reduced by natural means to three, as allowed by code, at which time this
994 permit shall expire.

995
996 3. The applicant shall maintain the property so that noise and odors are
997 controlled.

998

999

1000 Affirmative: Baka, Bell, Berman, Harris, Romers 5
1001 Negative: 0
1002 Absent: 0

1003

1004

1005 [At this point, the transcript continues with the public hearing on the next
1006 case.]

1007

1008 Mr. Blankinship - Mr. Chairman, the next two cases are companions.
1009 With your permission, I'll call them both together. When it comes time to vote, of
1010 course we'll need separate motions and separate actions. But for the public
1011 hearing purpose, I think it's more convenient to combine them.

1012

1013 **CUP2015-00031** **HOME DEPOT** requests a conditional use permit
1014 pursuant to Section 24-116(d)(1) of the County Code to allow a temporary sales
1015 stand at 11260 West Broad Street (Parcel 742-762-4307) zoned Light Industrial
1016 District (M-1C) and West Broad Street Overlay (WBSO) (Three Chopt).

1017

1018 **CUP2015-00032** **HOME DEPOT** requests a conditional use permit
1019 pursuant to Section 24-116(d)(1) of the County Code to allow a temporary sales
1020 stand at 6501 West Broad Street (Parcel 768-742-3277) zoned Business District
1021 (B-3) (Tuckahoe).

1022

1023 Mr. Blankinship - Would the applicant stand? Does anyone else intend
1024 to speak to this case? All right. Do you swear the testimony you're about to give
1025 is the truth, the whole truth, and nothing but the truth so help you God? Thank
1026 you. Mr. Madrigal?

1027

1028 Mr. Madrigal - Mr. Chair, members of the Board, before you are two
1029 identical requests to allow temporary tents and sales stands at two Home Depot
1030 locations. The first is at the Brookhollow Shopping Center, located at 11260 West
1031 Broad Street. The second site is located at 6501 West Broad Street where the
1032 Burlington Coat Factory store is located.

1033

1034 The Brookhollow Shopping Center was established in 1997. The center includes
1035 Target, Hobby Lobby, and Kohl's department store. The Home Depot store

1036 contains 106,800 square feet of floor area, and the garden center adds another
1037 25,500 square feet.

1038

1039 The second location was redeveloped by Home Depot in 1999 and includes
1040 Burlington Coat Factory and Office Max. The Home Depot store at this site
1041 contains 109,000 square feet of floor area, and the garden center adds another
1042 22,500 square feet.

1043

1044 Consistent with the last three years at both locations, the store management
1045 intends to erect a 40-by-60-foot tent in each parking lot to accommodate
1046 Christmas tree sales between the first of November and December 31st.
1047 although Christmas tree sales would be allowed by right in garden centers, the
1048 applicants have elected to have this activity in the parking lots. Because a
1049 specific condition in each of the respective plans of development governing the
1050 centers prohibits outdoor storage, this activity requires a conditional use permit.

1051

1052 The Brookhollow site is zoned M-1C, is located in the West Broad Street
1053 Overlay District and is designated as Commercial Arterial in the Comprehensive
1054 Plan. The second site is primarily zoned B-3 and is also designated as
1055 Commercial Arterial.

1056

1057 Since selling Christmas trees is a customary use accessory to a home
1058 improvement store and a seasonal outdoor sales stand is not out of character
1059 with each of the existing uses, staff found the request consistent with both the
1060 zoning and the Comprehensive Plan designations for each location. With respect
1061 to detrimental impacts on nearby properties, the only detrimental impact
1062 identified by staff was that of potential congestion in the parking lots. The tents
1063 will displace approximately fourteen stalls at each location. And in both
1064 instances, the tents will be placed in front of the garden centers adjacent to the
1065 main drive aisles in front of the stores.

1066

1067 The Brookhollow location has approximately 300 excess parking stalls for the
1068 shopping center. And the second location complies with the required parking for
1069 a shopping center. Although parking congestion is a factor, especially during the
1070 holidays, similar requests have been approved over the last three years, and the
1071 Planning Department has not received any complaints about parking from either
1072 location during that time.

1073

1074 In conclusion, the requests are consistent with the surrounding land uses, the
1075 intent of the Zoning Ordinance, and the Comprehensive Plan. There appears to
1076 be no lasting or substantial detrimental impacts associated with the requests. In
1077 both cases, staff has prepared specific conditions of approval to mitigate any
1078 adverse impacts on adjacent uses during the temporary period that the tents will
1079 be on site. For these reasons, staff recommends approval of the request subject
1080 to the recommended conditions for each case. This ends my presentation.

1081

1082 Mr. Bell - Any questions?

1083 Ms. Harris - Yes. Mr. Madrigal, you said there are over 300 excess

1084 parking spaces for the upper Broad Street location.

1085

1086 Mr. Madrigal - Yes, at the Brookhollow site.

1088

1089 Ms. Harris - Right. Do you know how many excess parking spaces

1090 exist for the lower Broad Street site?

1091

1092 Mr. Madrigal - For the second site?

1093

1094 Ms. Harris - Yes.

1095

1096 Mr. Madrigal - I don't recall the exact number, no. But it was parked

1097 at per code requirements.

1098

1099 Ms. Harris - It is what?

1100

1101 Mr. Madrigal - Parked at code requirements.

1102

1103 Ms. Harris - But it has fewer excess parking spaces than 11260,

1104 right?

1105

1106 Mr. Madrigal - They didn't have any excess stalls, so they are

1107 parked at what code requires.

1108

1109 Ms. Harris - Okay.

1110

1111 Mr. Bell - Any other questions? Thank you.

1112

1113 Mr. Madrigal - Thank you.

1114

1115 Mr. Bell - Next?

1116

1117 Mr. Johns - Good morning, Mr. Chairman, members of the Board.

1118 We've been setting these tents up for the past three years. We have always—

1119

1120 Mr. Bell - Excuse me, would you give us your name?

1121

1122 Mr. Johns - Oh, I'm so sorry. Johns, Paul. J-o-h-n-s. We've been

1123 setting these tents up for the past three years. We always abide by the fire code,

1124 which means fire extinguishers, exit signs as required and proper stabilization for

1125 the tent. Like I said, we have not had any falter over the past three years, so I

1126 don't see an issue with anything from anyone. If you have any questions for me,

1127 I'd be more than happy to answer.

1128
1129 Mr. Bell - Any questions?
1130
1131 Mr. Baka - One question. How do you anchor the tents?
1132
1133 Mr. Johns - We have four-foot stakes which are driven down into
1134 the asphalt with ratchet straps that are tested at 1,500 pounds per strap. Each
1135 stake is limited at 1,800 pounds of pressure to hold this down. And each leg
1136 requires two stakes—one inside the leg and one at an anchoring distance.
1137 They're standing at 8 feet, which puts the stake out at 6-1/2 to 7 feet.
1138
1139 Mr. Baka - When you're all done, how do you rectify the asphalt?
1140
1141 Mr. Johns - We do patch the holes. We insert sand into the hole
1142 and put blacktop right back on top of it.
1143
1144 Mr. Bell - Any other questions?
1145
1146 Mr. Romers - For the last three years, has this been at both
1147 locations?
1148
1149 Mr. Johns - Yes sir. We actually have more than two locations
1150 here. We ended up with four locations up here. I don't know if they submitted the
1151 packages for those other two locations.
1152
1153 Mr. Romers - Are those locations in Henrico County?
1154
1155 Mr. Johns - I'm not sure.
1156
1157 Mr. Romers - Okay. Do you work for Home Depot?
1158
1159 Mr. Johns - I work for the rental company that sets the tents up.
1160 We're a subcontractor from another company.
1161
1162 Mr. Romers - Home Depot then, this is actually their venture and
1163 you're just a part of the team, so to speak?
1164
1165 Mr. Johns - Yes sir.
1166
1167 Mr. Romers - Okay. The garden center is not an adequate place to
1168 try to set up these Christmas trees temporary and sell them?
1169
1170 Mr. Johns - In some locations, we set them up inside the garden
1171 center. In some locations, they just don't have enough space on the inside
1172 because of all of their product and the way they have their floor plans laid out. So
1173 the outside usually becomes the next best place to place this tent.

1174

1175 Mr. Berman - We discussed that with the manager at one of the
1176 stores. Her response was first of all, the cars would still have to drive right up to
1177 front, which may be even more dangerous for pedestrians if it was inside the
1178 garden center. And second of all, if it was out of sight, kind of out of mind. From a
1179 retail marketing standpoint, it would be better outside.

1180

1181 Question. You may not be able to answer this because you probably don't run
1182 the other one. I shop at both of these Home Depots and I think you all do a good
1183 job with the Christmas tree sales. Do you know if the mulch setup—which is in
1184 the same location—is bigger or smaller than the Christmas tree setup?

1185

1186 Mr. Johns - I would have no idea.

1187

1188 Mr. Berman - I know it's kind of unfair to ask you. I believe it's
1189 smaller. I'm sorry; I believe the mulch is bigger than the Christmas tree setup.
1190 And the mulch is pretty well organized, and I don't hear of any complaints with
1191 that either.

1192

1193 Mr. Bell - Any other statements or questions?

1194

1195 Ms. Harris - Question. For security, are you familiar with what is
1196 done to be sure that the trees are secure after hours?

1197

1198 Mr. Johns - After each tent is set up, there is another contractor
1199 that comes out, and they enclose the area with fencing. I'm guessing the store
1200 will have their own security that will insure anything. We're always on a 24-hour
1201 callback basis, so if there are any emergencies or anything, they always call us.
1202 And we can be there within a matter of a couple of hours.

1203

1204 Ms. Harris - How long have you been working with this?

1205

1206 Mr. Johns - I've been doing this for almost sixteen years.

1207

1208 Ms. Harris - For Home Depot?

1209

1210 Mr. Johns - No, not for Home Depot. For Home Depot it's only
1211 been for the past three years.

1212

1213 Ms. Harris - Okay. Do they have cameras out there, security
1214 cameras?

1215

1216 Mr. Johns - Yes ma'am.

1217

1218 Ms. Harris - Okay. Thank you.

1219

1220 Mr. Berman - To follow up on Ms. Harris's observation, I'd like to
1221 recommend an additional condition that would state a police placard be set up
1222 with a contact phone number, and after hours, and hours of operation so that the
1223 police would be able to figure out if somebody was trespassing after hours.

1224

1225 Mr. Blankinship - We can certainly do that.

1226

1227 Mr. Berman - That would be condition #6 on both of them. Similar to
1228 a case we previously had regarding plant sales. That was at Tuckernuck, I
1229 believe.

1230

1231 Mr. Blankinship - Yes sir.

1232

1233 Ms. Harris - Mr. Johns, do you think that condition would be
1234 agreeable?

1235

1236 Mr. Johns - Yes.

1237

1238 Mr. Romers - I guess I just want to clarify one thing at the moment.
1239 You are with the actual tent company, right?

1240

1241 Mr. Johns - Yes sir.

1242

1243 Mr. Romers - And just a part of the entire venture, not necessarily
1244 responsible for any other element of it from security to the perimeter fence to the
1245 mulch.

1246

1247 Mr. Johns - No I'm not. I'm just mainly for the tent purposes only.

1248

1249 Mr. Romers - So you come in, you erect the tent with a permit.

1250

1251 Mr. Johns - Yes sir.

1252

1253 Mr. Romers - And then when the job is over, you take the tent
1254 down, patch the asphalt, and you're done.

1255

1256 Mr. Johns - Yes sir.

1257

1258 Mr. Romers - So everything else that you might be telling us today
1259 would be just general observations of what you've seen occur?

1260

1261 Mr. Johns - Yes sir.

1262

1263 Mr. Romers - Thank you.

1264

1265 Mr. Johns - Like I said, they always called us if there were issues
1266 concerning the tent. And we do run across the guys that come up and set up all
1267 the security barriers around the tent. We have never run across any issues
1268 concerning the security.

1269

1270 Mr. Romers - Thank you.

1271

1272 Mr. Bell - Any other questions?

1273

1274 Mr. Berman - But just to be clear, for this request the applicant is
1275 Home Depot, and the request is to allow a temporary sales stand. It is not
1276 specifically to allow just a tent. So all conditions that we apply here don't just
1277 apply to the tent rental company; they apply to Home Depot's request.

1278

1279 Mr. Blankinship - That's correct. Home Depot is the responsible party.

1280

1281 Mr. Bell - Any other questions? Thank you. Anybody else wish
1282 to speak to this matter? Hearing none, we'll go on to the next one.

1283

1284 [After the conclusion of the public hearings, the Board discussed the case
1285 and made its decision. This portion of the transcript is included here for
1286 convenience of reference.]

1287

1288 Mr. Bell - Do I hear a motion on this case?

1289

1290 Mr. Berman - I move that we approve this case with the additional
1291 condition #6 requiring a police placard including contact phone number and
1292 hours of operation.

1293

1294 Mr. Bell - Do I hear a second on this motion?

1295

1296 Ms. Harris - Second.

1297

1298 Mr. Bell - Is there any discussion?

1299

1300 Ms. Harris - I think we need to say for the record that this
1301 conditional use permit has been submitted to us in prior years and we have had
1302 no complaints.

1303

1304 Mr. Bell - All those in favor of the motion say aye. All those
1305 opposed say nay. The ayes have it; the motion carries.

1306

1307 After an advertised public hearing and on a motion by Mr. Berman, seconded by
1308 Ms. Harris, the Board **approved** application CUP2015-00031, HOME DEPOT's
1309 request for a conditional use permit pursuant to Section 24-116(d)(1) of the
1310 County Code to allow a temporary sales stand at 11260 West Broad Street

1311 (Parcel 742-762-4307) zoned Light Industrial District (M-1C) and West Broad
1312 Street Overlay (WBSO) (Three Chopt). The Board approved the conditional use
1313 permit subject to the following conditions:

1314

1315

1316 1. This conditional use permit applies only to the temporary sale of Christmas
1317 trees from November 1 through December 31, 2015. All other applicable
1318 regulations of the County Code shall remain in force.

1319

1320 2. Only one tent, as shown on the plot plan filed with the application, may be
1321 constructed pursuant to this approval. Any additional improvements shall comply
1322 with the applicable regulations of the County Code. Any substantial changes or
1323 additions to the design or location of the improvements will require a new use
1324 permit.

1325

1326 3. The applicant shall obtain a building permit for the tent, and shall comply with
1327 all requirements and conditions of the Department of Building Construction and
1328 Inspections.

1329

1330 4. The tent shall not interfere with approved landscaping islands or parking lot
1331 lighting. All approved landscaping shall be maintained in a healthy condition.

1332

1333 5. The tent shall be removed from the property no later than January 5, 2016, at
1334 which time this permit shall expire.

1335

1336 6. Hours of operation and emergency contact information shall be posted
1337 conspicuously on the outside of the tent. When the tent is closed the property
1338 shall be posted "no trespassing."

1339

1340

Affirmative:	Baka, Bell, Berman, Harris, Romers	5
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Negative:		0
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Absent:		0
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1344

1345

1346 Mr. Bell - Conditional use permit CUP2015-00032. Once again,
1347 this is a temporary sales stand. Do I hear a motion on this case?

1348

1349 Mr. Baka - Mr. Chairman, I make a motion to approve CUP2015-
1350 00032, Home Depot, with the five conditions in the staff report plus the sixth
1351 condition that Mr. Berman just read for the previous case regarding public safety
1352 response from police and on the grounds that this is a temporary use and will not
1353 adversely impact the health, safety, or welfare of the surrounding properties.

1354

1355 Mr. Bell - Do I hear a second?

1356

1357 Mr. Romers - Second.

1358

1359 Mr. Bell - Is there any discussion? Hearing none, all those in
1360 favor of the motion say aye. All those opposed say nay. The ayes have it; the
1361 motion passes.

1362

1363 After an advertised public hearing and on a motion by Mr. Baka, seconded by Mr.
1364 Romers, the Board **approved** application CUP2015-00032, HOME DEPOT's
1365 request for a conditional use permit pursuant to Section 24-116(d)(1) of the
1366 County Code to allow a temporary sales stand at 6501 West Broad Street (Parcel
1367 768-742-3277) zoned Business District (B-3) (Tuckahoe). The Board approved
1368 the conditional use permit subject to the following conditions:

1369

1370

1371 1. This conditional use permit applies only to the temporary sale of Christmas
1372 trees from November 1 through December 31, 2015. All other applicable
1373 regulations of the County Code shall remain in force.

1374

1375 2. Only one tent, as shown on the plot plan filed with the application, may be
1376 constructed pursuant to this approval. Any additional improvements shall comply
1377 with the applicable regulations of the County Code. Any substantial changes or
1378 additions to the design or location of the improvements will require a new use
1379 permit.

1380

1381 3. The applicant shall obtain a building permit for the tent, and shall comply with
1382 all requirements and conditions of the Department of Building Construction and
1383 Inspections.

1384

1385 4. The tent shall not interfere with approved landscaping islands or parking lot
1386 lighting. All approved landscaping shall be maintained in a healthy condition.

1387

1388 5. The tent shall be removed from the property no later than January 5, 2016, at
1389 which time this permit shall expire.

1390

1391 6. Hours of operation and emergency contact information shall be posted
1392 conspicuously on the outside of the tent. When the tent is closed the property
1393 shall be posted "no trespassing."

1394

1395

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

1396

1397

1398

1399

1400

1401 [At this point, the transcript continues with the public hearing on the next
1402 case.]

1403
1404 CUP2015-00034 **SANDSTON MOOSE LODGE** requests a conditional
1405 use permit pursuant to Section 24-116(d)(1) of the County Code to allow a turkey
1406 shoot at 4505 Oakleys Lane (Parcel 818-719-0377) zoned Agricultural District (A-
1407 1) (Varina).

1408
1409 Mr. Blankinship - Would anyone who intends to speak to this case
1410 please stand and be sworn in. Raise your right hands, please. Do you swear the
1411 testimony you're about to give is the truth, the whole truth, and nothing but the
1412 truth so help you God? Thank you. Mr. Gidley?

1413
1414 Mr. Gidley - Thank you, Mr. Secretary, Mr. Chairman, members of
1415 the Board of Zoning Appeals. This is a request for a turkey shoot at the Sandston
1416 Moose Lodge, located at 4505 Oakleys Lane. The property is just over six acres
1417 in area and is a combination of M-1 (Light Industrial) and A-1 (Agricultural)
1418 zoning.

1419
1420 The turkey shoot would occur on the southern portion of the site, which contains
1421 a picnic shelter shown here in red and a wooden shed shown here in beige. One
1422 person at a time shoots and they shoot from the southwest corner of the picnic
1423 shelter towards a target on the shed.

1424
1425 This is a view of the shed containing the target that everybody shoots at. As you
1426 can see, the area around the target is heavily wooded, which does aid in the
1427 safety of the turkey shoot.

1428
1429 The temporary conditional use permit would allow for turkey shoots on Saturday
1430 nights between the hours of 7 p.m. and 11 p.m. This would be this year,
1431 September through December of 2015, and also next year, September to
1432 December 2016.

1433
1434 As far as evaluation, a Moose Lodge is a permitted use in the M-1 district, and
1435 it's not inconsistent with the designation of Planned Industry on the
1436 Comprehensive Plan. The Moose Lodge has conducted turkey shoots on the site
1437 since at least 1982. As far as any substantial detrimental impact, the contestants
1438 shoot away from the Moose Lodge. And as noted earlier, the site is heavily
1439 wooded, so I don't think there's a big safety concern here.

1440
1441 As far as the surrounding uses, as you can see on the aerial photo, the shoot
1442 takes place right here. And to the west, it's all wooded right now. To the north,
1443 there's a cement mixing plant. There are industrial uses to the east. And to the
1444 south is Interstate 64. The closest residences are over a thousand feet to the
1445 north.

1446
1447 Given the successful track record of turkey shoots here going back over thirty
1448 years, the surrounding industrial zoning, and the wooded nature of the site, staff

1449 does not anticipate any problems with the renewal of this conditional use permit.
1450 As a result, we can recommend approval of this request subject to the conditions
1451 found in the staff report.

1452
1453 That concludes my presentation. Are there any questions I can answer?
1454

1455 Mr. Bell - Any questions or statements?

1456
1457 Ms. Harris - Mr. Gidley, do you know if there has been any new
1458 residential construction new this site?

1459
1460 Mr. Gidley- The nearest residential homes are right up here. What
1461 you see on the aerial photo I believe is within the past year. If you go to the
1462 south, it's actually industrial zoning down here. To the southwest, it's still vacant.
1463 And to the southeast, there's an industrial use in there. I believe it's 2,000 feet to
1464 the residences to the south.

1465
1466 Ms. Harris - Could we see the view of the target building again?

1467
1468 Mr. Gidley- Yes ma'am.

1469
1470 Ms. Harris - What's behind the target building on the left side?
1471 Seems to be white.

1472
1473 Mr. Gidley- Over here?

1474
1475 Ms. Harris - Behind the trees.

1476
1477 Mr. Gidley- Oh, that's sky, ma'am.

1478
1479 Ms. Harris - Oh good. And what's the range of the shots? Do you
1480 know, or should we ask the applicant about that?

1481
1482 Mr. Gidley- A shotgun, from my experience, probably would go
1483 more than a couple hundred yards or so.

1484
1485 Mr. Romers - Can I speak to that?

1486
1487 Mr. Gidley- Yes sir.

1488
1489 Mr. Romers - Having personal experience, including at this location
1490 many, many years ago, actually, the shot distance is probably more like between
1491 50 and 100 feet at the most. Otherwise, with the shotgun pellets, they would
1492 spread out too far to do any competition that they do. The closest pellet to the
1493 center of the target is what wins the turkey. So they're very low-power shells. In
1494 this case, they're only allowing one person to shoot at a time, unlike other turkey

1495 shoots where they line up the targets left to right. There may be twelve
1496 contestants. This is very focused. There's the wood backdrop behind it, which is
1497 going to catch the pellets. The pellets themselves would not—as they spread out,
1498 would not exceed the size of that target if they were actually aimed directly at it.
1499 And the foliage behind it would very much knock down any stray pellets that
1500 might occur. I thought that might help a little bit on this.

1501

1502 Ms. Harris - Thank you.

1503

1504 Mr. Romers - Although I won a ham, not a turkey on my fifth shot.

1505

1506 Mr. Bell - Any other questions? Thank you.

1507

1508 Mr. Gidley- Thank you, sir.

1509

1510 Mr. Gwaltney - My name is Jerry, and the last name is Gwaltney—G-
1511 w-a-l-t-n-e-y. We've been doing this for a number of years in the past. We
1512 haven't had any problem at all with the project. Both of us are totally familiar with
1513 the rules and regulations, and we've gone through those in past years.

1514

1515 Mr. Childress - My name is Robert Childress—C-h-i-l-d-r-e-s-s. I'm
1516 the Moose Legion chairman. I'm the one who is trying to get the permit to do this
1517 project. It has never been a problem. Like he was saying, the black area on the
1518 target is like a rubber barrier, so the pellets bounce off. You're shooting at the
1519 little hole in the middle. It's a wheel with the targets on it. It's electric. It changes
1520 for each person.

1521

1522 Mr. Romers - I assume that picnic table wouldn't be occupied while
1523 we're doing this. When we do this, which is very traditional in this part of the
1524 world, is this a fundraiser for you guys?

1525

1526 Mr. Gwaltney - Yes. We support Moose Hut, Moose Haven, more or
1527 less—. It's helping us to support these.

1528

1529 Mr. Romers - So it's not for profit; it's for charity purposes.

1530

1531 Mr. Gwaltney - It's not for profit, no.

1532

1533 Mr. Romers - I guess the only other question I have at the
1534 moment—and experience, again, in my past with these events—tell us how
1535 alcohol is handled at these events.

1536

1537 Mr. Childress - There's no alcohol.

1538

1539 Mr. Romers - Do you all police that?

1540

- 1541 Mr. Childress - We will.
- 1542
- 1543 Mr. Romers - Including the parking lot and trunks and things like
1544 that? It's very important that this is an alcohol-free environment.
- 1545
- 1546 Mr. Childress - We will. I guess we'll have to have somebody to
1547 police it. We have a sign that says no alcohol beyond this point, none during the
1548 turkey shoot at all.
- 1549
- 1550 Mr. Romers - So "beyond this point" doesn't matter during the
1551 turkey shoot because there's no alcohol on the premises being consumed during
1552 the turkey shoot.
- 1553
- 1554 Mr. Childress - Right.
- 1555
- 1556 Mr. Romers - Is that correct?
- 1557
- 1558 Mr. Childress - Correct. This area is down at the bottom.
- 1559
- 1560 Mr. Romers - How about in the building? Again, is the entire
1561 property alcohol-free during the turkey shoot or is there alcohol allowed inside
1562 the building socially during—
- 1563
- 1564 Mr. Childress - Inside the lodge.
- 1565
- 1566 Mr. Gwaltney - They might be inside the lodge. But you'll find most of
1567 your turkey shooters are not lodge members. They're not subject to use our
1568 social quarters.
- 1569
- 1570 Mr. Romers - So it's alcohol-free at the turkey shoot itself
1571 regardless of what may be going on inside the lodge.
- 1572
- 1573 Mr. Gwaltney - That's correct.
- 1574
- 1575 Mr. Romers - And it's well posted to the manner that if anyone has
1576 consumed any form of alcohol, they're not welcome at the turkey shoot.
- 1577
- 1578 Mr. Gwaltney - That's correct.
- 1579
- 1580 Mr. Berman - Will you have either a fire marshal or any expert on
1581 site the entire time to make sure that the ammo and the shotguns are in good
1582 order and that safety procedures are being followed?
- 1583
- 1584 Mr. Childress - We haven't done it before.
- 1585
- 1586 Mr. Berman - But there is somebody there who knows about guns.

1587
1588 Mr. Blankinship - Who is responsible?
1589
1590 Mr. Childress - There's a person responsible to check the gun, look
1591 at the gun and all that.
1592
1593 Mr. Berman - Yes, that's all I'm asking. Do you provide the ammo or
1594 are people allowed to use their own ammo?
1595
1596 Mr. Childress - We provide it.
1597
1598 Mr. Berman - Good. So you control the specs that you've listed in
1599 the conditions. Good. When we inspected the site, I do feel that I-64 is safe. But
1600 there's a spot in the clearing on Oakleys Lane. It's an elevated berm. A person
1601 would have to actually turn like this and shoot. They could actually hit a car. It's
1602 within 200 feet. Maybe you'll see it here. You can see cars going by. I own a 12
1603 gauge, and I could probably hit the car, but with a higher caliber. That's why I
1604 asked to make sure that you control the shot.
1605
1606 Mr. Childress - Well, I don't think they would win a prize shooting a
1607 car.
1608
1609 Mr. Berman - Is there any way that they can cordon it off? Just put
1610 something on the side? I guarantee if somebody did that, they'd more than likely
1611 be arrested, but I don't want to give them the opportunity.
1612
1613 Mr. Childress - I think they would be responsible enough to shoot it at
1614 the target they're supposed to be shooting at, not turning to the left to shoot at
1615 the road. I think we'd have to make them leave.
1616
1617 Mr. Berman - Yes. It could be a misfire, though. Okay. That's the
1618 only thing I was concerned about. Everything else is very well insulated by the
1619 foliage. Do you retrieve the shells and shot from an environmental standpoint?
1620
1621 Mr. Childress - We get the shells up. The shot kind of falls in the
1622 woods and we sweep it up.
1623
1624 Mr. Berman - Thanks, that's all I have.
1625
1626 Mr. Bell - Any questions or statements? Thank you.
1627
1628 Mr. Blankinship - Does anyone else wish to speak to this case?
1629
1630 Mr. Bell - All right, we'll move right along.
1631

1632 [After the conclusion of the public hearings, the Board discussed the case
1633 and made its decision. This portion of the transcript is included here for
1634 convenience of reference.]

1635
1636 Mr. Bell - Do I hear a motion on this case?

1637
1638 Mr. Romers - I make a motion to approve this conditional use permit
1639 with the restrictions or notes made by the County.

1640
1641 Mr. Bell - Do I hear a second on this motion?

1642
1643 Ms. Harris - Second. I feel that in view of the fact that this lodge
1644 has conducted a number of turkey shoots in the past and we have had no
1645 complaints that it will not adversely affect the health, safety, or welfare of the
1646 community.

1647
1648 Mr. Bell - Is there any discussion? Hearing none, all those in
1649 favor of the motion say aye. All those opposed say nay. The ayes have it, the
1650 motion passes.

1651
1652 After an advertised public hearing and on a motion by Mr. Romers, seconded by
1653 Ms. Harris, the Board **approved** application CUP2015-00034, **SANDSTON**
1654 **MOOSE LODGE's** request for a conditional use permit pursuant to Section 24-
1655 116(d)(1) of the County Code to allow a turkey shoot at 4505 Oakleys Lane
1656 (Parcel 818-719-0377) zoned Agricultural District (A-1) (Varina). The Board
1657 approved the conditional use permit subject to the following conditions:

1658
1659 1. Hours of operation shall be limited to Saturdays from 7:00 p.m. to 11:00 p.m.,
1660 September through December, 2015 and 2016. This permit shall expire on
1661 December 31, 2016.

1662
1663 2. The property shall be clearly posted to show the area in which shooting
1664 occurs.

1665
1666 3. No alcoholic beverages may be consumed on the premises during the turkey
1667 shoot. A sign to this effect must be conspicuously posted in the immediate
1668 vicinity of the shooting area. No person under the influence of alcohol, as defined
1669 in Section 18.2-266 of the Code of Virginia, may be permitted in the shooting
1670 area.

1671
1672 4. Restrooms shall be provided.

1673
1674 5. The turkey shoot shall only involve the use of shotguns no larger than 12
1675 gauge and low powered (2-3/4") shells containing no larger than No. 8 shot.

1676
1677

1678 Affirmative: Baka, Bell, Berman, Harris, Romers 5
1679 Negative: 0
1680 Absent: 0

1681

1682

1683 [At this point, the transcript continues with the public hearing on the next case.]

1684

1685 Mr. Blankinship - That is the end of the conditional use permit portion of
1686 the agenda. There is one variance on this morning's agenda.

1688

1689 **VAR2015-00011** WILLIAM AND LAURA LEE request a variance from
1690 Section 24-94 of the County Code to build a deck at 11216 Grey Oaks Park
1691 Terrace (ESTATES AT GREY OAKS) (Parcel 740-772-7509) zoned One-Family
1692 Residence District (R-2AC) (Three Chopt). The rear yard setback is not met. The
1693 applicants propose a deck extending 14 feet into the rear yard setback, where
1694 the Code requires a deck to extend not more than 10 feet into the rear yard
1695 setback. The applicants request a variance of 4 feet rear yard setback.

1696

1697 Mr. Blankinship - Would everyone who intends to speak to this case
1698 please stand and be sworn in. Raise your right hands, please. Do you swear the
1699 testimony you're about to give is the truth, the whole truth, and nothing but the
1700 truth so help you God? Thank you. Mr. Gidley.

1701

1702 Mr. Gidley - Thank you, Mr. Secretary, members of the Board of
1703 Zoning Appeals. This is a request for a variance to allow a proposed deck that
1704 will encroach into the rear yard setback at 11216 Grey Oaks Park Terrace. The
1705 property is zoned R-2AC, One-Family Residence District, and is located in the
1706 Estates at Grey Oaks subdivision.

1707

1708 The required setback for a dwelling in the R-2A district is forty-five feet. However,
1709 the Board of Supervisors has decided to allow an exception for decks, which may
1710 encroach up to ten feet into the required setback. So instead of forty-five feet, a
1711 deck can come to within thirty-five feet of the rear property line.

1712

1713 In this case, the home itself was constructed within inches of the forty-five foot
1714 rear yard setback. So as a practical matter, any deck attached to the home is
1715 limited to ten feet. The applicant would like to tear down the existing deck and
1716 stairs and replace them with a new set that would come out eighteen feet from
1717 the house. This would place them eight feet beyond the ten-foot exception
1718 allowed for decks.

1719

1720 Based on comments made to staff and their application, it appears this request
1721 was done to accommodate a proposed Trex building material the applicant wants
1722 to use for the deck rather than any legal standards for a variance found in state
1723 code. In that light, the first two options for obtaining a variance, does zoning

1724 ordinance unreasonably restrict the utilization of the property. Staff does not
1725 believe that is the case, as it has allowed for a new home to be constructed, as
1726 shown here. In addition, it allows for a ten-foot deck to be constructed on the
1727 property.

1728
1729 The second option appears to be the one the applicant is referencing, which
1730 speaks to the property's slope. This would be, would the variance alleviate a
1731 hardship due to a physical condition related to the property or improvements
1732 thereon, at the time of the effective date of the ordinance. In other words, did any
1733 hardship exist at the time the ordinance took effect. In this case, the ten-foot
1734 exception for decks took effect in 1960, while the rear yard setback took effect in
1735 1969. Both of these predate the 2008 recordation of the subdivision plat and the
1736 construction of the home only last year. As a result, any hardship that may exist
1737 did not exist at the time of the effective date of the ordinance, as required by
1738 state code for a variance.

1739
1740 If one of the two above options were met, the Board must also find that the
1741 applicant meets all five of the following tests.

1742
1743 Test one. The property for which the variance has been requested was acquired
1744 in good faith and any hardship was not created by the applicant. The applicant
1745 purchased the home in August of last year and purchased the property in good
1746 faith.

1747
1748 Test two. The granting of the variance will not be a substantial detrimental impact
1749 to adjacent or nearby property. Staff does not believe that it would rise to the
1750 occasion of being a substantial detriment.

1751
1752 Test three. The condition or situation of the property concerned is not so general
1753 or reoccurring of a nature as to make reasonably practical an amendment to the
1754 Zoning Ordinance. This is where staff believes the application has serious
1755 shortcomings. The surrounding neighborhood is also zoned R-2AC and is subject
1756 to the same forty-five-foot rear yard setback as the property owner. In addition,
1757 every single-family lot in Henrico County is subject to the ten-foot exception
1758 allowed for decks. As a result, this is a general and reoccurring situation. Finally,
1759 the ten-foot exception for decks exists precisely because the Board of
1760 Supervisors decided to adopt a Code provision to allow for decks to encroach up
1761 to ten feet into the setbacks. Since the Board of Supervisors provided for this
1762 exception to begin with, they're free to change it if at any time they believe such a
1763 change is appropriate.

1764
1765 Test four. The granting of the variance does not result in a use not permitted by
1766 the zoning of the property. This is not a use variance, as a home is a permitted
1767 use in this district.

1768

1769 Test five. The remedy sought by the variance application is not available through
1770 a special exception or modification. While an ordinance amendment is certainly
1771 an option, a special exception or modification is not.

1772
1773 In conclusion, there is no unreasonable restriction on the use of the property. The
1774 lot contains a new dwelling, and the applicant has the ability to construct a ten-
1775 foot deck. The hardship provision does not appear to apply since both the home
1776 and the lot were created long after the effective date of the ordinance
1777 requirements. Finally, the applicant has to meet all five standards for a variance.
1778 Staff submits they do not meet condition #3, as the situation is definitely general
1779 and reoccurring. Also, just as the Board of Supervisors provided for a current ten-
1780 foot exception for decks, they are free to amend this provision if they believe it
1781 should be changed. For these reasons, staff recommends denial of this request.

1782
1783 This concludes my presentation. If there are any questions, I will be happy to
1784 answer them.

1785
1786 Mr. Bell - Any questions? There's something I want to ask Ben.

1787
1788 Mr. Blankinship - Yes sir.

1789
1790 Mr. Bell - We have a forty-five foot maximum setback in the
1791 backyard, very similar to what we had in the front yard on another case.

1792
1793 Mr. Blankinship - Yes sir, it's somewhat similar.

1794
1795 Mr. Bell - Is it similar enough—it didn't dawn on me until I read it
1796 right here—that that should be looked at, don't you think?

1797
1798 Mr. Blankinship - We can certainly bring that up with the Board, if they
1799 decide to move in the direction of an amendment on the other issue, yes sir.

1800
1801 Mr. Baka - I have a comment on that, if I may, Mr. Chairman. The
1802 general intent of that letter was to help smaller homes, many older homes in
1803 Henrico's aging neighborhoods to allow for revitalization and necessary
1804 improvements that bolster the value and vitality of those neighborhoods. Some of
1805 them are wearing out. I don't know if the intent of that letter, when we discussed
1806 it among the Board last month, went as far as to include adding new and larger
1807 decks on the rear of new homes. I kind of feel that was more of a conversation
1808 on helping our aging neighborhoods.

1809
1810 Mr. Blankinship - This certainly illustrates that that's a legislative
1811 decision the Board of Supervisors will need to arrive at.

1813 Mr. Bell - But Greg, since you put it that way, I think that was a
1814 good stipulation as to the difference between the two. And that's what was in my
1815 mind. Thank you. Any other statements or questions? Thank you.

1816

1817 Mr. Gidley - Thank you.

1818

1819 Mr. Bell - Mr. and Mrs. Lee?

1820

1821 Mr. Lee - Good morning. My name is William Lee—L-e-e. I'd
1822 just like to say that we moved here from New York last August, purchased this
1823 home. We actually purchased the lot January 2014. I grew up here in Richmond.
1824 When we bought the house, we didn't know what we wanted to build in the back.
1825 The plans originally called for a moderate deck made out of wood in the back,
1826 and we opted to put the money into the stampcrete patio that you see there.

1827

1828 We were not aware of the code. We're not a homebuilder; I don't know much
1829 about it at all. So we relied on our builder to let us understand what specs we
1830 could play with. While the house was being built, we learned a lot of things. We
1831 also learned that the home was built using all of the buildable square footage,
1832 apparently.

1833

1834 We were told—and my wife and I both recall this, that our builder said we could
1835 just build a stoop that you see there, nothing fancy at all, and later on we could
1836 tear it down and build what we want when we have the time to kind of focus on it,
1837 which is what we've been doing the past several months. In the meantime, we
1838 built this stampcrete patio. The deck, we were told, we could build however large
1839 we wanted to. The builder had told us that we could not build a covered structure
1840 back there within a certain size because we had used up all the buildable square
1841 footage. So we understood that. We were not aware of the deck and the forty-five
1842 foot easement and encroachment until recently. When we built the stampcrete
1843 patio, we built it 20-by-12 feet out, and that was not an issue. And so I believe
1844 that when they built the stoop, they brought the stoop stairs out to twelve feet
1845 also, just to match the depth of the stampcrete patio. We were not aware that we
1846 were in violation at all. Again, that's something that we learned quite recently.

1847

1848 I'll tell you that at the advice of some folks that we know, to just go ahead and
1849 build a fourteen-foot deck, we decided that was not the right thing to do. So we
1850 wanted to understand what this process was, so we went ahead and submitted
1851 this application.

1852

1853 While I understand the five tests, we probably do not meet all of them. I agree
1854 with the staff on that. Our concern is that with a ten-foot-depth deck, the pillars
1855 will have to be drilled into the stampcrete patio as well. Then we're going to have
1856 to re-imagine sort of the entire patio layout as well, and that's going to be at an
1857 additional cost. It won't look right. We considered putting out a ten-foot deck and
1858 what that would look like at the bottom there with the pillars going into the

1859 stampcrete and what that would entail. What we were told is that we couldn't get
1860 a clean cut, it was going to be very difficult to have clean cut to put the pillars in,
1861 and it may not look correct. We'll have some of the stampcrete coming out, which
1862 we were not a fan of. The twelve feet there or getting a fourteen-foot deck would
1863 allow us to put the pillars just to the outside of the stampcrete patio, which makes
1864 a lot of sense to us. Even at twelve feet, we could drill into the stampcrete and
1865 have it flush with the rest of the stampcrete, which would be okay too. But ten
1866 feet, it would be difficult.

1867
1868 Also, I just want to clear this up. I noticed that in this package here that we were
1869 asking for an eight-foot variance. But at the time we submitted this, we
1870 understood that the staircase would have had an additional four feet. So we've
1871 actually modified the plans, and we're fine putting the staircase on either side of
1872 the planned deck so that it does not encroach another four feet. So really what
1873 we're asking for is a four-foot variance. That's it.

1874
1875 Mr. Bell - Any questions?

1876
1877 Mr. Berman - I wanted to ask you about the Trex material. I've seen
1878 it, but I'm not familiar with it. Part of your request lies on the fact that you would
1879 have a lot of waste because if it was ten feet versus—

1880
1881 Mr. Lee - Yes, that's correct.

1882
1883 Mr. Berman - Do the boards go lengthwise or widthwise? Why
1884 would you have to cut the boards off, and why can't you use partial boards like
1885 you have on a wooden deck to make up the difference.

1886
1887 Mr. Lee - What we understand from the deck builder is that they
1888 would build it out lengthwise going toward the depth. And they would have to cut
1889 more of the Trex material to get it down to ten feet. If they flipped it the other way,
1890 they don't make the Trex boards long enough to go the twenty-seven feet that
1891 we're looking to do. So they have to put something in the middle. And then again,
1892 they'd have to cut more of the pieces off. Going to fourteen feet would minimize
1893 the waste that we'd have with Trex. Why we would not supplement it with wood is
1894 that what we're looking to do is have a maintenance-free deck.

1895
1896 Mr. Berman - No, no, no. What I meant was do you have to have a
1897 fourteen-foot run of Trex to the entire deck or can you split them seven feet and
1898 seven feet like a normal wooden deck splits them. I don't understand where the
1899 waste concept comes from.

1900
1901 Mr. Lee - I couldn't answer that for you definitively, sir.

1902
1903 Mr. Berman - Okay.

- 1905 Mr. Lee - But that's what we were told by our deck builder who
1906 is apparently a premier installer of Trex. So I just go with his professional opinion
1907 on that one.
- 1908
- 1909 Mr. Berman - I do have to say if this—not to slander anybody, but if
1910 this is a professional builder, they should have given you more information about
1911 the local guidelines as far as what you could and could not do.
- 1912
- 1913 Mr. Lee - I agree with you. The builder, he was stellar. I really
1914 couldn't find any fault with what he was doing. I think maybe he just gave us the
1915 wrong information at the time. But our deck builder, our deck designer is the one
1916 who brought this to our attention. Again, we want to do it the right way, so let's
1917 just hold off and submit the application for the variance and see what happens
1918 rather than just going ahead and building it because he didn't want to hurt his
1919 reputation either.
- 1920
- 1921 Mr. Berman - Hypothetical question. If this Board denied your
1922 request and limited you to ten feet, would you still build the deck?
- 1923
- 1924 Mr. Lee - We will. I mean, we'd like to build something in the
1925 back of the home coming off—the double doors up there are from the kitchen.
1926 Yes, we would. I mean, we would likely build something at ten feet. It would be
1927 cramped because we'd like to put a dining table up there and chairs, so you're
1928 talking seven to eight feet in width already, and then you've got a very small
1929 space on either side. We have two smaller children—6-1/2 and 2 years old. Just
1930 to have that tight space around there with the dining table as well, it would just be
1931 hard to chase them around and get them out of trouble. Having the room up
1932 there would help. But yes, we would build something still.
- 1933
- 1934 Mr. Berman - Thank you.
- 1935
- 1936 Mr. Bell - Any other questions?
- 1937
- 1938 Mr. Romers - I have a real quick question. It's a very minor detail.
1939 The existing depth out from the home is how many feet at this point, as shown?
- 1940
- 1941 Mr. Lee - It's at twelve feet.
- 1942
- 1943 Mr. Romers - Okay. So that would be, I guess, by admission, two
1944 feet over what it's supposed to be at this time?
- 1945
- 1946 Mr. Lee - Yes sir. And again, we had no idea of that when it
1947 was built.
- 1948
- 1949 Mr. Romers - Okay.
- 1950

- 1951 Mr. Lee - Again, I think they were just trying to match the depth
1952 of the stampcrete patio, to have the stairs kind of flush with that.
- 1953
- 1954 Mr. Romers - Thank you.
- 1955
- 1956 Mr. Bell - Any other statements?
- 1957
- 1958 Ms. Harris - Yes, I do have a question. I think in the report we saw
1959 that the steps could be relocated.
- 1960
- 1961 Mr. Lee - Yes. Currently now, we have the steps tentatively
1962 planned to be on either side of the deck rather than encroaching further into the
1963 depth of the yard. So yes, it would be on that side someplace.
- 1964
- 1965 Ms. Harris - And you do plan to tear this down to construct your
1966 new deck.
- 1967
- 1968 Mr. Lee - That's right.
- 1969
- 1970 Ms. Harris - Okay.
- 1971
- 1972 Mr. Bell - We're looking not at ten feet, you said, but four feet
1973 difference.
- 1974
- 1975 Mr. Lee - Just looking for a four-foot variance, yes sir. It will
1976 come out fourteen feet total.
- 1977
- 1978 Mr. Bell - Any other questions or statements? Thank you, Mr.
1979 Lee. Shall we go on with the voting or do you want to take a five-minute break?
- 1980
- 1981 [The Board takes a five-minute break.]
- 1982
- 1983 Mr. Bell - Call the meeting back to order.
- 1984
- 1985 **[After the conclusion of the public hearings, the Board discussed the case
1986 and made its decision. This portion of the transcript is included here for
1987 convenience of reference.]**
- 1988
- 1989 Mr. Bell - Do I hear a motion on this case?
- 1990
- 1991 Mr. Berman - I move that we deny the request on the grounds that it
1992 does not fulfill all the variance guidelines.
- 1993
- 1994 Mr. Blankinship - Which ones do you feel it doesn't?
- 1995
- 1996 Mr. Berman - Specifically, the general or reoccurring nature.

1997
1998 Mr. Blankinship - Thank you.
1999
2000 Mr. Bell - Do I hear a second on this motion? I'll second the motion. I'm seconding it because all five conditions as read by the Planning Department's representative, the presentation that he did, should be complied with to satisfy the Code of Virginia 15.2-2309 that applies to this variance. The variance did not satisfy those requirements. Because of that, what really hit home to me was if we change the forty-five/thirty-five foot guidelines, then we might be going beyond our capabilities to do what we do here. It's more of a Board of Supervisors' consideration than ours. Because of that, I second the motion.
2001
2002
2003
2004
2005
2006
2007
2008
2009 Do I hear any discussion?
2010
2011 Mr. Baka - One comment. I concur with the motion. Regrettably, the deck would not cause a significant impact to the neighboring property owners; however, this variance test by state code and the changes that were adopted on July 1, 2015, create a higher threshold to reach, which is difficult to reach in this situation. So I agree with the motion.
2012
2013
2014
2015
2016
2017 Mr. Bell - Any other discussion?
2018
2019 Ms. Harris - Yes. I have a concern that so often when homes are built on cul-de-sacs like this, their rear yard setback may be limited. We have another case that to me speaks to that. But in going by the guidelines, I feel we do have to deny the applicant this variance.
2020
2021
2022
2023
2024 Mr. Bell - Any further discussion?
2025
2026 Mr. Berman - I want to make sure that the applicants, if this does sustain the denial, are given other options to pursue, for example, an appeal and going to the Board of Supervisors.
2027
2028
2029
2030 Mr. Bell - Yes. We have a procedure for that, and you can choose it if you so desire.
2031
2032
2033 All those in favor of this motion say aye. All those opposed say nay. The ayes have it; the motion passes.
2034
2035
2036 After an advertised public hearing and on a motion by Mr. Berman seconded by Mr. Bell, the Board **denied** application VAR2015-00011, WILLIAM AND LAURA LEE's request for a variance from Section 24-94 of the County Code to build a deck at 11216 Grey Oaks Park Terrace (ESTATES AT GREY OAKS) (Parcel 740-772-7509) zoned One-Family Residence District (R-2AC) (Three Chopt).
2037
2038
2039
2040
2041
2042

2043 Affirmative: Baka, Bell, Berman, Harris, Romers 5
2044 Negative: 0
2045 Absent: 0

2046

2047

2048 Mr. Bell - Now we go to the minutes for July 23rd [sic]. Do I
2049 hear a motion on the minutes to approve?

2050

2051 Mr. Romers - Motion.

2052

2053 Mr. Bell - Do I hear a second?

2054

2055 Ms. Harris - Second.

2056

2057 Mr. Bell - Is there any discussion. Hearing none, all those in
2058 favor of the motion say aye. All those opposed to the motion say nay. The ayes
2059 have it; the motion passes.

2060

2061 On a motion by Mr. Romers, seconded by Ms. Harris, the Board **approved as**
2062 **submitted the Minutes of the September 24, 2015**, Henrico County Board of
2063 Zoning Appeals meeting.

2064

2065 Affirmative: Bell, Baka, Berman, Harris, Romers 5
2066 Negative: 0
2067 Absent: 0

2068

2069 Mr. Bell - We do have some other business. In our package, we
2070 did have a letter put together for us by the Planning Department that deals with
2071 the Rockwood Road situation and situations like it. I hope everybody has had a
2072 chance to read the letter. If you have, what discussions do we have on it at this
2073 time?

2074

2075 Ms. Harris - I think I said it all at the last meeting, but I do want to
2076 mention this. I know we had to write the letter based on what the Board decided
2077 at the last meeting. But to me, we had one case in an entire subdivision of 131
2078 houses whereby the building requirements were not followed. I wonder about
2079 saying that this situation is recurring. Although we have other homes in the
2080 neighborhood, they were not brought before us because a renovation had not
2081 occurred. I know when it comes to real estate assessment, we do go by
2082 comparables in the neighborhood and all of that.

2083

2084 We had three other houses, I believe, that may have not conformed to guidelines
2085 because of the porches. But I don't believe that they were built in violation of the
2086 building line, but maybe they were. But still, four out of 131, I don't think that's
2087 recurring enough for an amendment to the Zoning Ordinance to be made.

2088 Nevertheless, it's going before the Board of Supervisors, and we can see how
2089 they feel about it.

2090
2091 Mr. Bell - Do we need a vote on this?

2092
2093 Mr. Baka - I have a couple of comments on the text of the letter,
2094 if I may. Two items. First, I wanted to mention—and I appreciate Ms. Harris's
2095 comments and feedback on that. In this particular instance, the house that we
2096 had a request for a variance was built in 1952. Some of those houses in the
2097 neighborhood are small and modest in size. Some of them are 800 square feet,
2098 900 square feet, 1,000 square feet. Post-World War II bungalows, which when
2099 you consider Henrico's aging neighborhoods, if there's not some type of
2100 proactive addition or way to build onto them, some of those homes may—
2101 continue to deteriorate if they're not well maintained. Having small additions such
2102 as decks, stoops, or porches that go from the front of a house and give it a newer
2103 street appeal, a home improvement makeover, so to speak, that's a real plus.
2104 There are 130 houses in the neighborhood, but four that had this issue come up.
2105

2106 What I was looking at also were the other homes in the neighborhood that did not
2107 build an addition or a porch or a stoop or deck yet. They haven't built one yet into
2108 that front setback because they knew they weren't allowed; they had to follow the
2109 rules.

2110
2111 I feel it's a suitable effort for the Board of Supervisors to consider that's recurring
2112 not just in this neighborhood, but this situation occurs on post-World War II
2113 bungalows over in Sandston or Varina or in Lakeside or Northside, Brookland—
2114 all over the County. I guess that was some of the rationale I had suggested.
2115

2116 On the last paragraph of the draft letter, it says I'm writing on behalf of the BZA to
2117 bring this matter to the attention of the Board so that you may consider whether
2118 an amendment to the Zoning Ordinance would be appropriate. My observation or
2119 my comment is I feel that that language is not suitable enough; it's not as
2120 strongly worded as it could be. At the end of the sentence where it says the word
2121 "appropriate," my suggestion is I'd like us to take a more proactive stance
2122 because this is something that doesn't just affect the Elovaara household from
2123 last month, the family, but others countywide.

2124
2125 So at the end of the word "appropriate," my suggestion would be to add some
2126 more language to this general effect: ". . . and would be appropriate specifically
2127 one that would allow for the addition of stoops, porches, decks to be built into a
2128 front yard setback," with the emphasis on *front yard*—"to allow for and encourage
2129 proactive rehabilitation of homes in Henrico's aging neighborhoods." Something
2130 to that effect that emphasizes front yard setbacks. Again, this is focused on
2131 proactive rehab of older neighborhoods of small 800 to 1,000 square foot homes.
2132 Thanks.
2133

2134 Mr. Bell - To add to what you said, in the situation that we had, I
2135 think it was one home that was out of ordinance and two homes that were in
2136 ordinance with the same front porch covered. The consideration we would have
2137 made if we hadn't tried to address this, in these older houses, like he's pointed
2138 out, was to have them tear down this other porch and deck which would cost
2139 thousands of dollars. Not because of the money, but the people who bought it,
2140 like so many people that come before us, didn't realize that under this situation it
2141 was a violation, particularly in these older houses, which is what we are
2142 addressing. Therefore, once again, it's something that the Board of Supervisors, I
2143 believe, should look at as much as we are looking at it.

2144
2145 Mr. Romers - Mr. Bell, if I could add a couple of words?

2146
2147 Mr. Bell - Sure.

2148
2149 Mr. Romers - If my memory serves correctly with this builder in that
2150 particular neighborhood, there were four homes that he was involved with. Two
2151 of them were torn down and rebuilt and are in compliance with the setback. The
2152 one home in question that we heard, the house beside it, was built similarly by
2153 the same builder, and we knew that was next in line at that time. So there are
2154 actually two that we're aware of.

2155
2156 I'd like to ask a question real quick; maybe Ben can help me with this. What year
2157 was the setback established?

2158
2159 Mr. Blankinship - 1960.

2160
2161 Mr. Romers - 1960.

2162
2163 Mr. Blankinship - There were front yard setbacks in the earlier zoning
2164 ordinance as well. In that particular case, there is also a building line on the
2165 subdivision plat, which is how prior to 1960 some developers would incorporate a
2166 greater setback than what was required by the code at that time. So they already
2167 had the building line, which was put in place in 1952 when the property was
2168 subdivided. And then in 1960, when there was a complete revision of the Zoning
2169 Ordinance, the front yard setback was increased to match that.

2170
2171 Mr. Romers - Which meant those homes built to that building line
2172 were now impacted by the setback as well.

2173
2174 Mr. Blankinship - Yes.

2175
2176 Mr. Romers - I'm a hopeless eastern Henrico fellow. In the older
2177 towns over there—Highland Springs and Sandston in particular—almost every
2178 home in those communities was build around World War I and World War II.
2179 There are hundreds and hundreds and hundreds of homes that are all impacted

2180 by this setback. I would wonder in this neighborhood, when we raise the question
2181 that others had not done it, most of these homes are, for the most part in these
2182 neighborhoods, owned by folks that every dollar is precious or they're seniors or
2183 they have young families and they've moved to the area. They just want to
2184 improve their homes as best they can. At the end of the day, the community is
2185 better served by the beauty of the aesthetics being added to these homes. And
2186 we should do everything possible through this letter and hope that our Board of
2187 Supervisors would agree to make the necessary changes to allow this to occur.
2188 We will all be winners if this happens.

2189
2190 Mr. Bell - Any other discussion? All right. Do I hear a motion to
2191 approve this letter to be sent to the Board of Supervisors with the amendment
2192 made by Greg—or with the word change made by Greg?

2193
2194 Mr. Romers - I make a motion for that.

2195
2196 Mr. Baka - Second.

2197
2198 Mr. Bell - Any discussion? All those in favor say aye. All those
2199 opposed say nay. The ayes have it; the motion carries.

2200
2201
2202 Affirmative: Baka, Bell, Berman, Harris, Romers 5
2203 Negative: 0
2204 Absent: 0

2205
2206
2207 Mr. Berman - One quick point, I want to make sure we got this right.
2208 On the conditional use permits 30 and 33, we've already entered into the record
2209 that they're being deferred?

2210
2211 Mr. Blankinship - Yes sir.

2212
2213 Mr. Berman - I want to make sure we deferred them to the right
2214 months.

2215
2216 Mr. Blankinship - Yes sir. Number 30 is deferred to October and
2217 number 33 is deferred to December.

2218
2219 Mr. Berman - Thank you.

2220
2221 Ms. Harris - Mr. Chairman, I want to thank Mr. Blankinship for
2222 summarizing variance guidelines and conditional use permits and even the
2223 presentation that we heard at the last meeting.

2224
2225 I do have a question about ex parte.

2226
2227 Mr. Blankinship - Yes ma'am.

2228

2229 Ms. Harris - Can we review that? Exactly what does that mean?
2230 Some people might speak with the landowner or applicant before the meeting,
2231 and we want to be sure that that's legal.

2232

2233 Mr. Blankinship - Yes ma'am. The principle involved is that any input
2234 that goes into making your decisions should be discussed in front of both parties.
2235 You shouldn't have a conversation with one party that you don't have with the
2236 other party. The awkwardness here is that from our point of view, the staff is not
2237 really an interested party. We're not trying to persuade you for or against
2238 anything; we're just trying to make sure that you have all the information you
2239 need. But the new state code specifies that you can't have any ex parte contact
2240 with us or with the applicant. So any conversation about the specific facts or the
2241 specific law to be applied in a case should only be had with both parties
2242 available. The code specifies that if a mistake is made and you do have a
2243 conversation with one party and not with the other, the way to rectify that is to
2244 promptly inform the other party in writing that the conversation took place and let
2245 them know the substance of that conversation.

2246

2247 The County attorney's office has recommended, and staff concurs with this, that
2248 the best way to handle any questions that you want to have resolved before the
2249 meeting about either the facts or the law of the specific case, send those
2250 questions in writing—in an e-mail or a letter or whatever—to the staff. Or you can
2251 just call. I guess if all you're doing is posing the question, you can call the staff.
2252 We'll make a note of your questions, and then we will submit the question to the
2253 applicant, and we will provide their answer to you. That way, everybody receives
2254 the same information at the same time. The intent of the law, I think, is not to
2255 deprive anyone of information or of their opportunity to share information; it's just
2256 to make sure that everyone gets the same information at the same time. We
2257 would be happy to do anything we can to facilitate communication between the
2258 Board, the applicant, and the staff in any way.

2259

2260 Ms. Harris - These changes are effective when?

2261

2262 Mr. Blankinship - July 1st of this year, so they've been in effect for a
2263 couple of months now.

2264

2265 Ms. Harris - Thank you.

2266

2267 Mr. Bell - Any other discussion? All right, do I hear a motion that
2268 we adjourn?

2269

2270 Mr. Berman - So moved.

2271

2272 Mr. Bell - Do I hear a second?
2273
2274 Ms. Harris - Second.
2275
2276 Mr. Bell - I hear a second, so all in favor say aye. All opposed,
2277 nay.
2278
2279
2280 Affirmative: Baka, Bell, Berman, Harris, Romers 5
2281 Negative: 0
2282 Absent: 0
2283
2284
2285 Mr. Bell - The ayes have it; the motion passes. We're
2286 adjourned.



Gentry Bell
Chairman



Benjamin Blankinship, AICP
Secretary