

1 MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF  
2 HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE  
3 GOVERNMENT CENTER AT PARHAM AND HUNGARY SPRING ROADS, ON  
4 THURSDAY SEPTEMBER 26, 2019 AT 9:00 A.M., NOTICE HAVING BEEN  
5 PUBLISHED IN THE *RICHMOND TIMES-DISPATCH* SEPTEMBER 9, 2019 AND  
6 SEPTEMBER 16, 2019.  
7  
8

9 Members Present: Gentry Bell, Chair  
10 Walter L. Johnson, Jr.  
11 Terrell A. Pollard  
12 James W. Reid  
13

14 Member Absent: Terone B. Green, Vice Chair  
15

16 Also Present: Jean M. Moore, Assistant Director of Planning  
17 Benjamin Blankinship, Secretary  
18 Paul M. Gidley, County Planner  
19 R. Miguel Madrigal, County Planner  
20 Kuronda Powell, Account Clerk  
21  
22

23 Mr. Bell - Good morning and welcome to the September 26 Board of  
24 Zoning Appeals meeting. For those of you who are able please stand and join as we  
25 pledge allegiance to our flag.  
26

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

29 Mr. Blankinship, will you read the rules, please?  
30

31 Mr. Blankinship - Good morning, Mr. Chair, members of the board, ladies and  
32 gentlemen.  
33

34 The rules for this meeting are as follows. Acting as secretary I will announce each case,  
35 and then we will ask everyone who intends to speak to that case to stand and be sworn  
36 in. Then a member of the Planning Department staff will give a brief presentation, and  
37 then the applicant will present their application. And then anyone else who wishes to  
38 speak will be given the opportunity. After everyone has had a chance to speak, the  
39 applicant and only the applicant will have an opportunity for rebuttal.  
40

41 This meeting is being recorded, so we will ask everyone who speaks to speak directly  
42 into the microphone on the podium. State your name, and please spell your last name,  
43 so we get it correctly in the record.  
44

45 The Code of Virginia provides that in order to rule in favor of an applicant there must be  
46 three affirmative votes. We have one member absent today, so if anyone would like to

47 defer your case to next month you have the right to do that, if you think that will increase  
48 your chances of getting three affirmative votes.

49  
50 Also, Mr. Chair, we do have one withdrawal for this morning, and that is **VAR2019-00027**  
51 **THE UNITY OF FAITH FELLOWSHIP** requests a variance from Section 24-94 in the  
52 County Code, to build an addition at 298 Cedar Fork Road. That case has been  
53 withdrawn, so if anyone is here for that this morning I apologize for the inconvenience.

54  
55 All right. Does anyone wish to defer until next month, in order to have a better chance of  
56 a five-member board? Hearing none, we will proceed.

57  
58 Mr. Bell - Yes. Let's now call our first request.

59  
60 **CUP2019-00029** **HOME DEPOT** requests a conditional use permit pursuant to  
61 Section 24-116(d)(1) of the County Code to allow a temporary sales stand at 6501 W.  
62 Broad Street (Parcel 768-742-3277) zoned Business District (B-3) (Tuckahoe).

63  
64 Mr. Blankinship - Would everyone who intends to speak to this case please  
65 stand and be sworn in? There is nobody here to represent the applicant on this case? I  
66 spoke to them the day before yesterday and they said they were trying to find somebody,  
67 but maybe they're stuck in traffic.

68  
69 Mr. Richardson - I'm here. I wasn't prepared to speak. I am here to observe.

70  
71 Mr. Blankinship - You're here to represent the applicant?

72  
73 Mr. Richardson - I'm with Home Depot, yes, sir.

74  
75 Mr. Blankinship - Okay. Would you stand and raise your right hand please. Do  
76 you swear the testimony you're about to give is the truth, the whole truth, and nothing but  
77 the truth, so help you God?

78  
79 Mr. Richardson - I do.

80  
81 Mr. Blankinship - Thank you. Mr. Madrigal?

82  
83 Mr. Madrigal - Thank you. Thank you, Mr. Secretary. Mr. Chair, good  
84 morning, and members of the board. Before you is a request to allow a temporary tent in  
85 a commercial district. The subject site is a Home Depot location near the Intersection of  
86 W. Broad Street and Horsepen Road. The property is over 10 acres in area and is  
87 improved with a 109,000-square-foot retail building with an attached 22,500-square-foot  
88 outdoor garden center.

89  
90 Similar to past years, store management wants to erect a 40 by 60 tent in the parking lot  
91 for seasonal Christmas tree sales between November and December. The outdoor  
92 garden center is identified as an outdoor display area on their POD. Christmas tree sales

93 would be allowed in that area without the need for a conditional use permit. However,  
94 Home Depot prefers to sell Christmas trees from a temporary tent located in the parking  
95 lot, and the tent will be approximately in this location here. Because this preferred location  
96 is not identified on their POD as an outdoor display area, they are required to obtain a  
97 conditional use permit.  
98

99 The property is predominantly zoned B-3 and is designated as commercial arterial on the  
100 2026 Future Land Use Map. A home improvement store is the principal permitted use.  
101 The sale of Christmas trees is a customary and incidental accessory use to a home  
102 improvement retailer. The proposed seasonal sales tent is not out of character with the  
103 existing use and it is consistent with both the zoning and comprehensive plan  
104 designations.  
105

106 The application doesn't elaborate why Christmas tree sales can't be conducted in the  
107 garden center, which would be in compliance with their approved POD. The only  
108 detrimental impact staff anticipates would be added congestion in their parking lot. The  
109 proposed tent will temporarily displace approximately 14 parking spaces during the  
110 holiday season, in a shopping center that is slightly short on parking. This has proven not  
111 to be a significant issue based on past years, along with the lack of complaints or  
112 detrimental impacts.  
113

114 In conclusion, the applicant's request is consistent with the commercial nature of West  
115 Broad Street, the intent of the zoning ordinance, and the comprehensive plan. The  
116 proposed use will be temporary in nature and there appear to be no lasting or substantial  
117 detrimental impacts associated with their request. Specific conditions of approval have  
118 been prepared to mitigate any adverse impacts on adjacent uses during the time that the  
119 tent will be on site.  
120

121 For these reasons, staff recommends approval, subject to the attached conditions. If you  
122 have any questions I will be happy to answer them.  
123

124 Mr. Reid - Mr. Madrigal, I noticed in the stated conditions that a building  
125 permit is required for the tent? Why is that? Are we just talking about a tent with four  
126 metal poles?  
127

128 Mr. Madrigal - It's probably a bit more elaborate. Anything over 900 square  
129 feet, per building code, requires a building permit. So they check for structural issues.  
130 They check for method of attachment. They make sure that the tent is going to be staked  
131 down and it's not going to be carried away by wind load. And also because of the size of  
132 the tent they are checking for fire exiting as well, as well as certificates of fire on the  
133 material. So there are quite a few things that they do check for.  
134

135 Mr. Reid - Is this larger than the tent they did in past years?  
136

137 Mr. Madrigal - No. It's the same size.  
138

139 Mr. Reid - Thank you.  
140  
141 Mr. Bell - Any other questions?  
142  
143 Mr. Johnson - Also I noticed they've done this last year, as well, and the year  
144 before.  
145  
146 Mr. Madrigal - Yes, sir.  
147  
148 Mr. Johnson - So they're doing the same thing each year.  
149  
150 Mr. Madrigal - Yes, sir.  
151  
152 Mr. Bell - If there are no other questions we will go ahead and call for  
153 the applicant to come forward please. While he comes forward, is there anybody in here  
154 who would like to speak for this or against this? Thank you.  
155  
156 Mr. Richardson - Good morning. Colin Richardson, R-i-c-h-a-r-d-s-o-n.  
157  
158 Mr. Blankinship - Can you tell us why the Home Depot can't do the Christmas  
159 tree sales in the garden center?  
160  
161 Mr. Richardson - Quite frankly, sir, we receive too many. The garden center is  
162 not large enough to house an area to stage that many trees at one time.  
163  
164 Mr. Blankinship - Okay. Have you been at Home Depot for --  
165  
166 Mr. Richardson - Fourteen years.  
167  
168 Mr. Blankinship - Fourteen years. So you have seen this --  
169  
170 Mr. Richardson - We have certain stores that receive this tent. This is one of  
171 our largest garden centers, somewhere above 100,000 in trees.  
172  
173 Mr. Blankinship - Okay. And you've seen this one several years --  
174  
175 Mr. Richardson - Yes. I've been in this store now for two years. This will be the  
176 second tent.  
177  
178 Mr. Blankinship - Okay. What was the store's experience with the tent last  
179 year?  
180  
181 Mr. Richardson - Very successful, actually, and easier to load, easier to unload  
182 customers, get them in and out faster than dragging them through the garden center,  
183 which is open only during certain hours.  
184

85 Mr. Blankinship - For most retail businesses, Black Friday and then the  
186 Saturday before Christmas are like the busiest days of the year. Is that true for Home  
187 Depot, or are you busier in the spring?  
188

189 Mr. Richardson - It varies store to store.  
190

191 Mr. Blankinship - Okay. What about this store?  
192

193 Mr. Richardson - This store is busy constantly.  
194

195 Mr. Blankinship - I guess what I'm wondering is if this is the time when your  
196 parking lot is the most likely to be fuller is also a time when you're occupying a bunch of  
197 your required parking with a tent. It just doesn't seem like the time.  
198

199 Mr. Richardson - No, not necessarily. When we speak about foot traffic, spring  
200 would be a foot traffic necessity on that side of the building. Where this tent is built, it is  
201 not impeding flow of traffic or parking spaces.  
202

203 Mr. Blankinship - Okay. That's what we needed.  
204

205 Mr. Bell - A couple more questions. Next door to that you've got a large  
206 -- when you're coming to the drive there and you turn right you've got a store and then  
207 you've got what used to be a company which is not there, several things. Have you had  
208 any complaints from that side?  
209

210 Mr. Richardson - No, sir.  
211

212 Mr. Bell - Other businesses?  
213

214 Mr. Richardson - Not that I'm aware of in my two years at this location.  
215

216 Mr. Bell - Thank you. Any questions? Thank you, sir.  
217

218 Mr. Richardson - Thank you.  
219

220 Mr. Bell - Now we can go ahead with the next CUP.  
221

222 Mr. Blankinship - You changed the process.  
223

224 Mr. Bell - That's right. We sure did. We'll go ahead and vote on this  
225 particular CUP at this time. Do I hear a motion to approve this application?  
226

227 Mr. Reid - So moved.  
228

229 Mr. Johnson - I second.  
30

231 Mr. Bell - Mr. Reid motioned and Mr. Johnson second.

232  
233 Unknown Speaker - Mr. Reid, for the court could you state the basis of the motion?

234  
235 Mr. Reid - I move that we approve the conditional use permit for Home  
236 Depot subject to the conditions recommended by the staff. They've used that tent for  
237 several years and have not had any complaints. It is consistent with the B-3 zoning and  
238 does not have any lasting impact.

239  
240 Mr. Bell - Any discussions? All those in favor say aye. All those  
241 opposed say nay. The motion is approved.

242  
243 After an advertised public hearing and on a motion by Mr. Reid, seconded by Mr. Johnson,  
244 the Board **approved** application **CUP2019-00029 HOME DEPOT's** request for a  
245 conditional use permit pursuant to Section 24-116(d)(1) of the County Code to allow a  
246 temporary sales stand at 6501 W. Broad Street (Parcel 768-742-3277) zoned Business  
247 District (B-3) (Tuckahoe). The Board approved this request subject to the following  
248 conditions:

249  
250 1. This conditional use permit applies only to the installation of a tent for the sale of  
251 Christmas trees from November 2 through December 26, 2019. All other applicable  
252 regulations of the County Code shall remain in force.

253  
254 2. Only one tent, as shown on the plot plan filed with the application, may be erected  
255 pursuant to this approval. Any additional improvements shall comply with the applicable  
256 regulations of the County Code. Any substantial changes or additions to the design or  
257 location of the improvements will require a new use permit.

258  
259 3. The applicant shall obtain a building permit for the tent, and shall comply with all  
260 requirements and conditions of the Department of Building Inspections.

261  
262 4. The tent shall not interfere with approved landscaping islands or parking lot lighting. All  
263 approved landscaping shall be maintained in a healthy condition.

264  
265 5. A sign shall be posted on the exterior of the tent providing emergency contact  
266 information and stating that trespassing after hours is prohibited.

267  
268 6. The tent shall be removed from the property no later than December 30, 2019, at which  
269 time this permit shall expire.

270  
271  
272 Affirmative: Bell, Johnson, Pollard, Reid 4  
273 Negative: 0  
274 Absent: Green 1

275  
276

277 Mr. Bell - Now we can go on.

278  
279 **CUP2019-00030 GREYSTAR SHORT PUMP** requests a conditional use permit  
280 pursuant to Section 24-116(d)(1) of the County Code to allow a temporary office trailer at  
281 11881 W. Broad Street (Parcel 736-762-2221) zoned Business District (B-2C) (Three  
282 Chopt).  
283

284 Mr. Blankinship - Would everyone who intends to speak to this case please  
285 stand and be sworn in. Raise your right hand, please. Do you swear the testimony you're  
286 about to give is the truth, the whole truth, and nothing but the truth, so help you God?  
287 Thank you.  
288

289 Mr. Gidley - Thank you, Mr. Secretary. Good morning, Mr. Chairman, and  
290 members of the board. Greystar Construction is the process of building an age-restricted  
291 apartment building on the southern side of Three Chopt Road, just west of Lauderdale  
292 Drive. The applicant would like to place a leasing trailer on the northern side of Three  
293 Chopt Road, adjacent to the Short Pump Kroger store. The construction, which is ongoing  
294 currently is over here on this parcel, and the trailer would be located on this section here,  
295 approximately 1/2 acre of vacant land. As you can see, there is parking available and six  
296 of these spaces would be allocated for the proposed trailer. These six spaces are in  
297 excess of what is required for the surrounding shopping center, so parking should not be  
298 an issue.

299  
300 This is looking west. This is the side of the Kroger store, actually, and this is where the  
301 trailer would go, and again, you can see the parking spaces here, and these do include  
302 two handicapped parking spaces.  
303

304 The trailer would be in operation for six months, and that would be between November of  
305 this year and July of 2020.  
306

307 In evaluating this request, the zoning ordinance designates this as B-2C, Business District  
308 (Conditional), and the comprehensive plan designates that it's Commercial Arterial. It is  
309 also located in the West Broad Street Overlay District. The use of the trailer as a  
310 temporary leasing office is consistent with both the zoning designation and the  
311 comprehensive plan.  
312

313 As far as any detrimental impact on nearby property, the location that is proposed  
314 between the side of the Kroger store and the southern entrance into the property really  
315 should not impact any of the surrounding businesses, and it would have no impact on any  
316 residences as there are none nearby.  
317

318 In conclusion, the proposed location would provide potential residents of the senior  
319 apartments a safe place to meet with leasing agents, away from the construction site.  
320 The proposal is consistent with the zoning ordinance and the comprehensive plan, and it  
321 should not have a detrimental impact on nearby property. As a result, staff recommends  
322 approval of this request subject to the conditions in your staff report.

323  
324 This concludes my presentation, and if you have any questions I will be happy to answer  
325 them. Thank you.

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

328  
329 Mr. Gidley - Thank you, Mr. Chairman.

330  
331 Mr. Bell - Will the applicant please come forth.

332  
333 Mr. Pedini - Good morning, Mr. Chairman, members of the board. My  
334 name is Julian Pedini. I'm an attorney at Hirschler law firm in Richmond. The spelling of  
335 my name is in the staff report. I am here on behalf of the applicant.

336  
337 So Greystar is going to use this temporary office building to market and lease units in the  
338 recently approved Everleigh Apartments project across the street, on the south side of  
339 Three Chopt Road. The building will not require any water or sewer connections. They  
340 will use a portable generator for the needed power. Parking will be provided, as Mr.  
341 Gidley mentioned, six existing spaces next to the Kroger pharmacy. The proposed site  
342 is located really in an overflow parking area of a mostly built-out shopping center. This  
343 is, I think, the last remaining retail pad site in the center. And it will be a convenient  
344 location for prospective residents of the age-restricted community to meet with the leasing  
345 staff.

346  
347 We are in agreement with the staff report and with the proposed conditions. We  
348 respectfully request that you approve the permit, and I'd like to reserve any remaining  
349 time to answer any questions you may have. Thanks for your time.

350  
351 Mr. Bell - Questions?

352  
353 Mr. Johnson - Yes. Where would the trailer be located?

354  
355 Mr. Pedini - It would be just to the east of the --. If I may, also, just so the  
356 record is clear, we intend to use it for nine months, which is in the application and the staff  
357 report.

358  
359 Mr. Bell - Do you agree with the conditions?

360  
361 Mr. Pedini - Yes, sir.

362  
363 Mr. Bell - Any other questions? Thank you, sir. Is there anyone here  
364 who is for this and would like to speak, or is there anyone here who is against it and would  
365 like to speak? Seeing no indications, we will go on to our voting. Do I hear a motion?

366  
367 Mr. Reid - I move that we approve conditional use permit 2019-00030 for  
368 Graystar Short Pump trailer, subject to the conditions recommended by the staff. The

369 shopping center site is an appropriate location for a sales trailer, and the trailer will only  
370 be onsite for a short time, and it is not likely to cause any detrimental effects.

371  
372 Mr. Johnson - Second.

373  
374 Mr. Bell - Mr. Reid has motioned and Mr. Green [sic] has seconded. Do  
375 I hear any discussion? Hearing no discussion, a request that we should go ahead and  
376 vote. All those in favor of the motion say aye. All those opposed? Ayes have it. Motion  
377 approved.

378  
379 After an advertised public hearing and on a motion by Mr. Reid, seconded by Mr. Johnson,  
380 the Board **approved** application **CUP2019-00030 GREYSTAR SHORT PUMP's** request  
381 for a conditional use permit pursuant to Section 24-116(d)(1) of the County Code to allow  
382 a temporary office trailer at 11881 W. Broad Street (Parcel 736-762-2221) zoned  
383 Business District (B-2C) (Three Chopt). The Board approved this request subject to the  
384 following conditions:

385  
386  
387 1. Only the improvements shown on the Leasing Trailer Exhibit prepared by Kimley Horn  
388 dated August 15, 2019 may be constructed pursuant to this approval. Any additional  
389 improvements shall comply with the applicable regulations of the County Code. Any  
390 substantial changes or additions to the design or location of the improvements shall  
391 require a new conditional use permit.

392  
393 2. Before beginning any clearing, grading, or other land disturbing activity, the applicant  
394 shall obtain approval of an environmental compliance plan from the Department of Public  
395 Works.

396  
397 3. Hours of operation shall not exceed 9:00 am to 6:00 pm, Monday through Saturday.  
398 Sunday hours shall be by appointment only.

399  
400 4. A detailed landscaping and lighting plan shall be submitted to the Planning Department  
401 with the building permit for review and approval. All exterior lighting shall be shielded to  
402 direct light away from adjacent property and streets. All landscaping shall be maintained  
403 in a healthy condition at all times. Dead plant materials shall be removed within a  
404 reasonable time and replaced during the normal planting season.

405  
406 5. The applicant shall install a solid vinyl or lattice skirting around the base of the trailer.

407 6. The trailer shall be removed from the property on or before August 8, 2020, at which  
408 time this permit shall expire.

409  
410  
411 Affirmative: Bell, Johnson, Pollard, Reid 4  
412 Negative: 0  
413 Absent: Green 1

415  
416 **CUP2019-00031**                    **RICHARD L. MISTR** requests a conditional use permit  
417 pursuant to Section 24-95(i)(4) of the County Code to allow an accessory structure in the  
418 front yard at 11111 Hames Lane (BRIDLEWOOD) (Parcel 741-772-5941) zoned  
419 Agricultural District (A-1) (Three Chopt).

420  
421 Mr. Blankinship -                    Would everyone who intends to speak to this application  
422 please stand and be sworn in? Raise your right hand, please. Do you swear the  
423 testimony you are about to give is the truth, the whole truth, and nothing but the truth, so  
424 help you God?

425  
426 Mr. Mistr -                            Yes, sir.

427  
428 Mr. Blankinship -                    Thanks. Mr. Gidley?

429  
430 Mr. Gidley -                            Thank you again, Mr. Secretary. The subject property is  
431 located in the Bridlewood subdivision, which is just north of Shady Grove Road. The lots  
432 in this neighborhood are rather large, ranging in size from 2 acres up to 10 acres. The  
433 applicant's property is 4.4 acres in lot area and contains an existing dwelling.

434  
435 As you can see here on the aerial of the property, it is generally wooded, although you  
436 will also note in the front yard there is a pond right here. The applicant would like to  
437 construct a 20 foot by 24 foot pavilion in the front yard that would overlook this pond.

438  
439 This is the proposed pavilion here, and it would be on the interior side of the pond, in front  
440 of the house. The pavilion would include a fireplace, cooking facilities, and an eating  
441 area. The applicant is applying for a conditional use permit to allow this accessory  
442 structure to be located in the front yard, whereas it is typically required to be in the rear  
443 yard.

444  
445 In evaluating this request, the zoning ordinance for this site designates it as A-1  
446 Agricultural District and it is designated as Suburban Residential 1 on the Land Use Plan.  
447 A one-family dwelling is consistent with both of these designations and as noted an  
448 accessory structure, such as the proposed pavilion, is allowed in the front yard with the  
449 approval of a conditional use permit.

450  
451 As far as detrimental impact on nearby property, again, you can see the site is heavily  
452 wooded and there should be little, if any, visibility from the street. And this is looking at it  
453 from the street here and the pavilion would go up in this direction here, or over here. So  
454 due to all the trees, no one is really going to see it from the street, and the nearest  
455 residences are 300 feet or further away from the proposed location. So, as a result, staff  
456 does not really anticipate any detrimental impact on nearby property.

457  
458 In conclusion, due to the size of the property, its wooded location, and the distance of the  
459 pavilion from nearby residents, little if any detrimental impact is anticipated. As a result,

460 staff would recommend approval of this request, subject to the conditions in your staff  
461 report.

462  
463 This concludes my presentation, and if you have any questions I will be happy to answer  
464 those. Thank you.

465  
466 Mr. Bell - Are there any questions to the board or staff? Do you have  
467 one, Mr. Johnson?

468  
469 Mr. Johnson - Is there a variance, outstanding variance on this property?

470  
471 Mr. Gidley - No, sir. They are proposing to place the pavilion in the front  
472 yard, and that is allowed via the use permit, which is what they are applying for.

473  
474 Mr. Johnson - Okay. I was looking at number 4 in your conditional approval.

475  
476 Mr. Blankinship - Oh, that's a mistake on my part. I apologize for that. That  
477 should say "or this conditional use permit will expire."

478  
479 Mr. Johnson - Yes.

480  
481 Mr. Blankinship - Thank you, Mr. Johnson. I did not notice that.

482  
483 Mr. Johnson - Okay. Thank you.

484  
485 Mr. Bell - Mr. Johnson, I think I owe you an apology. I've been calling  
486 you Mr. Green. I don't know if it was the Muppets or what, but something caused me to  
487 do that.

488  
489 Mr. Johnson - Okay.

490  
491 Mr. Bell - Are there any other questions to Paul? Thank you. Would  
492 the applicant please come forward?

493  
494 Mr. Mistr - Richard Mistr, M-i-s-t-r.

495  
496 Mr. Bell - Okay, Mr. Mistr. Go ahead.

497  
498 Mr. Mistr - Well, I mean, I guess the only other thing I'll add is, you know,  
499 you might ask why is it in the front versus the back, I guess, because most of the appeal  
500 of this property is on the front, where the pond is and everything, and then in the back  
501 there's not as much land in the back, and there's a bunch of houses they just put up  
502 behind us. So really, the appeal is in the front yard. And then we like to entertain, we like  
503 to have friends over and stuff, and, you know, a pavilion like this would be a great thing  
504 to add, where we could have people over and enjoy the property.

05

506 Mr. Bell - Any questions? Hearing none, Mr. Mistr, thank you for your  
507 attention.

508  
509 Mr. Mistr - Thank you.

510  
511 Mr. Bell - Is there anyone here who would like to say anything for this  
512 application or against it? Hearing none, we will go on with the vote. Do I hear a motion?

513  
514 Mr. Johnson - Mr. Chairman, I move that we approve the conditional use  
515 permit subject to conditions recommended by staff. The development is on a large parcel  
516 and is heavily wooded. The proposed outdoor kitchen area should not be visible from  
517 other properties and it will add value to the property without causing any detrimental  
518 impacts. I move for approval.

519  
520 Mr. Bell - Do we have a second?

521  
522 Mr. Pollard - I second Mr. Johnson's proposal.

523  
524 Mr. Bell - Any discussion? Hearing none we will go ahead with the vote.  
525 All those in favor of the motion say aye. All opposed say nay. The motion is approved.

526  
527 After an advertised public hearing and on a motion by Mr. Johnson, seconded by Mr.  
528 Pollard, the Board **approved** application **CUP2019-00031 RICHARD L. MISTR's** request  
529 for a conditional use permit pursuant to Section 24-95(i)(4) of the County Code to allow  
530 an accessory structure in the front yard at 11111 Hames Lane (BRIDLEWOOD) (Parcel  
531 741-772-5941) zoned Agricultural District (A-1) (Three Chopt). The Board approved this  
532 request subject to the following conditions:

533  
534 1. This conditional use permit applies only to the location of the pavilion in the front yard.  
535 All other applicable regulations of the County Code shall remain in force.

536  
537 2. Only the improvements shown on the plot plan and building design filed with the  
538 application may be constructed pursuant to this approval. Any additional improvements  
539 shall comply with the applicable regulations of the County Code. Any substantial changes  
540 or additions to the design or location of the improvements shall require a new conditional  
541 use permit.

542  
543 3. Before beginning any clearing, grading, or other land disturbing activity, the applicant  
544 shall obtain approval of an environmental compliance plan from the Department of Public  
545 Works.

546  
547 4. A building permit must be approved by September 27, 2021, or this conditional use  
548 permit will expire. If the building permit is cancelled or revoked because construction was  
549 not diligently pursued, this conditional use permit will expire at that time.

550  
551

552	Affirmative:	Bell, Johnson, Pollard, Reid	4
553	Negative:		0
554	Absent:	Green	1

555  
556

557 **CUP2019-00032 WESTMONT AT SHORT PUMP** requests a conditional use  
558 permit pursuant to Section 24-116(d)(1) of the County Code to allow a temporary office  
559 trailer at 14399 N. Gayton Road (Parcel 738-769-7141) zoned General Residence District  
560 (R-6C) (Three Chopt).

561

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

566

567 Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chairman, members of the  
568 board, before you is a request to allow a temporary office trailer on a construction site.  
569 The subject site is a 5-acre tract of land located in the middle of the Twin Hickory, Bacova,  
570 and Gray Oaks residential neighborhoods. In 2017, the Board of Supervisors approved  
571 a rezoning and a provisional use permit for a life care facility on the property. In 2018,  
572 the Planning Commission approved the POD for the new project. A building permit was  
573 issued, and as of January of this year construction is currently underway.

574

575 While the site is under construction, the applicant would like to place a sales trailer on the  
576 site to meet with prospective residents. They intend to occupy the office trailer through  
577 the 2020 calendar year. The hours of operation would be from 8 a.m. to 6 p.m., and visits  
578 would be by appointment. According to the application, once the project obtains its  
579 certificate of occupancy the trailer would be removed.

580

581 The proposed trailer will be placed parallel to North Gayton Road and would be set back  
582 37 feet from Gayton and 50 feet from Pouncey Tract Road, and you can see here roughly  
583 the proposed location. It would be served by six temporary parking spaces, one of which  
584 would be wheelchair accessible.

585

586 The property is zoned R-6C and it is designated as Suburban Mixed Use on 2026 Future  
587 Land Use Map. The site was rezoned specifically for the proposed life care facility. The  
588 temporary sales office trailer will serve that use and is therefore consistent with both  
589 designations. The proposed trailer would be on the site for one year while the permanent  
590 facility is under construction. Although it will be clearly visible from two major roads, it  
591 shouldn't be any more unsightly than the construction going on behind it. Once the project  
592 is finished the trailer will be removed and the temporary parking will be incorporated into  
593 the permanent parking serving the property. Staff does not anticipate any substantial  
594 detrimental impacts from the temporary use.

595

596 In conclusion, the proposed trailer is consistent with the zoning ordinance, the  
597 comprehensive plan, and the permanent facility planned for the site, which will be an

598 asset to the community. The temporary use will not have any substantial detrimental  
599 impacts. Based on these facts, staff recommends approval subject to the conditions.

600  
601 This concludes my presentation. I will be happy to answer questions.

602  
603 Mr. Bell - Are there any questions? Hearing none, thank you, Miguel.

604  
605 Mr. Madrigal - Thank you.

606  
607 Mr. Condlin - Good morning, Mr. Chair, members of the board. My name is  
608 Andy Condlin, C-o-n-d-l-i-n, from Roth Jackson, representing the applicant in this case.  
609 As usual, staff did a very nice job. I don't have a whole lot to add other than the picture  
610 you saw is actually the actual trailer that was in a facility in Roanoke. So that will be the  
611 actual trailer coming to this site. So it is easy to see what you are going to get.

612  
613 Mr. Blankinship - It's not one like that. It's that one.

614  
615 Mr. Condlin - Exactly. Of course, the building, as is required, meets all the  
616 setbacks otherwise that are required and it's nice that they can incorporate it into the  
617 parking spaces that they have. With that, we would be happy to answer any questions,  
618 and all the conditions that have been provided for by the staff we are accepting.

619  
620 I would also like to add that I finally have the last case in front of the BZA and you changed  
621 your rules. I just told my client that they vote on all the cases and we're going to be right  
622 there at the end of it. Thank you.

623  
624 Mr. Bell - Any questions? Thank you. Is there anybody here who would  
625 like to speak for this or against it? Hearing none, we will go on with the motions. Do I  
626 hear a motion? Hearing none, I move that we approve the conditional use permit subject  
627 the conditions recommended by the staff. The site is already under construction. Meeting  
628 potential residents in a trailer in one corner of this site will minimize traffic on the property  
629 doing construction, and the trailer will only be on the site for a short time, and will not have  
630 any lasting impact. Do I hear a second?

631  
632 Mr. Johnson - Second.

633  
634 Mr. Bell - Mr. Johnson seconds the motion. Any discussion? Hearing  
635 no discussion, the motion has been approved. Thank you.

636  
637 After an advertised public hearing and on a motion by Mr. Bell, seconded by Mr. Johnson,  
638 the Board **approved** application **CUP2019-00032 WESTMONT AT SHORT PUMP's**  
639 request for a conditional use permit pursuant to Section 24-116(d)(1) of the County Code  
640 to allow a temporary office trailer at 14399 N. Gayton Road (Parcel 738-769-7141) zoned  
641 General Residence District (R-6C) (Three Chopt). The Board approved this request  
642 subject to the following conditions:

643



689 land, which is the requirement for the A-1 district. However, at 100 feet of lot width it is  
690 50 feet shy of the required 150 feet of lot width.

691  
692 Also, because Yester Oaks Lane is a private street, the lot also lacks the required public  
693 street frontage. You will note, however, right here, the property does abut the terminus  
694 of Kambis Drive. Although it does abut it, because it is the terminus of the street the  
695 zoning ordinance does not allow that to count for public street frontage, thus the need for  
696 a variance for public street frontage today.

697  
698 Two previous variances were approved here, but both expired without any action being  
699 taken. During the last hearing, back in 2017, a number of the neighbors turned out and  
700 expressed concerns that Yester Oaks Lane would be used by the applicant. However,  
701 the applicant has been clear in their plans that they will access the property only from  
702 Kambis Drive, as shown here. And it's kind of hard to see but this is Yester Oaks Lane  
703 here, which, again, is private. The driveway right here would go into Kambis Drive, which  
704 is a public street. And if you check in your staff report, Condition No. 5 says the driveway  
705 to the property shall connect to Kambis Drive, not Yester Oaks Lane, and the applicant  
706 shall obtain a driveway permit from Public Works before constructing the driveway. So  
707 the applicant will not use Yester Oaks Drive. Again, it will be Kambis Drive, which is a  
708 public street.

709  
710 In evaluating this request, does the Zoning Ordinance unreasonably restrict the property?  
711 When the lot was created in 1950, the public street frontage requirement did not exist.  
712 The adoption of this requirement 10 years later, in 1960, rendered the lot unbuildable.  
713 Acquiring additional land does not appear to be practical here. The lot to the south also  
714 lacks public street frontage and the lot to the north is in a subdivision, and trying to take  
715 land into or out of a subdivision can be very difficult. So the applicant really doesn't have  
716 much option here, short of a variance to make reasonable use of the property with the  
717 residence. As a result, there does appear to be an unreasonable restriction of the  
718 property.

719  
720 As far as the five subtests are concerned, as noted in your staff report, staff does believe  
721 these five subtests are met. I would note, under detrimental impact, there are two  
722 conditions that are unique to this case. One, as I said, the access to the property would  
723 come in off Kambis and not Yester Oaks Lane. Second, the natural drainage for this area  
724 tends to flow behind these lots to the north here. You can see where all the woods are  
725 here. It flows here, down through the end of this lot, through this vacant lot here. And so  
726 staff is recommending the rear 100 feet of the property be kept in its natural state, and  
727 this is to limit the amount of water going in there and its velocity, in order to not impact  
728 the existing drainage pattern.

729  
730 In conclusion, the lot has been in its current shape since 1950, which is prior to when the  
731 public street frontage requirement was added to the zoning ordinance. Absent a variance  
732 there is no reasonable use of the property. The one-family dwelling is consistent with the  
733 surrounding uses, and the applicant has direct access to Kambis Drive, which is a public

734 street. As a result, staff recommends approval of this request subject to the conditions in  
735 the staff report.

736  
737 This concludes my presentation, and if you have any questions, I will be happy to answer  
738 those. Thank you.

739  
740 Mr. Bell - Thank you, Paul. Any questions? Hearing none, we will go  
741 ahead and talk to the applicant.

742  
743 Mr. Blankinship - Is the applicant here this morning? I saw three people stand  
744 up and just assumed one of them was the applicant. Okay. We're looking for Cava  
745 Companies, the name of the individual, Kelly Henderson. No Kelly Hendersons this  
746 morning. Mr. Gidley, have you had any communication with a representative?

747  
748 Mr. Gidley - No, sir.

749  
750 Mr. Blankinship - We could check to see if anyone is outside. Well, Mr. Chair, I  
751 suggest we continue with the hearing and then you can decide.

752  
753 Mr. Bell - We are going to continue with the hearing and go on to the  
754 next case.

755  
756 Mr. Blankinship - No. Oh, okay. That's actually a better idea. I might go ahead  
757 and let these people speak, and then continue. That's an even better idea.

758  
759 Mr. Bell - All right.

760  
761 Mr. Blankinship - We hope that the applicant is caught in traffic and will join us  
762 momentarily.

763  
764 **VAR2019-00025** **LARRY K. AND MERLE D. WATKINS** request a variance  
765 from Section 24-94 of the County Code to build a one-family dwelling at 969 Grapevine  
766 Road (Parcel 838-721-5441) zoned Agricultural District (A-1) (Varina). The lot width  
767 requirement is not met. The applicants propose 50 feet lot width, where the Code requires  
768 150 feet lot width. The applicants request a variance of 100 feet lot width.

769  
770 Mr. Blankinship - Would everyone who intends to speak to this case please  
771 stand be sworn in. Raise your right hands, please. Do you swear the testimony you are  
772 about to give is the truth, the whole truth, and nothing but the truth, so help you God?  
773 Thank you. Mr. Madrigal?

774  
775 Mr. Madrigal - Thank you, Mr. Secretary. Mr. Chair, members of the board,  
776 the request is to allow a single-family dwelling on an A-1 Agricultural District lot. In 1960,  
777 when the zoning ordinance took effect, the property was part of a 133-acre farm that  
778 stretched from Grapevine Road to the Chickahominy River. Through a series of  
779 subdivisions, and in 2000, part of the property was sold to create Stephanie Trace

780 subdivision to the north. All these transactions resulted in the current boundaries of the  
781 property.

782  
783 The inadequate lot width, however, resulted from the 1979 subdivision that created 2604  
784 Lacywood Lane. Prior to that division, the lot contained almost 4.5 acres of land and  
785 measured approximately 190 feet in width. After the 1.6-acre lot was created, a variance  
786 was approved to build a dwelling on it. At that time, the remaining parcel was a buildable  
787 lot, because lot width was measured at the point where the house was built. In 1987,  
788 however, the Board of Supervisors amended the definition of lot width to regulate the  
789 creation of flag lots. As a result of that amendment, the subject property no longer meets  
790 the lot width requirement.

791  
792 The property comprises 2.85 acres and has an access strip approximately 53 feet wide  
793 and 120 feet in length. The northern half of the property is level and the southern half  
794 slopes down to Grapevine Road. The surrounding area consists almost entirely of one-  
795 family dwellings on lots of 1.5 acres, although public utilities are not available in the area.  
796 At its widest point, the property exceeds the required lot width of 150 feet. However, the  
797 code requires that lot width be provided at the setback line, which is 50 feet from the  
798 Grapevine Road right-of-way. For that reason, the lot cannot be used for a dwelling  
799 unless a variance is approved.

800  
801 With respect to the threshold question, the property is large enough for a dwelling. It is  
802 larger than many other lots in the area that have been improved with dwellings. It has  
803 more than 50 feet of frontage on a public street. Assuming a well and septic system can  
804 be approved, the lot is suitable for a dwelling. Due to its size and surroundings, it is  
805 unlikely to be used for anything else. However, because of its shape, the property does  
806 not meet the required lot width. Prohibiting the use of the property for a dwelling would  
807 appear to be an unreasonable restriction.

808  
809 With respect to the subtests, item number 1, the hardship was created by the division of  
810 the property in 1979. It has changed hands four times since then. The property was  
811 purchased by Lawrence and Florence Bradford in 2000. The applicant inherited the  
812 property in 2002, upon the death of Florence, her mother. The applicant was not  
813 responsible for the creation of the hardship.

814  
815 Item number 2, the construction of the dwelling on the lot would be consistent with the  
816 development pattern of the surrounding area. The proposed dwelling would meet all  
817 required setbacks. With respect to subtest item number 3, the variance is necessary  
818 because of the 1979 subdivision of the property and the 1987 amendment of the definition  
819 of lot width. Although the property is suitable for a dwelling, it cannot be used for a  
820 dwelling due to its unusual shape. These circumstances are limited to this property and  
821 do not lend themselves to a legislative solution.

822  
823 Items 4 and 5 are satisfied as outlined in the staff report.

824

825 In conclusion, to prohibit the use of the property for a dwelling would appear to be an  
826 unreasonable restriction. The applicant did not create the hardship and there would be  
827 no detrimental impact . The other tests are also met, as outlined above. Staff  
828 recommends approval of the variance subject to the attached conditions.  
829

830 I would be happy to answer any questions.  
831

832 Mr. Bell - Any questions? If there are no questions, let's proceed to  
833 have the applicant come up.  
834

835 Mr. Watkins - My name is Larry Watkins, W-a-t-k-i-n-s. We are requesting  
836 this variance in order to build a single-family dwelling for myself and my wife. My daughter  
837 owns the property adjacent to it and currently lives there. Her husband is in the military  
838 and he is gone probably 50 percent of the time, and she has a 2-year-old child that has  
839 been diagnosed with type 1 diabetes. So we are trying to get this approval so we can  
840 build a house and be close to her and help her all we can.  
841

842 Mr. Bell - Any questions?  
843

844 Mr. Johnson - Yes. I noticed that the entrance at Grapevine Road, that the  
845 powerlines and also the drains are right there. Have you considered what you're going  
846 to do with that.  
847

848 Mr. Watkins - Well, there's a drainage pipe right down there at the edge of  
849 Grapevine Road that runs water to the other side of Grapevine Road. So where we put  
850 the road in we would extend that pipe so that it wouldn't interfere with that. It wouldn't  
851 block the water.  
852

853 Mr. Johnson - Okay.  
854

855 Mr. Blankinship - Do you know if you will have to move the power pole?  
856

857 Mr. Watkins - I don't think we'll have to move the power pole, because we've  
858 got -- even though it's 52 feet of width there, the actual road, the frontage on Grapevine  
859 Road, is 83 feet. It comes right to 50 foot because of the angle, 52 feet, because of the  
860 angle. But from marker to marker it's 83 feet. The pole is near one end, so I don't think  
861 it's going to be a problem there. If it is, I mean, then we'd have to get it moved. We'd  
862 have to go through whatever process is required.  
863

864 Mr. Blankinship - I hope you can avoid that. That's an expensive step.  
865

866 Mr. Watkins - Yes.  
867

868 Mr. Bell - Any other questions?  
869

870 Mr. Johnson - That was the major thing that I was noticing about that.

871  
872 Mr. Bell - Thank you, Mr. Johnson. Thank you, Mr. Watkins.  
873  
874 Mr. Watkins - Thank you.  
875  
876 Mr. Bell - Is there anyone here that would like to speak for this? Is there  
877 anyone here that would like to speak against it? Hearing none, we will go on to the vote.  
878 Do I hear a motion?  
879  
880 Mr. Johnson - Mr. Chairman, subject to what's just been said, I move that we  
881 approve the variance subject to conditions recommended by the staff, and without a  
882 variance the applicant cannot make any reasonable use of the property. The hardship  
883 was not created by the applicant, and it was created when the property was developed in  
884 1979. There should be no detrimental impacts on nearby property, and all of the tests  
885 are met, as stated in the staff report. Again, I approve this variance 25.  
886  
887 Mr. Bell - Do I hear a second?  
888  
889 Mr. Pollard - Second.  
890  
891 Mr. Reid - Second.  
892  
893 Mr. Bell - Do I hear any discussion? Hearing none, we will go ahead  
894 with the vote. All those in favor say aye. All those opposed say nay. The ayes have it  
895 and the motion carries.  
896  
897 After an advertised public hearing and on a motion by Mr. Johnson, seconded by Mr.  
898 Pollard, the Board **approved** application **VAR2019-00025 LARRY K. AND MERLE D.**  
899 **WATKINS'** request for a variance from Section 24-94 of the County Code to build a one-  
900 family dwelling at 969 Grapevine Road (Parcel 838-721-5441) zoned Agricultural District  
901 (A-1) (Varina). The Board approved this request subject to the following conditions:  
902  
903 1. This variance applies only to the lot width requirement for one dwelling only. All other  
904 applicable regulations of the County Code shall remain in force.  
905  
906 2. At the time of building permit application, the applicant shall provide evidence of Health  
907 Department approval of a private water supply and onsite sewage disposal system.  
908  
909 3. Clearing, grading, or other land disturbing activity shall not begin until the applicant has  
910 submitted, and the Department of Public Works has approved, an environmental  
911 compliance plan.  
912  
913 4. A building permit must be approved by September 27, 2021, or this variance will expire.  
914 If the building permit is cancelled or revoked because construction was not diligently  
915 pursued, this variance will expire at that time.  
916



963  
964 This parcel has already been found to not properly percolate for a traditional septic  
965 drainage field. Therefore, the property will require significant build-up and an above-  
966 ground septic field, which will dam and divert water from and to nearby properties that  
967 abut this parcel.

968  
969 If the variances are granted, the following would happen: removing all trees, filling,  
970 grading, and burning (ph) of the dwelling will occur. In those cases, we are aware of the  
971 many construction vehicles that would be parked on the cul-de-sac of Kambis Drive.  
972 There is limited area for these construction vehicles to be parked, and if the vehicles park  
973 up and down Kambis Drive, the culverts, leave very little room to park off the road itself.  
974 The nature of the property in question does not allow for any parking of work vehicles on  
975 that property. Henrico County must ensure that no construction vehicles block a  
976 resident's driveway or access to their home on Kambis Drive, nor destroy road grading  
977 and culvert integrity.

978  
979 Since there is limited area for these construction vehicles on Kambis Drive, given that  
980 there is no road frontage for the 20 Kambis Drive address, the residents of Yester Oaks  
981 are concerned that their private gravel road will be used for access to the property and  
982 the parking of these vehicles. The owner of 4600 Darbytown Road has concern because  
983 the septic drain is in the parcel on the other side of the easement, and if construction  
984 vehicles use the graveled Yester Oaks Lane, the septic lines are at risk of being crushed,  
985 leading to sewage backup onto that property.

986  
987 Yester Oaks Lane is a private road and the address of the new parcel is no longer a  
988 Yester Oaks Lane address, as approved on 3/23/17. The residents have the right to  
989 prevent any construction vehicles access to the easement. The residents of Yester Oaks  
990 Lane maintain the private road with personal funds and we do not want any further  
991 damage to the gravel road, which is likely to happen with the heavy construction  
992 equipment.

993  
994 At the public hearing on 3/23/17, the residents of Yester Oaks Lane were granted  
995 accommodations to ensure that no construction vehicles were to use the private lane. On  
996 3/24/17, a day after approved variances, Adonna (ph) Investments used the easement  
997 without permission of the residents of Yester Oaks Lane. This is unacceptable, and we  
998 expressed this concern with the Board of Zoning Appeals at that time.

999  
1000 Yahley Mills Estates is an established neighborhood, and the residents should have the  
1001 chance to express their concerns about adding a single-family dwelling to the subdivision  
1002 prior to the address change in 2017. What actions has the County taken to allow the  
1003 neighborhood to have a voice in this matter beyond allowing a public hearing on the  
1004 variances?

1005  
1006 This area is a part of the Chesapeake Bay Watershed Area. Henrico County must  
1007 articulate actions to be taken that will ensure this area be preserved to allow proper  
1008 drainage of nearby creeks, which are a part of the watershed.

1009  
1010 On 3/23/17, we had approximately 15 residents in the nearby area at the public hearing  
1011 regarding these same variances, and the County of Henrico's Board of Zoning Appeals  
1012 dismissed our concerns regarding these matters in the interest of one landowner. When  
1013 the board was faced with the current residents from the neighborhood during a public  
1014 hearing, the board still did not vote in favor of the majority of impassioned residents, but  
1015 rather found in the interest of one resident property owner.

1016  
1017 The residents of Yahley Mills Estates and Yester Oaks Lane request the Henrico County  
1018 Board of Zoning Appeals deny the variances on 20 Kambis Drive, parcel 836-690-1480,  
1019 to ensure that the 8 abutting parcels and the possible 32 households are not faced with  
1020 undue negative repercussions to their homes and livelihoods. If Henrico County Board  
1021 of Zoning Appeals, our elected representatives in local government, grant these  
1022 variances, these issues above should be addressed immediately.

1023  
1024 We kindly appreciate your attention to this matter and we hope that we can come to a  
1025 resolution that supports the current residents of Yahley Mills Estates and Yester Oaks  
1026 Lane. We also had some others to speak on this also. Here is a letter that we would like  
1027 to be entered into the record.

1028  
1029 Ms. Peace - Good morning. My name is Michelle Peace, P-e-a-c-e. I  
1030 appreciate the time of the chairman and the board.

1031  
1032 Mr. Bell - Mrs. Peace, and anybody else that's going to speak, try not to  
1033 -- it's going to be hard and it always is -- not to repeat what we've already heard. That  
1034 tends to make it go more smoothly.

1035  
1036 Ms. Peace - Sure.

1037  
1038 Mr. Bell - Thank you, Ms. Peace.

1039  
1040 Ms. Peace - Absolutely. So what my husband and I, Doug Barry, and my  
1041 parents, who are now new residents of Yahley Mills Estates, recently moved in next door  
1042 at 17 Kambis -- we live at 25 Kambis, at the terminus. And so we reviewed the Cava  
1043 Construction variance appeal and want to make a counterpoint to what they said in their  
1044 report.

1045  
1046 So to the first question, does the zoning ordinance unreasonably restrict the use of the  
1047 property? The report from Cava Construction states that the ordinance requirements  
1048 unreasonably restrict the use of the parcel. The ordinance is meant to protect the property  
1049 owners who have invested in the community and protect the very nature of the community  
1050 as it is. The plots are designed to provide wide frontage and access to each property,  
1051 such plots appear to give ample space between the dwellings. In this case, despite this  
1052 property being on an acre, the house will effectively need to be built on the front third of  
1053 the property, giving the appearance that the house is on less than the required acreage,  
1054 changing the very nature of the property and the neighborhood at the terminus.

1055  
1056 In order to accommodate the house on this narrow property it will also need to be  
1057 positioned sideways on the property, effectively forcing neighboring homes to look at the  
1058 side or back of the proposed home from the fronts of their homes. In doing so, this  
1059 changes the nature of the subdivision.

1060  
1061 Question number 2, is there a hardship related to the physical condition of the property?  
1062 The hardship has been created by the property owner. The report, as provided by Cava  
1063 Construction, is biased with regards to the nature of the public street frontage  
1064 requirement. What is missing from the report is that the property has always been used  
1065 as drainage, from what surrounding farm property historically used it and now the current  
1066 neighborhood. This information has been provided to us by family members who have  
1067 long ties to the history of this entire property prior to its purchase by Mitchell Kambis for  
1068 the development Yahley Mill Estates.

1069  
1070 This parcel was specifically not developed by Mr. Kambis as it is a low-lying property that  
1071 provides drainage for the houses in between Kambis and Dowdy. Building the right-of-  
1072 way on this property at 20 Kambis will interfere with the right-of-way for Dominion Power.  
1073 There is a significant right-of-way -- if you could look here, there's a significant right-of-  
1074 way for Dominion Power that cuts in between 16 Kambis and 20 Kambis now. And so  
1075 that is a significant right-of-way for Dominion Power. There is a pole with a transformer  
1076 that sits exactly at that corner. That will be right on the driveway, as proposed, which  
1077 then creates a significant risk for not just passing vehicles but increases the chance for  
1078 accidents and then will impact electricity for this neighborhood.

1079  
1080 Question number 3, if there is a hardship, was it created by the applicant? Yes. The  
1081 applicant understood that the purchase of this parcel has had significant and expensive  
1082 issues for years. They have applied for variances previously and allowed them to expire.  
1083 The original owner was also told by several surrounding property owners that building on  
1084 that property would create significant challenges for the surrounding property. His  
1085 comments in response to that was, "I'm going to maintain the property as is for a park for  
1086 my children," and then within a year he applied for the variances to then build a home on  
1087 this property. The owner clearly purchased this, then, to generate profit by flipping the  
1088 property, is our opinion.

1089  
1090 Would the variance have a negative effect on the other properties in the area? Most  
1091 definitely it will. Surrounding properties will be significantly impacted. Neither Henrico  
1092 County nor Cava Construction have demonstrated, with any evidence, that surrounding  
1093 properties will not be affected by the construction of this house.

1094  
1095 As you have already heard, this property is used as drainage. Damming of this property  
1096 is going to only exacerbate our current flood problems that all of the surrounding houses  
1097 currently have, in which our septic fields lie and our drinking water for wells. So the 100  
1098 feet that has been proposed at the back of this lot, that is still going to serve as drainage  
1099 for the entire community, is not sufficient.

1100

1101 We are asking for a delay of the approval of this variance and demand that Henrico  
1102 County Public Works and Public Health assess the property before a building permit is  
1103 issued. We demand that the County address the issues that currently exist for the current  
1104 property owners and how any new construction would avoid tens of thousands of dollars  
1105 of damage to surrounding properties due to flooded septic systems and contaminated  
1106 wells.

1107  
1108 We appreciate your considerations and your conversations in reviewing our concerns.  
1109 Thank you. And we have one more neighbor in the establishment.

1110  
1111 Mr. Burke - Steve B-u-r-k-e. I live at 7670 Dowdy Drive, which that lot  
1112 backs up to. It's hard to not repeat -- most everything that's been said. I was talking with  
1113 the Health Department, I've been through Planning, I've been through Community  
1114 Development, I've been through each phase of the County to discuss this, and again, my  
1115 purpose was to ask you all to note vote on this, postpone it until the County can do their  
1116 assessment of the lot.

1117  
1118 Even 120 feet on the back side of that lot may not be enough to save the drainage. And  
1119 what we're asking is that the County go out there, look it over, walk it, do whatever they  
1120 have to do to say maybe it needs to be 200 feet, and then maybe it's not enough room  
1121 for a house, or if there is enough room for a house, at that point as long as they live to  
1122 the County's rules then we probably don't have an argument. But right now, they have  
1123 not applied for a septic permit, okay, so that would then tell them what type of septic they  
1124 could have, which would then dictate the size of the house. They don't really know what  
1125 size house they can even put on this lot at this point. And if the only way to make the  
1126 septic work is to do backfilling to this lot -- that's what our belief is -- then that's going to  
1127 create drainage problems that everybody is concerned about.

1128  
1129 And that lot does drain -- I mean, I've lived there for 20-some years, and on a rain storm  
1130 you can go in my back yard and I can look more than 100 feet through that woods and  
1131 it's two feet deep, just flowing through there. And it's not shown on any drawings or  
1132 anywhere that that's a low drainage area. Why -- even the Health Department said, "I  
1133 can't believe y'all have that much water through there and it's not shown as a problem on  
1134 the site maps."

1135  
1136 So we're just asking to please not approve this -- and as you can see they didn't show up  
1137 to argue their points today, which is kind of odd on its own -- just make the County go out  
1138 and do the research for us, as County residents, instead of us trying to fight the battle at  
1139 each step along the way, after it's already done. That's all.

1140  
1141 Unknown Speaker - I've got a topo map and my comments as well.

1142  
1143 Mr. Bell - Okay. Is there anybody here who would like to continue  
1144 speaking against this?

1145

1146 Ms. Sochi - This is Debbie Sochi (ph), also lives on Yester Oaks. And just  
1147 so the board is aware, we held a community survey. And so what we also have is a bunch  
1148 of signatures from other residents in the neighborhood who oppose this variance.  
1149  
1150 Ms. Hacker - My name is Debbie Hacker, H-a-c-k-e-r. And when you look  
1151 on the map you see the 7735. I'm at 7741 and I own that lot behind it, that butts up to it.  
1152 And I just wanted to comment and say that it does drain and there's a lot of water. That's  
1153 why that's not built on.  
1154  
1155 Mr. Bell - Thank you. Is Ms. Henderson here?  
1156  
1157 Mr. Blankinship - Kelly Henderson?  
1158  
1159 Mr. Johnson - Mr. Chairman, we have one person in this room -- When was  
1160 this property bought by the owner? Do you have anything about that?  
1161  
1162 Mr. Blankinship - That's normally the first paragraph of the staff report but we  
1163 didn't really cover that this time.  
1164  
1165 Mr. Johnson - While you're waiting for that, I had a concern, property owners  
1166 have valuable property and then can't do anything with it. That was my concern. Also, I  
1167 noticed we had two approvals in the past, in 2014, and 2017. And also, the County usually  
1168 would have some conversation with the owners to do something with their property,  
1169 especially drainage and all that, and that's another concern. It's like you or me, or anyone  
1170 else buys property and then can't do anything with it? I just want to know the  
1171 circumstances of it.  
1172  
1173 Mr. Gidley - Mr. Johnson, in response to your question, the sale date of  
1174 the property was listed as December 14, 2011.  
1175  
1176 Mr. Blankinship - And that was acquired by --  
1177  
1178 Mr. Gidley - Cary Bryan Duncan at that point.  
1179  
1180 Mr. Blankinship - So as far as we know, Cava Companies is a contract  
1181 purchaser but has not closed on the property.  
1182  
1183 Mr. Gidley - The owner is still listed as Cary Duncan. The applicant is  
1184 listed as Cava Companies, and it says contract purchaser, yes.  
1185  
1186 Mr. Blankinship - Duncan purchased it in 2011. It was in the Cauthorn family  
1187 prior to that. I don't see the original date when the Cauthorns acquired the property, but  
1188 it looks like it changed from parent to child in 1998. What was your other question? Oh,  
1189 did the previous variances --  
1190

1191 The site-specific work about drainage and, you know, exactly where the driveway is going  
1192 to be located, the driveway permits, all that is typically done at the building permit phase.  
1193 People don't apply for a building permit until after they have some reasonable assurance  
1194 that it can go forward, and an early step in that process is usually the variance, because  
1195 if the variance is denied then there's no point in pursuing any of the other permits, most  
1196 of which are more expensive to obtain than the variance. So a lot of people do start with  
1197 the variance and then get into the process and discover that there are other problems  
1198 that they can't afford to overcome.

1199  
1200 In a case like this, I think the septic system is probably the most significant expense that  
1201 they're going to face. We have heard from one of the neighbors that a traditional septic  
1202 system cannot be approved on this property. Assuming that that's true, that would be  
1203 consistent with, I think, the experience that they got a variance twice and have not been  
1204 able to move forward. That probably is the most likely reason for that.

1205  
1206 Mr. Johnson - I appreciate that.

1207  
1208 Mr. Bell - Would we hear from the applicant Ben or make a decision?  
1209

1210 Mr. Blankinship - That would be up to the board. If we had known in advance  
1211 that the applicant was not going to be here we probably would not have heard the case.  
1212 Unfortunately, we didn't discover that until we were already into the public hearing. And  
1213 you have these folks who have come here, so we definitely want to take into account their  
1214 time and any inconvenience to them. We don't want to just tell them, well, you have to  
1215 come back next month because the applicant didn't show. I do think it's valuable that we  
1216 have heard their testimony and gotten it on the record.

1217  
1218 Mr. Bell - Then let's go ahead and vote on it.

1219  
1220 Mr. Blankinship - There's nothing to prevent the board from acting in the  
1221 absence of the applicant. The board does also have the option of waiting to hear from  
1222 the applicant, perhaps next month, and then making the decision. The neighbors would  
1223 then have the option either to come or not. Based on what I've heard, it doesn't seem to  
1224 me that their testimony would be any different next month, and I don't know what the  
1225 applicant would say that would affect that.

1226  
1227 But that said, I don't know what the applicant intends to say. The board has the authority  
1228 to proceed, either to defer or to make a decision.

1229  
1230 Mr. Johnson - And the applicant, did they show up for those other two?  
1231

1232 Mr. Blankinship - This is a new applicant. So, yes, I believe, as far as I know --  
1233 I don't remember specifically, but it seems like I would remember if they did not show. Do  
1234 you remember seeing that in the record, for sure, that the applicant, in 2004 and 2017,  
1235 was present for the hearing?

1236

1237 Mr. Gidley - I believe they were present but I don't know for certain.  
1238  
1239 Mr. Blankinship - I'm sure they were. It's very unusual for us to proceed without  
1240 them being here. But this is a new applicant. There was one note of a phone conversation  
1241 so there was some follow-up. It's not somebody that's just mailed this in and we don't  
1242 have their address. We did, of course, mail them a copy of the staff report and a copy of  
1243 the agenda. It sounds like we haven't had any other contact with them since that mailing,  
1244 so whether they received it, I don't know.  
1245  
1246 Mr. Johnson - That was before my term. I understand what we have heard  
1247 about the problems with the property. If we deferred, Mr. Chairman, would that change  
1248 the -- well, what I'm saying is if we deferred then there would be no problem just leaving  
1249 everything like it is?  
1250  
1251 Mr. Bell - You mean what we've already heard?  
1252  
1253 Mr. Johnson - Yes.  
1254  
1255 Mr. Bell - Yes. They wouldn't have to come back, because we've heard  
1256 the opposite side. It's just we haven't heard from the applicant.  
1257  
1258 Mr. Johnson - From the applicant. Mr. Chairman, I move that we defer this  
1259 until we hear from them, but I understand that situation, and plus, that's a nice community  
1260 as well.  
1261  
1262 Mr. Bell - Let's finish the discussion right now. So is there anything else  
1263 you want to say, other than what's already been said, then we will do the motions now.  
1264 Is there a motion to defer this because the applicant did not show up today, and give them  
1265 a chance to show up one more time? And then if he doesn't show up the next time -- now  
1266 I'm making the motion. I can't say this.  
1267  
1268 Mr. Johnson - Go ahead. I like that.  
1269  
1270 Mr. Bell - We'll end the discussion. Do I hear a motion to defer this  
1271 case?  
1272  
1273 Mr. Johnson - I motion that we defer the case until we hear from the  
1274 applicant and keep in consideration what has already been said by the adjacent property  
1275 owners.  
1276  
1277 Mr. Pollard - I second the motion to defer. I would like to see -- I've heard  
1278 the property owners in the area, what you all have said, and I would like to see if the  
1279 property owner, because it's been delayed so much, give them the benefit of the doubt,  
1280 that they would have a way to address their concerns.  
1281

1282 Mr. Bell - Any other discussion? I would merely add, for the record, that  
1283 this is the time -- I'd like to say for the record that if he fails to show up again, the deferment  
1284 might not be available.

1285  
1286 So we will go ahead with the vote. All those in favor of postponing this until the next  
1287 meeting say aye. All those opposed say nay. The ayes have it. This will be postponed  
1288 until our October meeting.

1289  
1290 After an advertised public hearing and on a motion by Mr. Johnson, seconded by Mr.  
1291 Pollard, the Board voted to **defer** until the October 24, 2019 public hearing **VAR2019-**  
1292 **00024 CAVA COMPANIES** requests a variance from Section 24-9 and 24-94 of the  
1293 County Code to build a one-family dwelling at 20 Kambis Drive (Parcel 836-690-1480)  
1294 zoned Agricultural District (A-1) (Varina).

1295  
1296  
1297 Affirmative: Bell, Johnson, Pollard, Reid 4  
1298 Negative: 0  
1299 Absent: Green 1

1300  
1301  
1302 Mr. Bell - And you've heard us talk. You don't have to come back  
1303 because we have your testimony already.

1304  
1305 Mr. Blankinship - You are welcome to come back and you will have the  
1306 opportunity to speak again if the applicant says something that you feel needs to be  
1307 addressed. Yes, they have to act within 90 days. The board has to act within 90 days.

1308  
1309 Mr. Burke - If they wait another year could they do this again with another  
1310 new company, and another new company, and another new company?

1311  
1312 Mr. Blankinship - No, there's no limit on that.

1313  
1314 Mr. Burke - Okay.

1315  
1316 Mr. Bell - All right. Let's go into some more votes, since we've been  
1317 humping. Let's vote on the meeting last month, which was the August 22nd meeting. Do  
1318 I hear any motions?

1319  
1320 Mr. Johnson - I move that we approve the minutes from the last meeting,  
1321 August 22, 2019.

1322  
1323 Mr. Bell - All right. Do I hear a second?

1324  
1325 Mr. Reid - Second.

1326

1327 Mr. Bell - Do we have any discussion? Hearing no discussions,  
1328 minutes from August have been approved.

1329  
1330 After a motion by Mr. Johnson, seconded by Mr. Reid, the Board **approved the minutes**  
1331 of the August 22, 2019 public hearing.

1332  
1333  
1334 Affirmative: Bell, Johnson, Pollard, Reid 4  
1335 Negative: 0  
1336 Absent: Green 1

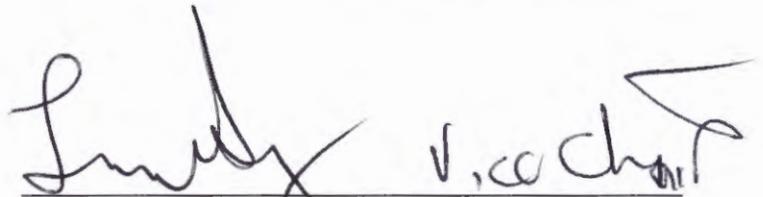
1337  
1338  
1339 Mr. Bell - If there's nothing else then we can call it quits.

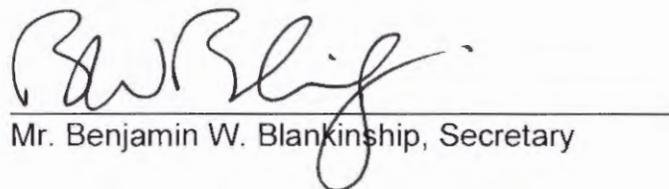
1340  
1341 Mr. Blankinship - I do have one announcement which is, as you know, the board  
1342 -- some don't know because you weren't even on the board at the time -- the board, a  
1343 couple of years ago, revoked the use permit for the East End Landfill. They challenged  
1344 that decision at the circuit court and the circuit court upheld your decision. They had filed  
1345 with the Virginia Supreme Court to overturn the circuit court's decision, and we recently  
1346 learned that the Virginia Supreme Court decided not to hear that appeal. So your decision  
1347 on that matter stands.

1348  
1349 Mr. Bell - That's good. Did you handle that?

1350  
1351 Mr. Blankinship - The County Attorney's office, although I speak with them  
1352 regularly. And that's the only new business that I have, Mr. Chairman.

1353  
1354 Mr. Bell - Any other new business? Any old business? If there's no  
1355 business, we'll call it a day.

1356  
1357  
1358  
1359  
1360  
1361   
Mr. Gentry Bell, Chair

1362  
1363  
1364  
1365  
1366  
1367   
Mr. Benjamin W. Blankinship, Secretary