

1 Minutes of a work session to discuss amendments to the County Code's UMU
2 District held in the Planning Department – Large Conference Room, County
3 Administration Building in the Government Center at Parham and Hungary
4 Spring Roads, beginning at 6:00 p.m. Thursday, July 14, 2011.

5
Members Present: Mr. C. W. Archer, Chairman, C.P.C. (Fairfield)
Mr. Tommy Branin, Vice Chairman (Three Chopt)
Mr. E. Ray Jernigan, C.P.C. (Varina)
Mrs. Bonnie-Leigh Jones, C.P.C. (Tuckahoe)
Mr. Ernest B. Vanarsdall, C.P.C. (Brookland)
Ms. Jean Moore, Assistant Director of Planning,
Acting Secretary
Mrs. Patricia O'Bannon, Board of Supervisors' Representative

Members Absent: Mr. R. Joseph Emerson, Jr., AICP, Director of Planning

Also Present: Mr. David O'Kelly, Assistant Director of Planning
Mr. Tom Tokarz, Deputy County Attorney
Mr. Ben Thorpe, Assistant Attorney
Mr. James P. Strauss, CLA, Principal Planner
Mr. Benjamin Sehl, County Planner
Ms. Sylvia Ray, Recording Secretary

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7
8 Mr. Archer - Let us come to order for our work session and I will
9 turn it over to you, ma'am.

10
11 Ms. Moore - Thank you, Mr. Chairman. This continues our work
12 session into the next item, which is the consideration of revisions to the Urban
13 Mixed Use District. Ben Sehl has a PowerPoint going over those revisions we've
14 worked on so far.

15
16 Just quickly going back, the Commission did initiate an ordinance amendment at
17 their June 9, 2011 meeting. Looking at that, staff felt this is a good time to do this.
18 We've had a number of UMUs under our belt, but quite simply, one development
19 doesn't fit all. So, with our experience with UMUs we're looking at what we can
20 change. The review and approval of the 2026 Plan also called staff to begin
21 reviewing and analyzing the ordinance a number of years ago.

22
23 With that, I'm going to turn it over to Mr. Ben Sehl who is going to conduct the
24 rest of this work session.

25
26 Mr. Archer - Thank you. Mr. Sehl, go right ahead, sir.

27
28 Mr. Sehl - Thank you, Mr. Chairman.

29 As Ms. Moore mentioned, the Urban Mixed Use Ordinance was adopted in
30 August of 2002 by the Board of Supervisors. The Ordinance was originally
31 targeted at infill and brownfield sites such as Rocketts Landing, which was
32 actually the first UMU project that was approved by the Board in November of
33 2004. Because it was the only mixed-use development ordinance in the County,
34 other greenfield sites have filled in for the UMU zoning and what we found is that
35 it's created various challenges for staff and for the development community as
36 those projects have come forward through POD and Subdivision review as well.

37
38 For areas where a UMU form of development might not be suitable—we've had
39 some that are more of a TND type of development—the 2026 Comp Plan also
40 introduced a couple of different land use designations. And staff is also looking at
41 ordinances for that sort of development.

42
43 What we've done to this point as part of the 2026 Comprehensive Plan review,
44 our consultant during that process actually provided a memorandum analyzing
45 the Urban Mixed Use Ordinance in its entirety. We took those recommendations
46 and then we went to internal staff review, took a look at what had been working
47 up to that point and what wasn't working. We also looked at common proffers
48 through the various UMU developments, as well as at typical provisional use
49 permit conditions that we had seen.

50
51 Mr. Branin - May I ask a question, Ben?

52
53 Mr. Sehl - Sure.

54
55 Mr. Branin - What wasn't working? Just one example.

56
57 Mr. Sehl - Some of the landscaping provisions were tighter and
58 didn't allow the flexibility that we needed in the more urban environment. Signage
59 regulations. The parking requirements were greater than was necessary in some
60 of these environments where you have a mixture of uses where the parking
61 standards could be reduced. There is no mechanism in the ordinance at this point
62 to reduce those standards.

63
64 Mr. Branin - Okay. I know out at West Broad we've been
65 monitoring parking and thinking we don't need as much as we originally thought
66 from the beginning.

67
68 Mr. Sehl - And West Broad Village is a good example. We've
69 talked with the folks in the Development Review and Design Division. They've
70 been an integral part of this process as we've moved forward to try to identify
71 those things to help them as they review POD and subdivision applications.

72
73 Ms. Moore - If I may add, too, another part of this is not only from a
74 development stance, but also from a process stance. We're hearing from the

75 development community, too, that there are some things that are onerous,
76 repetitive. So we also feel like those can be streamlined and be a little bit more
77 friendly to development as well.

78
79 Mr. Sehl - Those reviews that I just mentioned led to staff
80 discussing potential updates both internally and with other agencies in the
81 County. Once we started generating some ideas for ways to address the
82 concerns that had been noted, we also took those possible updates and late last
83 year took those out to the development community and solicited some input from
84 them. We sent out copies of the possible changes to fifteen development
85 professionals that had been involved with previous UMU developments in the
86 County. We did receive three responses to those requests for information.

87
88 Mr. Branin - Three out of fifteen?

89
90 Mr. Sehl - Three out of fifteen, yes sir. Jim is handing out to you
91 right now copies of the comments that were reviewed by the development
92 community, as well as staff has gone through each of those comments. In many
93 cases we've taken the comments that we received and tried to incorporate those
94 recommendations into our ordinance update. Obviously there were some
95 instances where we didn't think changes maybe were necessary. We tried to
96 explain those in the letter that we have there in front of you as well.

97
98 Based on that, we have provided to the Commission in your Planning
99 Commission packet a cover letter summarizing the key changes to the
100 ordinance, as well as a more detailed black-lined ordinance and a matrix listing
101 each of the changes that we're proposing. It's obviously a very lengthy list of
102 items that were proposed to be changed. Included in that table is an identifier of
103 who generated the recommended change, whether it was somebody from
104 internal staff, from our development consultant for the 2026 Plan, from the
105 development community, or also we have some changes that were
106 recommended by the County Attorney's Office during their review of the possible
107 changes.

108
109 I would note that in many instances, especially if you look at the first page of the
110 ordinance, the black-lined ordinance that you received, there appear to be
111 greater changes than maybe were necessary. We have some recommendations
112 that, for ease of use in the ordinance, we moved some parts of the ordinance
113 around. In this case the submission requirements and procedure to establish a
114 district were moved to the front of the ordinance. The first thing when you turn to
115 the UMU District you're going to see how that type of district is established.

116
117 Now that we've kind of discussed a little bit about how we've reached this point, I
118 kind of wanted to walk through—as it was identified in the letter that we sent out
119 a couple weeks ago—each of the major changes that staff is proposing at this
120 point. Feel free to stop me with any questions as we move through each section

121 because I am going to do this kind of section-by-section in concert with how the
122 ordinance is laid out.

123

124 The first major change is one of the major changes that is proposed to the
125 ordinance at this time. The Land Use Plan would no longer need to be amended
126 as part of a UMU zoning request. Obviously when this was first done there was
127 no UMU land use designation for any properties in the County. What staff has
128 found is that the Land Use Plan amendment was less of a focus as far as being a
129 part of the process than the rezoning request. And each one of the ones that
130 we've received have come in concert with a rezoning request. It essentially
131 repeated information that was provided as part of the request. So at this time
132 staff is recommending that that portion of the ordinance be deleted.

133

134 The other major change to this first section of the ordinance would move specific
135 language regarding road access to the development standards section of the
136 ordinance because it is more appropriate. What was previously kind of stated in
137 the intent of the ordinance we're now moving as a development standard.

138

139 The next section we're looking at is a new section number but it contains a
140 number of items that were previously located in Section 24-34.1. This is
141 regarding procedures to establish the UMU District. What we've done is we've
142 moved everything to the front. And in addition to that we've made a couple of
143 minor changes to the actual text of the ordinance there. Another one of our major
144 changes was removing the requirement to file a Provisional Use Permit for a
145 master plan as part of the development. We had some discussion internally with
146 the County Attorney's Office and we tried to figure out exactly what the PUP for a
147 master plan is. A provisional use doesn't necessarily apply to a master plan. So
148 what we've tried to do is limit that specifically to—if you're going to request a
149 Provisional Use Permit, it's for a provisional use in the district. So we've now
150 removed the requirement to file a PUP for a master plan as part of a UMU. We
151 will still require a master plan and it's still required as part of the ordinance. It is
152 laid out as a submission requirement. It's actually better defined, which I'll get
153 into in a little bit.

154

155 At this point going forward, you would see—even if there was no provisional use
156 requested by an applicant as part of the UMU application, they had to file a PUP
157 for that master plan. The master plan is now a submission requirement. It's going
158 to be something that staff reviews in concert with the zoning. And it's typically
159 something that's proffered. And the conditions of a PUP were replicating the
160 conditions that were part of the provisional use. Staff thought that wasn't
161 necessary unless you actually had a provisional use.

162

163 We also added some language regarding future proffer amendments. There is
164 still some ongoing discussion regarding this. The language that was added to the
165 Code is consistent with some language that we found in Fairfax County. There
166 are some recent decisions legal regarding these proffer amendments and who is

167 required to sign them, so I think we're still having some internal discussions on
168 that. But that's the last part of that section. That was added specifically to
169 address how do we come back and re-analyze these or amend proffers on a
170 project that might have in the future six thousand property owners or something
171 like that if you have a condominium development, a large project.

172
173 Again, this next section was moved from the rear of the ordinance up to the front.
174 But in doing so we also made some small text amendments. One of the larger
175 changes was adding language that actually defined what a master plan was.
176 Previously we mentioned master plans. You've seen them as UMU
177 developments that come forward to you. You have a pattern book that might
178 have various elements that are separate. And you have one book that lays out
179 architectural guidelines, another that might lay out street guidelines. If they aren't
180 all packaged as one thing, we still want it known that that constitutes a master
181 plan overall. That also helps because there are specific elements listed in the
182 ordinance—north arrows, scale maps, and those types of things. All of those
183 things might not be located in one document. But when we look at the overall
184 master plan and their overall documents that are submitted by an applicant as
185 part of the request, they're all contained in that.

186
187 One of the other changes was to allow what is called a conversion schedule. In
188 looking at other mixed-use development ordinances across the country and
189 looking at best practices in other localities, we've seen this type of schedule that
190 might allow for a conversion of commercial square footage to office square
191 footage, or even office square footage to residential units based on some over-
192 arching tie-in as far as say traffic generation. That would all be established as
193 part of the initial development and it's not something where we've laid out this is
194 what it should look like. If an applicant chooses to come forward with a
195 conversion schedule as part of their master plan—it's not a requirement—they
196 can present something to us and say in the future they don't want to be tied down
197 to, say, 900 residential units and 100,000 square feet of office. As long as they're
198 meeting those other development standards, they might be able to switch some
199 of those residential units to an office space without having to go back and amend
200 proffers. This is obviously something that would have to be approved at the time
201 of rezoning. It is something that the Board of Supervisors would have to approve
202 as part of the rezoning case.

203
204 Mr. Branin - With the flexibility.

205
206 Mr. Sehl - With the flexibility. That is providing flexibility for the
207 applicant, especially on the larger projects. As they come through we're going to
208 see—if a project has a ten- or a twelve-year build-out, I'm certainly not skilled
209 enough to look and see what the market's going to look like in ten years. So the
210 hope is to provide some flexibility in the ordinance to allow a developer to come
211 in and if they miss the mark a little bit on where they think the market is they don't

212 have to go back through the rezoning process just to switch some small
213 numbers. But it all has to be within that range.

214

215 Mr. Jernigan - Ben, is there going to be a cap on how much you can
216 change?

217

218 Mr. Sehl - It would really be something that as staff reviewed,
219 the Planning Commission and Board would be able to say that range that you're
220 providing—we don't want you to be able to take it down to zero residential units
221 since that's obviously a conflict. But it would have to be something that we would
222 have to evaluate because it's going to be specific to each development.

223

224 The final part in the submission requirements is actually requiring a sign program
225 be submitted at the time of rezoning. You've seen the sign programs typically as
226 part of the UMU Ordinance when these master plans are submitted. The wording
227 is just a little unclear as to when it was required to be submitted and who is
228 reviewing it. Staff thought it was best that we get that established at the time of
229 rezoning. As we get more into that, I'll talk about that a little bit more. We've
230 allowed some flexibility in the sign ordinance as well because one of the things
231 that has been noted as a concern as these UMUs have started coming out of the
232 ground is that the signage can—we're very specific in the ordinance and that's
233 often a good thing. But when you have these pedestrian-oriented environments
234 it's not something our sign ordinance was necessarily geared towards.

235

236 Moving on we get to Section 24-32, which is about the principal uses. We had a
237 number of things essentially cap the square footage of principal uses in the
238 district at 10,000 square feet per use. There were certain instances like a grocery
239 store could go up to 35,000 square feet. Office buildings could exceed that;
240 hotels could exceed that; parking could exceed that 10,000-square-foot cap. And
241 then also a grocery store had the option to go above that 35,000 square feet with
242 a Provisional Use Permit. Staff thought the cleanest thing to do was to move that
243 square footage to 10,000 square feet. We think that's a pretty vital component of
244 the ordinance. We're really looking for a pedestrian-friendly environment.

245

246 Mr. Vanarsdall - When would you use the PUP?

247

248 Mr. Sehl - The PUP would only be necessary if you wanted to
249 exceed 10,000 square feet for a particular use. So you might not need to file a
250 PUP for that. And that PUP could be filed later in the process. When you first
251 filed it for development and you don't anticipate anything larger, but in West
252 Broad Village we have several uses that exceed that 10,000 square feet. As part
253 of their approval they got a Provisional Use Permit to increase the square
254 footage. What we tried to do is just kind of streamline it, basically make it so
255 if you want to exceed 10,000 square feet you need a Provisional Use Permit.
256 Except for office uses. Some medical office uses, which tend to have a little bit
257 more impact because of the turnover in the office, we do still cap that at 15,000

258 square feet per individual office without the issuance of a PUP. But essentially
259 we've gone down to it's a simple cap of 10,000 square feet unless that PUP is
260 issued by the Board of Supervisors.

261

262 What we've also found is we had two density limitations. The UMU ordinances
263 that have been approved have had a multiple number of residential dwelling
264 types that have been approved. But the way the ordinance is now structured
265 there are only two permitted residential units and it's townhouses and multi-family
266 dwellings. Multi-family dwellings are permitted up to forty units an acre and the
267 residential townhouses at twelve units an acre. In a mixed-use environment you
268 might have a block that has apartments and townhouses on the same block. That
269 happens in Rocketts Landing. You have townhouses on one block face and
270 condominiums on the other. How do you measure density in that sort of situation.
271 It's tough; it's been an issue. So what we're recommending is to remove the
272 individual density caps for the different residential units and then set a straight
273 cap of thirty units an acre unless the Board changed that via a PUP as well.

274

275 Mrs. O'Bannon - How many stories is thirty units per acre? I'm trying to
276 get a visual on it.

277

278 Mr. Sehl - Like I said, it depends on the size of the unit and if
279 there's going to be parking. You can go up sixty feet in the ordinance without
280 getting a PUP. But if you wanted to build a fifteen-story building you could do it
281 on an acre of land if you wanted to build that all with parking and all those types
282 of amenities.

283

284 Ms. Moore - Do we know what the portion of any of West Broad
285 Village is? It's not nearly that intense.

286

287 Mr. Sehl - Our densest project is probably Staples Mill Centre
288 and that was 2,000 units on eighty acres. That's probably our densest UMU
289 development. So that's less than thirty units an acre there, twenty-five units an
290 acre.

291

292 Ms. Moore - Maybe we can research other localities just to give
293 you a good illustration of what that might be.

294

295 Mr. Jernigan - In Caroline County, that UMU that they have up there,
296 I've been up there a couple of times and looked around. I noticed that they'll have
297 some single-family or R-5AC and then have some townhouses. You might have
298 two or three of the R-5A and then you'll have four townhouses. I asked about that
299 here and they said it would be hard to do because you have two separate
300 zonings. Is there a possibility that maybe when you all are working on this to look
301 into maybe being able to get to that?

302

303 Mr. Sehl - You could do that as part of this. It could be
304 established as a master plan. And that's why we're trying to go to one overall
305 density versus the split density for townhouses and multi-family.

306
307 Mr. Jernigan - That looked pretty good.

308
309 Mr. Sehl - And that's what we're trying to encourage is some
310 variety in the streetscapes and those types of things. That would help out.

311
312 The next thing we did was actually allow one-family dwellings by right. We have
313 three of the UMU developments that have been approved by the County: Tree
314 Hill Farm, Wilton, and Staples Mill Center. All of these allowed one-family
315 dwellings, separated detached one-family dwellings with a Provisional Use
316 Permit. What we've done is allow them as a permitted use but limited them
317 because this is an urban mixed use. We are developing traditional neighborhood
318 development ordinances. Tree Hill Farm, a large portion of that was single-family
319 detached dwellings. And that's more of a traditional neighborhood development
320 style. In these urban contexts we still wanted to allow that, but we didn't want a
321 single-family detached dwelling to dominate an urban type of development. So
322 what we've done is recommended that they be limited to twenty-five percent of
323 the overall number of dwelling units unless they have a Provisional Use Permit. I
324 think this way it establishes that it's a permitted use, but given the urban nature
325 of these types of developments we would want to see some justification in going
326 through the Provisional Use Permit process.

327
328 As part of the permitted use section we also, each of the previous types of multi-
329 family and residential townhouse dwelling types had specific development
330 standards regarding refuse containers and HVAC units, those types of things that
331 were only applicable to residential. Those are development standards. We
332 thought they were better served in the development standards section of the
333 ordinance versus in the permitted use section of the ordinance. So we eliminated
334 a couple of those development standards as they moved forward because they
335 were already in the rest of the ordinance.

336
337 One other thing that we added in addition to the one-family dwellings is a
338 permitted use of live/work units, which is a type of dwelling that was actually
339 done as a Provisional Use Permit in Tree Hill Farm. You've heard the term before
340 where it's essentially combining a non-residential use with a residential use for
341 the owner—it might be an art gallery or something like that—who actually lives
342 upstairs and it's an integrated unit. What we actually have to do is identify the
343 specific location. Not a specific location but where is this type of thing going to be
344 permitted.

345
346 Moving into provisional use. This is kind of tying into what I had briefly touched
347 on before. Now any permitted use in the district could exceed 10,000 square feet
348 if they had a PUP. Previously it had to be spelled out in the permitted uses.

349 There were only certain uses that were allowed to exceed that 10,000 square
350 feet. So we've kind of combined them. There were three or four different sections
351 that allowed three or four different provisional uses that allowed you to exceed
352 the square footage cap. So we said let's make it simple. Let's have one
353 provisional use that allows you to exceed the square footage cap.
354

355 A UMU requires twenty-five percent of the square footage in a development to be
356 devoted to commercial or non-residential uses, whether that's office or retail.
357 Those types of uses must comprise twenty-five percent of an overall
358 development. Previously the Board was able to approve a reduced percentage
359 as just part of the approval. What we're concerned about is that we're not giving
360 due consideration necessarily to that reduction. So staff at this point is
361 recommending that that still be permitted, but that we permit it as a provisional
362 use. If they want to go below twenty-five percent commercial square footage, put
363 out a specific request to do that, include it as part of the Provisional Use Permit
364 application.
365

366 That kind of tied into the next part, which was our open space percentages. Right
367 now you might have a development site with twenty percent open space, which is
368 what the code requires right now. If you have a five- or ten-acre site—which we'll
369 get into some of the acreage changes here in a little bit as well. In an infill site,
370 twenty percent open space might not work. We want to allow for a way that when
371 it can be demonstrated that that doesn't work that the applicant can come to us
372 and say this is why it doesn't work. And we say okay, we agree with that
373 standard; the Board maybe agrees with that standard. Previously there was no
374 way to reduce that. What we're recommending is that you can do that now but
375 through a Provisional Use Permit.
376

377 Moving into the next section of the ordinance which deals with accessory uses.
378 One item that we're recommending to be permitted as an accessory use is
379 actually an accessory dwelling. We only have six of these so I'll keep referring
380 back to the various UMU developments that we've seen in the County. Tree Hill
381 Farm permits accessory dwellings. This is behind a single-family detached home,
382 you have a carriage house type of situation. You have a garage. You have an
383 apartment above it. The way they provide some affordable housing in one of
384 these developments is they tend to not always be the cheapest, but what we've
385 seen in other mixed-use developments is the prices can remain pretty high and
386 this could be a way to house some of your workers in your commercial setting,
387 your retail and service workers.
388

389 One of the things that we would require is any one-family dwelling that has an
390 accessory dwelling be sprinkled for fire protection. We've seen in the other UMU
391 developments with townhouses and the multi-family developments, those
392 required sprinklers. There is certainly something to be said for not sprinkling
393 one-family dwellings, but when you start adding additional dwelling units on the

394 rear of those lots, we thought it might be appropriate to incorporate that as part of
395 the fire protection for the development.

396

397 Previously, outdoor dining areas were just listed with the restaurants in the
398 permitted use. It said "restaurant with outdoor dining." As you know, as one of the
399 regular Provisional Use Permit applications the Planning Commission sees is
400 outdoor dining. There are a lot of things that we consider as part of an outdoor
401 dining request. So what we've recommended is to move that as an accessory
402 use. It's still permitted by right; they're not going to have come in and get a
403 provisional use for outdoor dining in a urban mixed use. What we wanted to do is
404 make sure that we captured some of those typical conditions we see in our other
405 districts, our business districts, and incorporate them into UMU standards. It's
406 really maintaining sidewalk width adjacent to them, those types of things, not
407 having speakers out there that can't be controlled through various volume
408 controls.

409

410 Mr. Jernigan - Ben, I'm a little fuzzy on the carriage houses. What
411 was that again? Who can put it in there?

412

413 Mr. Sehl - You could rent it out to a renter. You could do any of
414 those things. It could be a family member. Right now in one-family districts you
415 can't have a separate dwelling. In this type of context we think that it might be
416 appropriate. They have to establish the number of those as part of the rezoning
417 case, and that's how it's spelled out in the district.

418

419 Mr. Branin - Can I get an example of that?

420

421 Mr. Sehl - The only one that we've approved that has this in the
422 County right now is Tree Hill Farm. Accessory dwellings are permitted essentially
423 in that sort of context. It could be a carriage house out back that has a dwelling
424 above and a garage below. It could be some of those things you see in DC or
425 any of those types of urban contexts.

426

427 Mr. Jernigan - You can live in them all year?

428

429 Mr. Sehl - Yes. It would be a dwelling just like a multi-family
430 apartment.

431

432 Mr. Jernigan - And with a cooking facility?

433

434 Mr. Vanarsdall - We've always had the mother-in-law suite.

435

436 Mr. Sehl - You can't have kitchens. This would be a full—I mean
437 this is—

438

439 Mrs. O'Bannon - The only thing that happens with those is—and I'm
440 sure you've written in there—when you're building on the lot you can't just build
441 the accessory structure and not build the house.

442 Mr. Sehl - Yes.

443

444 Mrs. O'Bannon - In other communities—and I can name them—that's
445 what they've always had problems with. Somebody will build a three-car garage
446 with the apartment over it and never get around to building a house. They end up
447 living in the accessory structure at the back corner.

448

449 Mr. Sehl - That's something we'll have to look at and make sure
450 it works.

451

452 Mr. Jernigan - Ben is over here laughing at me. We have a little case
453 in Varina that's exactly this situation.

454

455 Ms. Moore - The definition of accessory is it has to have a principal
456 use first, so. We could clarify that.

457

458 Mr. Sehl - And moving on from there is one of the sections that
459 we made probably the greatest number of changes, which is regarding our
460 development standards. We made a number of changes to this section. Right
461 now the UMU development has to have twenty acres in order to be considered
462 by the Board of Supervisors. You have twenty acres and you have somebody
463 who comes in next door and has a corner piece that was not able to be
464 integrated into the development. They weren't able to come to some sort of an
465 agreement to purchase the piece of property that was directly adjacent and it's
466 only two acres or five acres or an acre and they want to integrate it into an overall
467 UMU development. How do they go about doing that? They could just rezone it.
468 If it's zoned B-3 they could put up a commercial use that ties in architecturally,
469 those types of things. Or if they want to be able to do some of the mixed uses
470 they would have to rezone it to UMU. What we're providing for now is that those
471 smaller acreage parcels that are adjacent to that kind of core twenty-acre area
472 could be rezoned to UMU. They would have to update any standards.

473

474 There are a lot of studies that are required as part of the UMU development. You
475 have fiscal impact studies, traffic impact analysis. If we feel that it's necessary to
476 update those—I mean for an acre parcel where they might not be providing any
477 residential dwelling units or something like that, maybe they don't need to update
478 those standards but they could still get the benefit of the master plan.

479

480 I will tell you that in recent discussions between the Director and I, we've been
481 discussing that that twenty acres—We have a lot of parcels along older portions
482 of West Broad Street that might be fifteen acres or twelve acres. That could be
483 appropriate. This is really geared toward an infill type of development and you're
484 not always going to have twenty acres for that infill. So we're looking at some

485 reduced acreage, potentially ten acres. You have some of these old car
486 dealerships that are perfectly tied into adjacent neighbors. I mean you have stub
487 streets that go in there. This form of development could provide that transition
488 from Broad Street. When transit extends down Broad Street, you could be
489 looking at some of these small parcels and really look at infill development.

490
491 Mr. Vanarsdall - You're also looking at parking?

492
493 Mr. Sehl - For parking now, on-street parking on private streets
494 is permitted to count towards your parking requirements in the UMU District. On-
495 street parking is a vital part to what we think is creating a pedestrian-oriented
496 environment in an urban context.

497
498 Mr. Vanarsdall - And while we're on it, we used to not count the
499 garage.

500
501 Mr. Sehl - In the Urban Mixed Use Ordinance you're actually
502 allowed to count garage spaces towards your parking requirements. The parking
503 requirements for an urban mixed-use development are totally different animals, I
504 think, than our more suburban-based separated uses type of parking
505 requirements. So we really took a close look at the parking. Right now we don't
506 allow parking on public streets to be counted towards this. What we're proposing
507 at this point is that twenty-five of the spaces—it's tough on public streets. We
508 don't have any standards for striping those spaces off and those types of things.
509 So we didn't want to be able to count every space that you might be able to lay
510 out on a public street. But if an urban mixed-use development came in and
511 proposed public streets during the development and had on-street parking, I
512 mean, our street standards provide for a pretty wide street and it provides for
513 parking on either side of it. It's not striped; it's not anything. But there's room
514 there for people to park, for you to still get your fire apparatus through there, all
515 those types of things. So we figure that we could give them some credit for the
516 parking that would happen on those streets.

517
518 One of the other things that we looked at with parking—we talked about this
519 earlier—is in the parking standards we have four different non-residential uses
520 listed in there for office, for restaurants, for retail uses. You have to provide one
521 space for 400 square feet. That's what the standard is in the ordinance right now.
522 We're going to keep that standard, but that standard might not be appropriate.
523 Especially when they're going to be building parking decks in a lot of instances,
524 we don't want them to go out and have to build a parking deck that has fifty
525 percent more spaces than they think they're going to need, than we think they're
526 going to need. But because the ordinance requires it, there was really no way to
527 reduce that standard.

528
529 So what we've allowed for is at the time of plan of development for an applicant
530 to submit a parking study, done by a licensed professional, that shows other case

531 studies that they've looked at, this is a very analogous situation. We don't need
532 four spaces per thousand square feet; we need two spaces per thousand square
533 feet. We would be able to review that. I can't say what a specific one might look
534 like because each of these projects could be different. But the Planning
535 Commission at the time of POD could approve the reduced parking standard.

536
537 What we've recommended is that they reserve areas, say if it's a surface parking
538 lot that could be converted to a parking deck in the future. So if parking is shown
539 to be an issue, there is room for that parking to be provided on site. We've
540 approved this reduced parking standard, but we come back and nobody can ever
541 find a parking space then we need to add onto it.

542
543 Mr. Jernigan - Ben, as you said earlier, our streets in our UMU have
544 been done per the County Standards. The wide streets. If they don't have on-
545 street parking, are we going to still have it?

546
547 Mr. Sehl - What we've noticed in most of the UMU
548 developments is they've actually been done on private streets. Rocketts Landing
549 I think is the only one that's actually been developed that has some public streets
550 in it. West Broad Village, those streets going through there are all private. They
551 have some reduced widths from our actual County standard street widths.

552
553 Mr. Jernigan - When we went to Charleston and down to Florida and
554 all, their streets were narrower than what we require.

555
556 Mr. Sehl - There has been some back and forth about what—the
557 big thing has always been talked about is making sure the Division of Fire has
558 adequate room to get their fire trucks in there, get the outriggers laid out. If you
559 have parking on either side they have to be able to get around the truck.

560
561 Mr. Jernigan - Yes. If you have parking on both sides, you have to
562 have them to County Standards.

563
564 Mr. Sehl - But again, most of those are going to be on private
565 streets in UMU developments. There might be a portion that are public streets,
566 but the majority of them have been done on private.

567
568 The next is still dealing with development standards. We did want to clarify some
569 things regarding sidewalk requirements. Obviously sidewalks, we're trying to
570 create pedestrian-oriented environments here. We want to make sure that we're
571 as clear as possible and what the sidewalk requirements are in a UMU District.
572 We want to make sure that if people are putting in outdoor dining areas, if they're
573 putting vending stands outside, that they still have that five-foot-minimum
574 walkway so people can still move down the sidewalk and still engage in the
575 streetscape that's going on.

576

577 Again, we moved some of the development standards regarding HVAC units,
578 refuse containers, from the residential portion of the district into the development
579 standards. One of the typical conditions that we found as we moved through
580 there were the fire suppression requirements, standpipes in parking decks,
581 sprinkling of townhouse units and multi-family buildings were typical PUP
582 conditions. So we incorporated those into the ordinance versus looking at them
583 with each provisional use.

584
585 One of the bigger things that we added was a requirement specific to civic uses,
586 which we think are a pretty vital part, whether that's a library, a school, a church,
587 a fire station. These are not necessarily public uses. They could be semi-private
588 uses. Looking at a certain percentage of the development devoted to those types
589 of uses to help create that healthy mixture of uses that we want to see. Again,
590 that's something that could be reduced or eliminated completely, though, if a
591 developer could demonstrate that that wasn't something that needed to be done
592 in their development.

593
594 I'm getting right towards the end here. If there are questions we could—

595
596 Ms. Moore - I think let's just go to the next steps because we're
597 getting too close to our 7:00. We're just fact-gathering right now and you've just
598 received some new information, some comments from the development
599 community. So what we ask, though, is to kind of keep this on track is we would
600 like for the Planning Commission to set a public hearing for this consideration,
601 more fact gathering, and open it up to the public for its August 11, 2011 meeting.

602
603 Mr. Branin - If we decide that we need more time we can suspend
604 making a decision at that time, correct?

605
606 Ms. Moore - Well we could. I strongly encourage setting that date.
607 And if you don't have enough time, you can always have another public hearing.

608
609 Mr. Branin - Right, that's what I'm saying. At the public hearing if
610 something comes up because of public comment we can extend out beyond that.

611
612 Ms. Moore - Right. And what I suggest is to digest all of this and
613 we can also set a work session as a continuum on your POD meeting on the
614 27th.

615
616 Mr. Branin - At POD?

617
618 Ms. Moore - Yes.

619
620 Mr. Branin - Prior or post?

621
622 Ms. Moore - I don't know.

623 Mr. Sehl - I don't if DRD knows what their agenda looks like on
624 the 27th yet.
625 Ms. Moore - Do you feel like you want to continue this work
626 session conversation and we could have that at the POD and then go ahead and
627 set the public hearing for August 11th? That would be a good thing to do as well.
628
629 Mrs. Jones - My preference is to talk about this a little bit more. I
630 have questions, questions. But we don't have to. I can clarify things by talking to
631 Ben. That way we don't have to, unless other people want to.
632
633 Mrs. O'Bannon - I think you should ask them because we might end up
634 thinking the same things.
635
636 Ms. Moore - Yes. Why don't we have a second work session to
637 follow up on July 27th?
638
639 Mrs. Jones - I think we have like four pages at the moment, but
640 that will change.
641
642 Mr. Archer - A lot of TOAs in there.
643
644 Mrs. Jones - Well I'd like that, if that—
645
646 Ms. Moore - Is there a motion to do that?
647
648 Mr. Branin - I'm going to make a double motion so we can knock
649 them both out. How about that?
650
651 Mrs. Jones - You go.
652
653 Mr. Archer - Let's see how it goes.
654
655 Mr. Branin - So we can move forward. I'd like to move that on July
656 27th we have a continuation of this work session post-POD, moving out of the
657 boardroom if necessary. And have our first public hearing in regards to this on
658 August 11th.
659
660 Ms. Moore - Let's just move on the first one first.
661
662 Mr. Branin - Then I recant the August 11th.
663
664 Mr. Archer - We'll let you give it again. Is there a second? Okay.
665 So it's been moved and seconded that we will have an additional work session
666 on 7/27. All in favor say aye. All opposed say no. The ayes have it; the motion
667 passes.
668

669 Mr. Branin - I'd like to move that on August 11th we have our first
670 public hearing in regards to this matter.

671

672 Mr. Archer - Before we move, is that incorporated into the meeting
673 or do we have to start early? Do we just start at 7:00 as usual?

674

675 Mr. Branin - It would be part of the agenda.

676

677 Ms. Moore - Yes, I would say at 7:00.

678

679 Mr. Archer - Okay. It's been moved and seconded that we have on
680 August 11th a public hearing concerning this matter All in favor say aye. All
681 opposed say no. The ayes have it; the motion passes.

682

683 Ms. Moore - If you'd like to move to continue the meeting to our
684 7:00 we can convene this meeting and continue.

685

686 Mr. Archer - Okay. Is there a motion?

687

688 Mr. Branin - So moved.

689

690 Mrs. Jones - Second.

691

692 Mr. Archer - Okay.

693

694 **WORK SESSION ADJOURNS IN ORDER TO RECONVENE FOR REGULAR**
695 **PUBLIC HEARING**

696

697 Minutes of the regular monthly meeting of the Planning Commission of the
698 County of Henrico held in the County Administration Building in the Government
699 Center at Parham and Hungary Spring Roads, beginning at 7:00 p.m. Thursday,
700 July 14, 2011. Display Notice having been published in the Richmond Times-
701 Dispatch on June 27, 2011 and July 4, 2011.

702

Members Present: Mr. C. W. Archer, Chairman, C.P.C. (Fairfield)
Mr. Tommy Branin, Vice Chairman (Three Chopt)
Mr. E. Ray Jernigan, C.P.C., (Varina)
Mrs. Bonnie-Leigh Jones, C.P.C., (Tuckahoe)
Mr. Ernest B. Vanarsdall, C.P.C. (Brookland)
Ms. Jean Moore, Assistant Director of Planning,
Acting Secretary
Mrs. Patricia O'Bannon, Board of Supervisors Representative

Member Absent: Mr. R. Joseph Emerson, Jr., AICP, Director of Planning

Also Present: Mr. David O'Kelly, Assistant Director of Planning

Mr. Tom Tokarz, Deputy County Attorney
Mr. Ben Thorpe, Assistant Attorney
Mr. James P. Strauss, CLA, Principal Planner
Ms. Rosemary Deemer, AICP, County Planner
Mr. Benjamin Sehl, County Planner
Ms. Sylvia Ray, Recording Secretary

703

704

Mrs. Patricia O'Bannon, the Board of Supervisors' representative, abstains on all cases unless otherwise noted.

705

706

707

[THE WORK SESSION ENDED AT 6:55 P.M. AND THE PUBLIC HEARING CONVENED AT 7:05 P.M.]

708

709

710

Mr. Archer - At this point in time we will continue our meeting from the work session that we just returned from. I would ask that everyone please stand and let us Pledge Allegiance to the Flag.

711

712

713

714

I would like to welcome everyone to our July 14, 2011 rezoning meeting. I know there are some members from the press that are present, Mr. Bill McKelway from the *Times-Dispatch* and Yvette Yeon from NBC12 and someone also from Channel 8. If you're here and I didn't call your name I apologize.

715

716

717

718

719

Our secretary is not here today so our acting secretary tonight is Ms. Jean Moore. I'll turn it over to you.

720

721

722

Ms. Moore - Thank you, Mr. Chairman. The Commission just finished their work sessions upstairs. They had an executive work session and also a work session on potential revisions to the Zoning Ordinance regarding the Urban Mixed Use District. Now we are continuing the meeting to its 7:00 o'clock portion, which is the public hearing for rezonings.

723

724

725

726

727

728

We do have a very short agenda tonight. We have two cases on the agenda. We have not received any requests for deferrals from the applicants, unless the Commission has any of these requests at this time.

729

730

731

732

(Deferred from the May 12, 2011 Meeting)

733

C-6C-11 Brian Mitchell for J & B Realty, LLC: Request to conditionally rezone from A-1 Agricultural District to R-5AC General Residence District (Conditional) Parcel 843-701-2778 containing approximately 24.4 acres, located along the south line of Portugee Road approximately 2,300 feet east of its intersection with Memorial Drive. The applicant proposes a zero lot line residential development. The R-5A District permits residential development at a density not to exceed six (6) units per acre. The use will be controlled by zoning ordinance regulations and proffered conditions. The Land Use Plan recommends Office and Environmental Protection Area.

734

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741

742

743 Mr. Jernigan - Madam Secretary, I have one deferral. In the Varina
744 District, case C-6C-11, Brian Mitchell for J & B Realty, LLC. This is a deferral to
745 October 13, 2011, by the request of the Commission.

746
747 Mr. Vanarsdall - Second.

748
749 Mr. Archer - Motion by Mr. Jernigan, seconded by Mr. Vanarsdall
750 for this deferral. All in favor say aye. All opposed say no. The ayes have it; the
751 motion passes.

752
753 The Planning Commission deferred C-6C-11, Brian Mitchell for J & B Realty,
754 LLC, to its meeting on October 13, 2011.

755
756 Mr. Archer - Deferral is granted until the October meeting.

757
758 Ms. Moore - Mr. Chairman, we have no expedited items, which
759 moves us into our regular agenda of cases to be heard. The first is in the
760 Brookland District. It is case C-10C-11, John G. Mizell, Jr. for 1241 Associates,
761 LLC. This is a request to conditionally rezone from O-3C Office District
762 (Conditional) to R-2AC One-Family Residence District, part of Parcel 775-749-
763 1480, containing 3.6 acres, located on the east line of Impala Drive at its
764 intersection with Impala Place. The applicant proposes a place of worship. The
765 R-2A District allows a minimum lot size of 13,500 square feet and a maximum
766 gross density of 3.23 units per acre. The Land Use Plan recommends Office and
767 Environmental Protection Area. Mr. Ben Sehl will be doing the staff report.

768
769 **C-10C-11 John G. Mizell, Jr. for 1241 Associates, LLC:** Request to
770 conditionally rezone from O-3C Office District (Conditional) to R-2AC One-Family
771 Residence District (Conditional), part of Parcel 775-749-1480, containing 3.6031
772 acres, located on the east line of Impala Drive at its intersection with Impala
773 Place. The applicant proposes a place of worship. The R-2A District allows a
774 minimum lot size of 13,500 square feet and a maximum gross density of 3.23
775 units per acre. The use will be controlled by zoning ordinance regulations and
776 proffered conditions. The Land Use Plan recommends Office and Environmental
777 Protection Area.

778
779 Mr. Archer - Good evening, Mr. Sehl. Is there anyone here who is
780 in opposition to this case, C-10C-11, John G. Mizell, Jr., for 1241 Associates,
781 LLC? We have opposition.

782
783 Mrs. Jones - Mr. Chairman, before we begin I think for the record I
784 wish to state that because of a representational conflict I will be neither
785 discussing nor voting on this case.

786
787 Mr. Archer - All right, Mrs. Jones. Also, I failed to acknowledge
788 Mrs. O'Bannon from the Board of Supervisors. Good to have you, ma'am.

789 Mrs. O'Bannon - And I abstain from all cases because I'll be voting on
790 them at the Board level.

791
792 Mr. Branin - Mr. Chairman, usually we make note if there is press
793 in the room and actually there is tonight.

794
795 Mr. Archer - Yes, I did acknowledge that. Thank you, sir.

796
797 Ms. Moore - Would you like me to go over the rules and
798 regulations for opposition?

799
800 Mr. Archer - Yes, we can do that first.

801
802 Ms. Moore - The Commission has a policy that the applicant's
803 representative has ten minutes to present the case. And also any opposition or
804 anyone who wants to speak to it also has ten minutes in the aggregate. So we do
805 ask that if a lot of people are speaking to please keep it concise.

806
807 With that, we're ready for the presentation.

808
809 Mr. Archer - Go ahead, Mr. Sehl.

810
811 Mr. Sehl - Thank you very much, Mr. Chairman.

812
813 This request would rezone 3.60 acres on Impala Drive from O-3C to R-2AC to
814 allow a place of worship and community center. Adjacent properties are zoned
815 O-3C, M-1, and R-4.

816 The subject site is mostly wooded and vacant and contains several prominent
817 environmental features, including a stream and associated wetlands.

818
819 The 2026 Comprehensive Plan recommends Office and Environmental
820 Protection Area uses for the subject site. The requested zoning and proposed
821 use are in conflict with these designations.

822
823 The applicant has submitted proffers which address use restrictions, building
824 materials, landscape buffers, location of storm water management facilities,
825 screening of mechanical equipment, conservation areas, and restrictions on the
826 hours of exterior construction and trash removal.

827
828 The proffers provide many assurances of quality; however, staff notes the
829 proposed zoning and use deviate from the 2026 Comprehensive Plan. Staff
830 believes the current Office zoning and the land use designation are appropriate.
831 However, because of the proposed use, the land use provisions of the Religious
832 Land Use and Institutionalized Persons Act, or RLUIPA, must be carefully
833 considered as part of this rezoning request. This act prohibits the County from
834 imposing a substantial burden on a religious applicant unless a compelling

835 governmental interest can be demonstrated. The County Attorney has indicated
836 that legal authority on this topic indicates compliance with the Land Use Plan is
837 not a compelling governmental interest.

838

839 Given these RLUIPA considerations, staff believes a deviation from the Land Use
840 Plan could be appropriate at this location, and recommends approval of this
841 request.

842

843 This concludes my presentation. I will be happy to answer any of your questions.

844

845 Mr. Archer - Thank you, Mr. Sehl. Are there questions from the
846 Commission for Mr. Sehl? All right, Mr. Vanarsdall, we have opposition. Do you
847 want to hear from the opposition first or the applicant?

848

849 Mr. Vanarsdall - I would like to hear from the applicant first.

850

851 Mr. Mizell - Good evening.

852

853 Mr. Archer - Good evening, Mr. Mizell. How are you, sir?

854

855 Mr. Mizell - I'm fine, thanks. Mr. Chairman, members of the
856 Commission, for the record, my name is John Mizell. I'm an attorney with
857 Spinella, Owings & Shaia Law Firm. I appear before you this evening
858 representing the applicant, 1241 Associates, LLC, to request approval of the
859 rezoning of 3.6 acres located at 7705 Impala Drive, from O-3C Office District
860 (Conditional) to R-2A (Conditional), one-Family District, for use as a place of
861 worship.

862 The applicant purchased the property in question in January 2008 after a lengthy
863 search for an appropriate site. They were looking for one that was easily
864 accessible by a transportation network in the northwestern part of Henrico
865 County for use as a place of prayer and worship.

866

867 At the outset I'd like to accentuate several specific aspects of the case and
868 highlight certain provisions of the proffers that have already been mentioned in
869 part by the staff. The conceptual plan filed and referenced as part of the proffers
870 commits to a one-story, 10,500-square-foot building not to exceed twenty-five
871 feet in height. The exposed exterior wall surfaces will be brick. Approximately
872 ninety-three to ninety-five parking spaces will be provided, which far exceeds the
873 number required for this development.

874

875 A twenty-five-foot buffer would be provided along the southern property line
876 adjacent to the residential—

877

878 Mr. Vanarsdall - May I interrupt you a minute? These folks are part of
879 the case, I'm sure, and they may want to hear what you said.

880 Mr. Mizell - Okay. That gives me an opportunity, perhaps, to
881 reserve one minute for rebuttal out of the ten.

882

883 Ms. Moore - Did you want to reserve some time?

884

885 Mr. Mizell - Yes, one minute. And I'll try to condense. I tried to
886 provide some information ahead of time in writing and we'll just try to hit some of
887 those highlights.

888

889 So, going further, there would be a twenty-five foot buffer provided along the
890 southern property line adjacent to the residential subdivision; a fifteen-foot buffer
891 provided along the eastern line adjacent to the County property; and a ten-foot
892 right-of-way dedication would be provided along Impala Drive. And any storm
893 management facility would be set back at least twenty-five feet from Impala Drive
894 and screened from public view with evergreen plantings.

895

896 After the previous case concerning the subject site in question was heard by the
897 Planning Commission in August 2008, there were further amendments made to
898 the proffers as a result of several concerns expressed by neighbors, including
899 those at a community meeting on November 10, 2008. One particular
900 amendment to Proffer #1 responded to possible traffic concerns by excluding the
901 use of the property as a daycare facility or a weekday school. In addition, Proffer
902 #11 was amended so that the hours for the use of the property would be limited
903 to between 6 a.m. and 10 p.m., which is the same time limitation for use that has
904 existed since 1984 under the previous Office rezoning. Proffer #12 was
905 amended to reflect that construction signs would be posted on site in English and
906 Spanish listing hours of construction activity. Proffer #15 was added to provide
907 that parking spaces, roads, and other access drives shall be paved.

908

909 The applicant projects a modest use of the premises with an estimated ten to
910 fifteen individuals coming for prayer on Monday through Thursday and on
911 Saturday. Also a peak day on Friday afternoon from approximately 12 noon to 3
912 p.m. with an estimated 100 individuals coming to the site, and a secondary
913 period of activity on Sunday where twenty-five to forty vehicles per day is
914 estimated with families riding together for education or Sunday school.

915

916 The current planning staff report dated June 28th does indicate that the requested
917 rezoning is somewhat in conflict with the 2026 Comprehensive Land Use Plan,
918 recommending Office and an Environmental Protection Area. However, as Mr.
919 Sehl has indicated, given federal law concerning religious land uses, that was
920 also referenced in the report, staff does now indicate that a deviation from the
921 Land Use Plan could be warranted at this location, and this time recommends
922 approval of the rezoning request.

923

924 I'd like to briefly review some of the history of the subject site; it might be helpful
925 as a frame of reference. In rezoning case C-63C-84, Edward Seay on behalf of

926 William F. Kehoe, requested rezoning of 5.2 acres from R-4 One-Family
927 Residence to O-3 (Conditional) to build an office building. The County staff report
928 at that time reflected that the site was designated low density residential on a
929 land use map because of the R-4 zoning and adjoining residential land uses, and
930 the location of Holladay Elementary School, and the undeveloped property to the
931 east. The proposed Office use was in conflict with the Plan.

932
933 The applicant indicated that the proposed use would be an office building
934 providing services similar to those provided in the Kogerama Building. Most of us
935 perhaps can remember that in the former Koger Center off Three Chopt Road
936 and Forest Avenue with multiple tenants. The staff report pointed out that the
937 requested rezoning to office use was contrary to the Land Use Plan, which called
938 for low-density residence and Environmental Protection. Nevertheless, on August
939 9, 1984, the Planning Commission recommended approval of the requested
940 rezoning. And on September 12, 1984, the Board of Supervisors voted
941 unanimously to approve the requested rezoning from R-4 One-Family Residence
942 to O-3 Office District (Conditional). My client would concede that in 1984 there
943 might have been arguable debate about the appropriate transitional use between
944 light industrial to the west and residential to the east and south of the subject
945 property. Nevertheless, for whatever reasons, the subject property did not get
946 developed for office use and, in fact, remains vacant today, some twenty-seven
947 years later.

948
949 Hopefully we can all agree that the County's Land Use Plan is not something
950 etched in stone, but rather is merely used as a guide. I believe it's also important
951 to review and reflect for comparative purposes on the action that Henrico County
952 has taken on two other cases in recent years relating to requested rezoning for a
953 church or a church-related facility.

954
955 The first of these was back in 2003, case number C-22C-03. First Mennonite
956 Church requested rezoning of 5.9 acres from R-6C, General Residence District,
957 to R-2 One-Family Residence District of a parcel located at the southeast
958 intersection of East Parham Road and St. Charles Road for purposes of building
959 a church and parsonage. The subject property was designated Office on the
960 Land Use Plan and therefore the proposed church use being requested by the
961 First Mennonite case in 2003 was not consistent with that designation. However,
962 the staff report indicated that the proposed church could be a compatible land
963 use at that location if the building and site designs built upon the existing high
964 quality that was exhibited by recent development nearby, and did not adversely
965 affect adjacent residential neighborhoods. The subject property was also within
966 the Scott Road Study Area, then under review by the Commission, and a Semi-
967 Public designation was being considered for the site. On June 12, 2003, the
968 Planning Commission unanimously recommended approval of the requested
969 rezoning change. And on July 8, 2003, the Board unanimously approved the
970 requested rezoning.

971

972 Mr. Archer - Your time is winding down sir; I just wanted to remind
973 you. You reserved one minute.

974

975 Mr. Mizell - Okay. All right. Thank you. The second case was that
976 of the Episcopal Diocese of Virginia, case number C-36C-04, to rezone from O-
977 3C Office District to R-0C One-Family (Conditional) two parcels of land. Again, I
978 would just highlight that the main point was that it was part of the Land Use Plan
979 but it was deviated from. I think we are all aware that a pharmacy was allowed to
980 be developed at the extreme corner of that northeast quadrant. And then the
981 balance was eventually approved for a church site, even though that was
982 somewhat in conflict with the Land Use Plan at that particular time.

983

984 Moving forward, I would just simply add that we believe that the requested use as
985 part of this application does further the public health, safety, and welfare. And we
986 ask that the County simply apply the same scrutiny and flexibility that the County
987 has done in similar church-related type cases.

988

989 Staff has already mentioned the federal act and I won't elaborate any further at
990 this point in the initial presentation. If there are questions now or later, I'll
991 certainly be glad to respond further.

992

993 Thank you.

994

995 Mr. Archer - Thank you, Mr. Mizell. Are there questions from the
996 Commission? The same ten-minute period is now allocated to the opposition. It
997 is inclusive for all of those who speak, so whoever wants to be first can come up.
998 Please give your name and address for the record.

999

1000 Mr. Mathews - Good evening. My name is Al Matthews and my wife
1001 and I run Matthews Automotive, which is across the street from the proposed
1002 site. These are kind of our concerns.

1003

1004 First, as we know, it's an industrial area. Noise from my business—airguns and
1005 so forth—we run a mechanical shop. We have a company next door to us, Fire
1006 Protection, that does air tank testing and fire equipment testing for Henrico Fire
1007 Department. It's noisy. The thought of having a house of worship, whatever it is,
1008 reminds me kind of like the deal over at Nuckols Road at the rock quarry when
1009 people bought houses a half a mile from a rock quarry and then all of sudden
1010 they got problems with noise and the sheet rock falling off the walls. Who is
1011 responsible for that? That's kind of one of my concerns.

1012

1013 The other is a tax revenue issue. Our businesses, we pay business license fees,
1014 all of our gross sales, everything that comes through the door is going to the
1015 County, three percent of it. How much is going to be gained by a house of
1016 worship there?

1017

1018 The third thing is the traffic issue on Impala Drive. Impala Drive is a dead end.
1019 One way in. You have to go all the way down, turn around, and come back out.
1020 There is a lot of tractor-trailer traffic. There's a lot of straight truck traffic. A lot of
1021 workers' vehicles. We have a really small road and there's only one way in and
1022 one way out. And there's no way to do anything about that that I know of.

1023

1024 When they have their religious thing on Friday afternoon, a lot of our businesses
1025 get out at 3:00, 3:30 in the afternoon. Are we as taxpayers going to have to pay
1026 for the Henrico Police Department to come there to get these people out on
1027 Impala Drive through all the maze of tractor-trailers, trucks, and other cars letting
1028 out from the factories down below us?

1029

1030 Those are some of my concerns and I appreciate your time. I definitely am
1031 against it in that area.

1032

1033 Mr. Archer - Thank you, sir. Before you take your seat, are there
1034 any questions?

1035

1036 Mr. Jernigan - I just want to make a statement. Mr. Matthews, they're
1037 moving in on you; you're not moving in on them. You were already there with
1038 your air guns and everything. Any complaints that came in on that would be kind
1039 of null and void.

1040

1041 Mr. Mathews - I appreciate that. Thank you so much.

1042

1043 Mr. Jernigan - I'm not speaking as a police officer; I'm just speaking
1044 of the way things generally work.

1045

1046 Mr. Branin - Mr. Matthews, you're fine to speak, but you need to
1047 do it at the microphone, sir.

1048

1049 Mr. Mathews - I've seen instances where people build something
1050 next to, say, an airport or something and then a year later, two years later, all of a
1051 sudden it's in the news that the people have a problem with the noise. I just don't
1052 want to see that happen to my business.

1053

1054 Mr. Branin - Mr. Mathews, what is your business zoned?

1055

1056 Mr. Mathews - Commercial—I don't know the exact zoning
1057 description of it, but it's commercial.

1058

1059 Mr. Branin - M-1? Okay. You're not in violation of any conditions
1060 currently, so that wouldn't change.

1061

1062 Mr. Mathews - We've been there for eleven years in that building
1063 now and hopefully we'll be there another fifteen.

1064 Mr. Jernigan - Let's hope so.
1065
1066 Mr. Mathews - Then I can quit. Thank you very much.
1067
1068 Mr. Archer - Thank you, Mr. Mathews. All right. Is there someone
1069 who wishes to speak in opposition?
1070
1071 Ms. Moore - We have about five minutes and forty seconds
1072 remaining.
1073
1074 Mr. Archer - Good evening, sir.
1075
1076 Mr. Leahey - I'm Bob Leahey. I'm the owner of the property
1077 across—
1078
1079 Mr. Vanarsdall - What's your last name, Bob?
1080
1081 Mr. Leahey - Leahey—L-e-a-h-e-y. I own the property across the
1082 street, and the business that's in the property, Fire Protection Equipment. I'm
1083 opposed for the following reasons and they're somewhat similar to Al's.
1084
1085 We're also zoned M-1 and I'd like to divert here a minute. We make noise. Friday
1086 afternoons we get a forty-foot tractor-trailer in to deliver CO2 and he goes with a
1087 huge "whoosh" vents the lines, and so forth. And we are there earlier, as you
1088 pointed out, but you try and be a good neighbor. But we shouldn't have to
1089 change our way of operating to be that good neighbor. At any rate.
1090
1091 One of the concerns was the mass and scale of what was proposed before didn't
1092 seem to me to complement the single-story Cape Cods that were nearby.
1093 They've been there a long time and it's a nice little neighborhood. This is kind of
1094 an assault on their neighborhood. The current zoning for a single-story office
1095 warehouse would seem to be more in keeping with that. And given the
1096 competition, if you put an office warehouse in there it's going to have to be nicely
1097 built because there is certainly competition on commercial property rental. So I'm
1098 sure there would be every attempt to make that very nice and to complement
1099 those Cape Cods.
1100
1101 I'll mention traffic on Impala. It's busy. We're two blocks down from the stoplight.
1102 We sometimes see it back up to us. The neighborhood already has truck
1103 problems on their streets and they don't like trucks going through there. I've told
1104 our guys don't drive down the residential streets; go out to Hilliard, and we try
1105 and do that. And you see larger trucks going down these residential streets,
1106 which is not a good thing. So any increase will just make that more of a problem
1107 for the neighborhood I think.
1108

1109 Now with the dead end, traffic's heavy. The plants operate around the clock with
1110 a constant flow of large and small trucks in and out. And then at quitting time
1111 there is just a flow of people coming out. And there are a lot of people walking.
1112 They live in the neighborhood and walk down Impala to the plants down at the
1113 end.

1114
1115 In recent years there have been several—and you could probably even say
1116 many—fender-benders at Impala and Hilliard, Impala and Impala Place, and
1117 Impala and Lafayette. And Jean's house, somebody wiped out her carport and hit
1118 her house sometime last year. They're relatively minor and there have been one
1119 or two relatively serious truck accidents. But with increased traffic certainly that
1120 would increase. It has to make it worse.

1121
1122 We talked about the tax revenue. You'd have a number of small businesses in
1123 there if you had office warehouse. You'd certainly have greater potential for
1124 revenue from sales tax and vendors' licenses and so forth from that.

1125
1126 Our concern is that the presence of something other than other a complementary
1127 use would depress the values of not only the businesses on the other side of the
1128 street, but probably on the residences that back up to that.

1129
1130 Lastly, we've been considering expanding our building and we've talked to the
1131 County about that. We have conceptual drawings and a construction budget of
1132 250,000 to 300,000 dollars. This would make us reconsider that, is this the right
1133 place for us to put that kind of money, should we move? We've done a study to
1134 say should we stay there or should we move. We decided we'd probably stay if
1135 we could do this addition, which appears to be doable. I'd have to consider
1136 whether that would be a good place to put our money as opposed to some place
1137 else where we could be sure that there would be no adverse loss in value.

1138
1139 That's all I have. Are there any questions?

1140
1141 Mr. Archer - Thank you, sir. Are there questions from the
1142 Commission?

1143
1144 Mr. Leahey - Thank you.

1145
1146 Mr. Archer - Thank you, Mr. Leahey. Okay, the next person.

1147
1148 Mr. Vanarsdall - Mr. Chairman, they're running a little short on the ten
1149 minutes.

1150
1151 Mr. Archer - I was just getting ready to ask. We can extend the
1152 time some.

1153

1154 Ms. Blake - My name is Sue Blake and I live in the area. I can
1155 attest to the traffic. I walk a lot. I walk my dogs. The traffic on Friday in particular
1156 is really bad. It's bad on both streets. It's bad on the other one where the school
1157 is and also on Impala. I have walked all the way to the end of Impala where it
1158 turns and where it dead-ends and there is no other way out. There are children
1159 that play in that area on the side streets right before you get to Hilliard Road. It's
1160 just going to be a dangerous situation. The intersection at Hilliard and Impala has
1161 had many, many, many accidents. We are right through from it. We hear the cars
1162 hitting all the time. The County has tried many different traffic patterns there. It's
1163 been better, but it's still a bad intersection. When you add more traffic to that,
1164 then you're just going to increase it.

1165
1166 I am not a politically correct person. I am an American and I want to know that
1167 whoever goes on that piece of property is not going to tear down my country and,
1168 is not going to tear down the neighborhood, and is not going to teach hate. Many,
1169 many mosques that have gone in, they have said they were not going to do it, but
1170 at another point they put in training centers and they put in schools. And they're
1171 not teaching to love your neighbor. I can say that because I have been with ACT!
1172 for America for at least four years now. We see a lot, we've heard a lot, and I'm
1173 very concerned.

1174
1175 Thank you very much.

1176
1177 Mr. Archer - Thank you, ma'am. Questions for Ms. Blake? Yes
1178 sir? Yes sir.

1179
1180 Mr. Bahen - I do live in the neighborhood. My name is Henry
1181 Bahen. That's spelled B-a-h-e-n. B (as in boy)-a-h-e-n. I live on the corner of
1182 Thornrose and Alycia.

1183
1184 I'm somewhat downhill from all of this, but still within a block. I know the EPA has
1185 looked at this and things like this. When you get a half inch of rain in this area the
1186 creeks stay pretty much within the boundaries of the creek. But if you take four
1187 acres out, almost four acres out, hard surface it, put a building on it and things
1188 like this, it's going to start overloading that to where we're going to have some
1189 flooding issues. Not on this picture here, but down below. There's a church that
1190 one of the corners of the building is about ten feet from the creek. So they're
1191 going to have some issues there.

1192
1193 I guess my question is has this amount of runoff been addressed? I know they
1194 talked about some type of holding tank or holding area that most places have
1195 now, but then that goes into health issues of mosquitoes. And, of course, the
1196 school is fairly close.

1197
1198 My second is the noise. Part of their religion is that they're called to prayer five
1199 times a day. I notice that the time of operation is from six, which is first prayer,

1200 and then later on they have other prayers during the daylight. I'm just wondering
1201 about the disruption to the school and to the community around at large.
1202
1203 Those are the two issues; I don't know if you looked at them. They are my
1204 concerns and I'd appreciate an answer.
1205
1206 Mr. Jernigan - Mr. Bahen, on your drainage problem, this is the
1207 zoning phase of it; they also have to go through a plan of development. At that
1208 point their engineers have to prove to our Department of Public Works that they
1209 can get rid of all the water.
1210
1211 Mr. Bahen - Okay.
1212
1213 Mr. Jernigan - This is not it. This is the zoning phase.
1214
1215 Mr. Bahen - That's fair.
1216
1217 Mr. Jernigan - Plan of Development comes after this.
1218
1219 Mr. Bahen - Thank you for the information.
1220
1221 Mr. Archer - And that would be true in any zoning case.
1222
1223 Mr. Bahen - Okay. And the other issue of noise, the same thing?
1224
1225 Ms. Moore - It might be something that the applicant could address
1226 to see what that involved.
1227
1228 Mr. Bahen - Until it's stated publically I don't know, but I've heard
1229 that they said they weren't going to do—
1230
1231 Mr. Jernigan - Are you speaking of outside speakers?
1232
1233 Mr. Bahen - Just rumors, that's all. And really I shouldn't address
1234 that. But I'm just saying I know because I've lived in Muslim countries for the last
1235 three years and I do know what it's like, as far as their worship practices.
1236
1237 Mr. Archer - If there are instances in which outside speakers are
1238 used, we do have means of controlling the decibel level.
1239
1240 Mr. Bahen - Okay. All right.
1241
1242 Mr. Archer - That's also part of any zoning case.
1243
1244 Mr. Bahen - Thank you.
1245

1246 Mr. Archer - Thank you, sir. We have about what, Ms. Moore,
1247 about two minutes left?

1248
1249 Ms. Moore - We've added ten minutes. If you want to go that long,
1250 we have about six minutes left.

1251
1252 Mr. Branin - This is for Mr. Bahen's sake. Mr. Bahen, in their
1253 proffers they've proffered no outdoor speakers to be installed. That's their proffer
1254 number eleven. And on the hours the subject property will be used, to limit the
1255 time between 6 a.m. and 10:00 p.m. But having no outdoor speakers was
1256 addressed. I don't know if you heard that. Once it's proffered, sir, they can't
1257 change it without bringing it back before us, which then it goes through the whole
1258 public hearing process again.

1259
1260 Mr. Archer - All right, you may come forward, ma'am. State your
1261 name for the record, please.

1262
1263 Ms. Rose - My name is Pamela Rose and I live at 2926 Lafayette
1264 Avenue, which is the second house from the corner at Impala and Lafayette.

1265
1266 The construction of this house of worship would be at the back of my house, as
1267 well as other neighbors who are here with me. I know that this is an opportunity
1268 to show your opposition. From my perspective and in talking with Ms. Johnson
1269 and other neighbors, we are not opposed to a house of worship. We would have
1270 the same concerns regarding traffic, lighting, pedestrians whether it is a house of
1271 worship or whether it is an office building or whatever is going to be put in our
1272 backyards. We wanted to see if the County is looking at the neighborhood and
1273 what hours this will impact our neighborhood.

1274
1275 Because Impala is a one-way street in, there is only one way out. You have to go
1276 back up to Hilliard. Either you're going to sit there and wait with the transfer
1277 trucks or the cars that are leaving or the moving trucks that are leaving, or you're
1278 going to turn down my street, Lafayette. Or you could also turn down Lincoln,
1279 which is going to get you back onto Galaxie, which will take you back up to
1280 Lourdes and back up towards Parham Road. If you're going to turn right onto
1281 Hilliard, then you're going to be sitting at a traffic sign right down there at Staples
1282 Mill where there is no turn on red because there's not a lane there to turn right.
1283 So then that traffic a lot of times will back up all the way now even up to the
1284 laundromat on Hilliard Road just to turn right to get to Ukrop's—or Martin's,
1285 whatever it is.

1286
1287 We've heard from the business people here and Al, who is a wonderful auto
1288 mechanic. But from a neighborhood perspective we have a lot to deal with, with
1289 these businesses that are here. There are approximately twenty-six businesses
1290 in a .7-mile range. There are nineteen businesses in a .4-mile range. And there
1291 are forty-five businesses within a 1.1-mile loop of Impala, which has no

1292 throughway. With these businesses there are alarms that go off during
1293 thunderstorms. These owners are wherever they are, but we are here with the
1294 alarms. There is an ambulance company back there. Every now and then when
1295 they want to say hello to somebody, they just turn on their siren for a second.
1296

1297 There are fire drills for the Quebecor business that's back there where you get
1298 fire trucks coming in every so how many times per month of whatever their
1299 services are. With this you have the fire trucks that have to come down and do
1300 fire drills for this company that runs three shifts. Then you have a moving
1301 company. Then you have the trash trucks that come in. Has anybody ever heard
1302 the BFI or, you know, where they come in and take the truck and dump it? We
1303 have all of those noises to deal with in our neighborhood.
1304

1305 There is a storage facility right on our street, but on the other side of Impala. That
1306 gentleman chooses not to rent it as storage, but chooses to rent it to bands to
1307 practice. So in the evenings when we want to sit out in our backyard, we have to
1308 listen to three or four bands practice. They're taking in the revenue. He's not in
1309 our neighborhood, doesn't live in our neighborhood, but he's taking in the
1310 revenue and we have to deal with the consequences.
1311

1312 You can look at this and you can see the area that we're talking about. That's
1313 Ms. Johnson's house on the corner; my house is right next to it. As you can see,
1314 there is no curbing; there's nothing there. The trees that you see in the
1315 background, that is the proposed site of this.
1316

1317 And two, I guess about six months or so ago, *Richmond Magazine* came to my
1318 house and told me that they wanted to do an interview about the meeting that we
1319 had. I don't know how many years ago that was. It was being investigated by the
1320 Department of Justice. And then several months later the Department of Justice
1321 shows up at our door, wanting to ask questions. So, basically, I told *Richmond*
1322 *Magazine* they could find everything in the transcript from that thing. And I told
1323 the Justice Department that they could get whatever information they wanted to
1324 get from the transcripts. I sat there and talked to them and told them about the
1325 issues of the traffic.
1326

1327 There are a lot of pedestrians. There is no curb here. There is not even a little
1328 drainage curb. The street you're looking at here is Impala. That's a hundred
1329 percent better than Lafayette. On Impala—
1330

1331 Mr. Archer - We've gone past the extended time. I'll give you
1332 another minute or so to wrap up.
1333

1334 Ms. Rose - That's fine. It's just that my concern is that this is
1335 being seen as an opposition and it has the potential for the magazine or for the
1336 Justice Department to show up as these are contentious issues amongst people.
1337 And they are not. Our concern is the traffic. Our concern is the lighting and the

1338 parking. With the Botanical Gardens, I remember all of that that went on over
1339 there. I don't want to have to deal with that in my backyard. And I had to answer
1340 a question from *Richmond Magazine* do I really use my backyard, do I sit out
1341 there at night and look up at the stars or look at the sky. That just simply took my
1342 breath away. I shouldn't have to answer a question like that. I shouldn't have the
1343 Justice Department showing up at my door without a notice or somebody from
1344 Henrico County with them to let us know that this is going on. I didn't even know
1345 that this was still an issue.

1346
1347 After we spoke at this last meeting, we met with these people that wanted to
1348 build this house of worship. They came and sat at our kitchen table, showed us
1349 their plans of what they were going to do, and how they were going to buffer our
1350 backyards that are up against it. That's all fine and good, but it's not a legal thing
1351 that they have to do. We just want to make sure that the pedestrians are safe,
1352 that their worshipers are safe, or whoever is in their property is safe, whatever is
1353 done there.

1354
1355 That's all I have to say.

1356
1357 Mr. Archer - Thank you, Ms. Rose.

1358
1359 Mr. Jernigan - Thank you.

1360
1361 Mr. Archer - Any questions?

1362
1363 Mr. Branin - I don't have any questions for Ms. Rose, but I would
1364 like to see Mr. Sehl. Mr. Sehl, a traffic study has been done and traffic has been
1365 reviewed.

1366
1367 Mr. Sehl - Yes sir. The Department of Public Works did review
1368 this.

1369
1370 Mr. Branin - Ms. Rose brought up something that I found a
1371 concern. We're looking at noise that's been brought up by the neighborhood a
1372 couple of times. There are bands that are in a storage place, allegedly, right up
1373 against this neighborhood. Can you get with Ms. Rose and get more information,
1374 please, and find out what exactly that is about. If it is in violation of the noise
1375 ordinance it needs to be taken care of.

1376
1377 Mr. Sehl - Yes sir, I'll get with Ms. Rose after the meeting and
1378 get that information from her.

1379
1380 Mr. Archer - Thank you, Mr. Branin. All right. Mr. Mizell, you had
1381 requested a minute, but we went over quite a bit on the other side so we'll give
1382 you some additional time, too, sir.

1383

1384 Mr. Mizell - Thank you, Mr. Chairman. In general, several
1385 speakers mentioned traffic. I believe the traffic study that has been done
1386 appeared to indicate the roadway system was adequate to handle the traffic that
1387 would be generated by this project. I'll try to take a few other points that were
1388 mentioned by different individuals.

1389

1390 I think we've already alluded to the fact that the applicant knows full well what the
1391 neighborhood is like. Yet on the other hand there's a desire and perceived need
1392 to have a worship space that is accessible to the transportation network. There
1393 aren't very many sites available. In fact, I think when we left off in November
1394 2008, there was every expectation that the County would actually try to assist in
1395 identifying, inventorying some other alternative sites. And yet here we are two
1396 and a half years later and I don't think any have really been identified. No site is
1397 perfect; there are always going to be some difficulties. But we feel like this is a
1398 relatively reasonable use that would transition. You have residential over to the
1399 south and you have mainly industrial over to the west. As a contrast, what could
1400 be developed in the O-3C as it stands today, I would submit a pediatrician's
1401 office, various specialty doctors' offices, orthopedic with high volume. I don't think
1402 there would be any prohibition of that. We feel this would be a significantly lesser
1403 impact and therefore a reasonable one.

1404

1405 Regarding the tax revenue, I would submit that additional revenue would come to
1406 the county by folks coming to this site to worship, whether it be stopping off at a
1407 grocery store or a gas station rather than running over to Chesterfield and
1408 spending those dollars there. Plus the potential community aspect of this site. We
1409 heard in 2008 that there were community projects there on Buford Road. We
1410 don't have all of that determined at this point, but certainly there could be some
1411 community activities here. It may be just a food closet. There are various food
1412 closets around the Richmond Metro area. This could be another opportunity for
1413 one. So there is minimal tax revenue generated by a vacant piece of property
1414 that has sat that way for twenty-seven years. So to do something that could
1415 generate some activity I think would be a plus.

1416

1417 Mr. Vanarsdall - Mr. Mizell, I would like to ask you if you would explain
1418 what we're doing tonight under RLUIPA.

1419

1420 Mr. Mizell - Okay, I'll do my best.

1421

1422 Mr. Vanarsdall - I'd appreciate it if you'd do that.

1423

1424 Mr. Mizell - All right. In 2000, the U. S. Congress passed the
1425 Religious Land Use and Institutionalized Persons Act, the acronym being
1426 RLUIPA. The background of that is that there had been a predecessor federal
1427 act, the Religious Freedom Restoration Act, or RFRA, that had been passed in
1428 1993. It was pretty broad and all-encompassing about prohibiting federal, state,
1429 and local government from acting in a way that would substantially burden

1430 religious exercise unless there was a compelling government interest at place,
1431 and that the least restrictive means was being used to further that. In 1997, the
1432 U. S. Supreme Court struck down RFRA in a decision entitled City of Boerne
1433 versus Flores as it related to state and local governments. And in response to
1434 that, the Congress narrowed the focus of what they thought was appropriate in
1435 the religious realm of free exercise of the First Amendment. Accordingly, in the
1436 year 2000 this new statute was passed. Rather than applying to all federal, state,
1437 and local acts that burden religious exercise, this one only affects land use cases
1438 or cases in which the religious exercise of prisoners are in question. We could
1439 describe it as a machine gun that might have been used in the past and this was
1440 much more precise to get at what could reasonably be interpreted as the most
1441 sensitive areas. That was the effect of this. It only affects those two areas.

1442
1443 So when we have land use decisions, RLUIPA may only be applied in three
1444 distinct cases. First, when a governmental act affects Congress' spending power;
1445 secondly, when Congress' power to regular interstate commerce is involved; or
1446 thirdly—and this is probably the most applicable for this case—when
1447 individualized assessments of proposed uses of property are involved. And there,
1448 if a person or religious assembly are in any one of those three situations and they
1449 can show that the religious exercise is being substantially burdened, then the
1450 government must show that its acts are in furtherance of a compelling
1451 government interest, that the government is using the least restrictive means of
1452 furthering that compelling government interest.

1453
1454 So in a nutshell I believe what we've heard from legal advice, whether it be to the
1455 County or on behalf of the applicant, is that these kinds of local land use
1456 regulations do impact and do trigger this, and it may in fact be seriously
1457 questionable whether they can be upheld. That is the reason that more sensitivity
1458 has come to this issue than we were fully aware of in 2008. The Act has been
1459 there since 2000, but a number of cases have come down since then and I think
1460 it's a fair statement to say that a significant number of them have held in favor of
1461 the plaintiff or the applicant in church-type settings. And just as a representative
1462 sample, there are five that have come between the years 2005 and 2010. Four of
1463 those are U. S. Court of Appeals' decisions in various Courts of Appeals
1464 throughout the country, and one U. S. District decision in New York in 2010 that
1465 was entitled Fortress Bible Church versus Town of Greenburgh.

1466
1467 So the compilation of those indicates a very definite trend. It had maybe started
1468 two and a half years ago, but it seems to have become more prominent and
1469 more sensitive for these kinds of decisions. We do believe the folks here have
1470 the opportunity to have their free exercise of religion allowed, permitted. We
1471 would argue, as we did two and a half years ago, that if the County simply takes
1472 the decisions made by this County in the First Mennonite Church case and the
1473 Episcopal Diocese case, this is not very different and in fact is similarly situated.
1474 Considering all of those reasons, we feel that it is, in fact, a reasonable request
1475 at this time.

1476 Mr. Branin - Thank you for that definition, Mr. Mizell. May I ask you
1477 a question?

1478
1479 Mr. Mizell - Yes.

1480
1481 Mr. Branin - You just made a statement about your client wanting
1482 to participate with the community and community participation in say a food
1483 closet or whatever, did you not?

1484
1485 Mr. Mizell - Yes.

1486
1487 Mr. Branin - You also said *perhaps* they may. I really don't work
1488 well with *perhaps*. Would you like to proffer that?

1489
1490 Mr. Mizell - I'm not sure how we can draft that, but I'm certainly
1491 willing to sit down and try to do that. I can give you another example, a care-a-
1492 van situation. Maybe that's a little better known. I think most everybody knows
1493 about food closets, but a care-a-van, I think Bon Secours has a care-a-van that
1494 has been going to the mosque over on Buford Road for several years. The
1495 testimony that came at the November 2008 hearing before the Board of
1496 Supervisors indicated that some sixty physicians in the Muslim community
1497 donated time on a regular basis to work with those care-a-vans to do diagnostic
1498 work. That has been going on for some time.

1499
1500 Mr. Branin - And I'm quite aware of that, but to stand up and say
1501 *perhaps* they would. If we heard that with every case in this County that we hear
1502 on a monthly basis nothing would ever get done. So if this does move forward, I
1503 would recommend that between now and the Board you come up with a program
1504 or a plan. I hear some pushback from your surrounding neighbors. And to be a
1505 good neighbor and act as a good neighbor we should reach out to the community
1506 you're impacting and show them that coming in as a good neighbor you're there
1507 with them. So instead of telling us perhaps they may, I would recommend you
1508 actually formulate a plan to show the community that you're coming into that
1509 you're intention is to be a strong asset to that community. Okay?

1510
1511 Mr. Mizell - Yes sir. Thank you very much; I appreciate it.

1512
1513 Mr. Archer - Mr. Mizell, before you go, I have a question I'd like to
1514 ask. Maybe if you can't answer it someone may be here as a representative of
1515 the church. Ms. Blake, I believe, made a comment that was disturbing and at the
1516 same time it's one that deserves attention. She indicated that there was a feeling
1517 or belief that the occupants of this facility would teach hate. I think it's worthy of
1518 at least minimal discussion as to where that perception came from.

1519
1520 Mr. Mizell - All right. I'll be glad to have one of the investors who
1521 are part of 1241 Associates respond.

1522 Mr. Vanarsdall - Mr. Mizell explained the position we're in very nicely
1523 but some of it is legal, as it should have been. I want to know if you understand
1524 what we're doing tonight. Most of you were here in 2008 and heard our decision;
1525 you heard his. I want you to understand that the decision he represents overrides
1526 that, the Department of Justice. Good evening.

1527
1528 Mr. Khan - My name is Majid Khan. I am a PhD. doctor, so I am
1529 an engineer by profession. I came to this country fifty-one years ago as a very
1530 young person. In 1967, I built the first unique United States Navy anti-ship
1531 missile. I was a propulsion engineer there. Today I have daughters, sons,
1532 granddaughter, and grandson. I would like to tell our neighbors that I am, too, an
1533 American. Just like anybody else. Some people came very early; some people
1534 came late. And yet there are others who will be coming in the future.

1535
1536 This country is great to exercise the freedom that we all escape from the
1537 persecution all around the world. That's what all America is about. I would say
1538 this much, that I care for this country much more than anybody else. And I tell my
1539 children and grandchildren that I as an immigrant to this country went through in
1540 1961 to U. S. Navy class of 1975; I was an honor graduate there.

1541
1542 I think, the reason that, because of the seven eleven [sic] it's really the American
1543 Muslim had nothing to do with it and we are the double victims. First, our religion
1544 has been hijacked and used as a terrorist base. The second thing, we as an
1545 American are the victim of our own fellow Americans in this country. They do not
1546 understand that we had nothing to do with that and we have lost our life, we have
1547 served in the army, we have continued to build this great nation in and out in
1548 whatever way we can.

1549
1550 I stand before you because in our religion there is no such thing as hate.
1551 Because whatever the perception we are getting because of this nonsense called
1552 ACT! America [sic] that is going around this good nation and telling people that
1553 all Muslims are bad. Can we say that all Christians are bad or all Jewish citizens
1554 of this country are bad? That would be impossible to prove, that everybody is
1555 bad. Yes, in every nation, every country, every place you'll find good people and
1556 bad people. But here in America the American Muslim are very smart, they are
1557 very well-to-do, they are very highly educated. Two of my daughters have
1558 Doctorates of Law, one of them in computer science. And then others are doing
1559 that.

1560
1561 So I would say that when you start listening to the media and start reading the
1562 newspaper, you have instilled in yourself a fear that Muslims are not your
1563 neighbor, that they're your enemy. That's not so. I go out there and see if I can
1564 find anybody hungry that we can feed. With the month of fasting of Ramadan that
1565 is coming next week, we'll be looking out for all type of people regardless of their
1566 race, color, or national origin so we can feed them.

1567

1568 Mr. Vanarsdall - Dr. Khan?
1569
1570 Mr. Khan - And one other thing that we're asking a question, that
1571 is asking, that maybe. No, we are not *maybe*.
1572
1573 Mr. Vanarsdall - Dr. Khan?
1574
1575 Mr. Khan - Yes sir.
1576
1577 Mr. Vanarsdall - It's interesting what you're telling us and I hate to cut
1578 you off, but we're not here for that. None of these people who spoke tonight
1579 touched on anything that you're saying.
1580
1581 Mr. Khan - I heard earlier the ACT! of America. [sic]
1582
1583 Mr. Vanarsdall - We don't have any reason not to—
1584
1585 Mr. Khan - I'm trying to say that I heard very distinctly that one of
1586 the two people who came in opposition said that Muslims are going to be a
1587 breeding ground for hate. That's not true.
1588
1589 Mr. Branin - Mr. Khan?
1590
1591 Mr. Vanarsdall - We understand your point.
1592
1593 Mr. Branin - First of all, I think you have—
1594
1595 Mr. Khan - And they even referenced the ACT! of America— [sic]
1596
1597 Mr. Branin - Mr. Khan?
1598
1599 Mr. Khan - —which we know is an organization. That not
1600 supporting—
1601
1602 Mr. Branin - Mr. Khan?
1603
1604 Mr. Archer - Mr. Khan, we've heard enough. I sympathize with
1605 what you're saying, sir, and I appreciate you offering an explanation. I didn't need
1606 for you to have to delve that deeply into it, but I did want someone to be able to
1607 explain and give an understanding of what it is that you actually do. And I think
1608 you've done that adequately.
1609
1610 Mr. Vanarsdall - Thank you.
1611
1612 Mr. Khan - Thank you very much.
1613

1614 Mr. Archer - All right. Any further questions for anyone from the
1615 Commission members?

1616
1617 Mr. Vanarsdall - All right, thank you for coming. Since this is an
1618 unusual case I'm going to read my motion. Everything we say in here is
1619 recorded; make sure this is recorded properly.

1620
1621 I have carefully reviewed the staff report recommending approval. Although I
1622 have reservations about the merits of this case, I recommend approval of the
1623 zoning application only because of the requirements of the Religious and Land
1624 Use Institutionalized Persons Act known as RLUIPA.

1625
1626 Mr. Branin - Second.

1627
1628 Mr. Archer - Motion by Mr. Vanarsdall and seconded by Mr.
1629 Branin. All in favor say aye. All opposed say no. The ayes have it; the motion
1630 passes.

1631
1632 Mrs. Jones - I abstain.

1633
1634 Mrs. O'Bannon - Of course I abstain also.

1635
1636 **REASON:** Acting on a motion by Mr. Vanarsdall, seconded by
1637 Mr. Branin, the Planning Commission voted 4-0 (two abstentions) to recommend
1638 the Board of Supervisors **grant** the request because of the requirements of the
1639 Religious Land Use and Institutionalized Persons Act.

1640
1641 Mr. Branin - Mr. Mizell, again, I would come up with a program
1642 before you get to the Board.

1643
1644 Mr. Archer - Thank you, Mr. Mizell. Thanks to everyone for
1645 coming.

1646
1647 Madam Secretary?

1648
1649 Ms. Moore - That takes us to the next item on the agenda which is
1650 the approval of Planning Commission minutes of June 9, 2011.

1651
1652 Mr. Archer - Are there any corrections to the minutes?

1653
1654 Mrs. Jones - Yes. Can I just go ahead while everyone is vacating?

1655
1656 Ms. Moore - Yes.

1657
1658 Mr. Archer - Could you all please move the conversation outside?

1659

1660 Mr. Branin - Ladies and gentlemen, we're still in session.
1661
1662 Mrs. Jones - Mr. Jernigan, you can correct me if I'm wrong, but in
1663 several places in the minutes the indication was that you left the auditorium. You
1664 took a seat in the back, I think.
1665
1666 Mr. Jernigan - Yes, for my zoning case.
1667
1668 Mrs. Jones - For whatever reason if you wish to change that. That
1669 was on page four, line 142. On page seventeen on 720. Also in that case on
1670 page sixteen—
1671
1672 Mrs. O'Bannon - I see. He didn't leave the auditorium.
1673
1674 Mrs. Jones - Right. On page sixteen, line 681. "Auto parts used to
1675 be there before they sold out to contractors." I think that was supposed to be
1676 Carquest.
1677
1678 Mr. Vanarsdall - I have a couple, Mr. Chairman. On page fifteen, line
1679 667. "I used to run a bank down in East End down towards Highland Springs and
1680 I used to go by your place." It says, "to get across the street." I guess it's to get
1681 to your place across the street at the doughnut shop. What you cross out is "to
1682 get." On page sixteen, line 681. "Auto parts used to be there before they sold out
1683 to," and it says "contractors."
1684
1685 Mr. Jernigan - Just change that to Carquest.
1686
1687 Mr. Vanarsdall - I have four more pages, seventeen—no, I was just
1688 kidding.
1689
1690 Ms. Moore - Any others?
1691
1692 Mr. Archer - All right, may we have a motion on the minutes?
1693
1694 Mrs. Jones - So moved.
1695
1696 Mr. Branin - Second.
1697
1698 Mr. Archer - Motion by Mrs. Jones, seconded by Mr. Branin. All in
1699 favor say aye. All opposed say no. The ayes have it; the motion passes.
1700
1701 Ms. Moore - All right.
1702
1703 Mr. Archer - All right, Madam Secretary, where are we?
1704
1705 Ms. Moore - That concludes our public hearing.

1706 Mrs. Jones - I have just a comment when we're finished with
1707 regular business. Would this be the time?

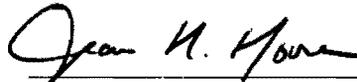
1708
1709 Mr. Archer - Do you want to close the meeting first?

1710
1711 Mrs. Jones - Sure.

1712
1713 Mr. Archer - Okay, the meeting is adjourned.

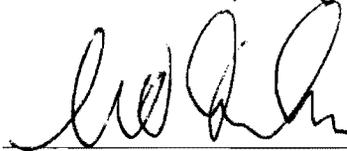
1714
1715 The meeting adjourned at 8:14 p.m.

1716
1717



Ms. Jean Moore, Acting Secretary

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1719



Mr. C. W. Archer, Chairperson

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