

1 Minutes of the regular monthly meeting of the Planning Commission of the
2 County of Henrico and a public hearing on Zoning Ordinance Amendments held
3 in the County Administration Building in the Government Center at Parham and
4 Hungary Spring Roads, beginning at 6:30 p.m. Thursday, March 10, 2011.
5 Display Notice having been published in the Richmond Times-Dispatch on
6 February 21, 2011 and February 28, 2011.

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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)
Mr. R. Joseph Emerson, Jr., Director of Planning, Secretary
Mrs. Patricia O'Bannon, Board of Supervisors Representative

Also Present: Ms. Jean Moore, Assistant Director of Planning
Mr. James P. Strauss, LLA, Principal Planner
Mr. Benjamin Blankinship, AICP, Principal Planner
Ms. Rosemary Deemer, AICP, County Planner
Mr. Benjamin Sehl, County Planner
Mr. Roy Props, County Planner
Ms. Lisa Taylor, County Planner
Mr. Mike Jennings, Traffic Engineer, Public Works
Ms. Kim Vann, Henrico Police
Ms. Sylvia Ray, Recording Secretary

8
9 **Mrs. Patricia O'Bannon, the Board of Supervisors' representative, abstains**
10 **on all cases unless otherwise noted.**

11
12 Mr. Branin - Good evening. Welcome to the March 10, 2011
13 Planning Commission hearing. Our chairman has been caught in the weather, so
14 we're going to open up the meeting this evening with the public hearing, which is
15 the first item. After that public hearing and discussion we will then return back to
16 the normal agenda.

17
18 Mr. Emerson - Thank you, Mr. Vice Chairman. The first item on your
19 agenda tonight is a public hearing on Zoning Ordinance amendments. It is to
20 amend and reordain Section 19-2 titled "Definitions," Section 19-60 titled
21 "Required," Section 19-134 titled "Lot Frontage," and Section 24-9 titled "Street
22 Frontage Required," and to add Division 4 titled "Family Subdivisions" and
23 consisting of Section 19-97 titled "Required," Section 19-98 titled "Application for
24 approval," Section 19-99 titled "Review of Plat; Action by Planning Commission,"
25 Section 19-100 titled "Standards for Review," and Section 19-101 Titled
26 "Recording," All of the Code of the County of Henrico to Regulate Family
27 Subdivisions and Amend Street Frontage Requirements. Staff presentation will
28 be presented by Mr. Ben Blankinship.

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Mr. Blankinship - Thank you, Mr. Emerson. Good evening ladies and gentlemen. We have been through this more than once so I won't belabor each point. If there is anything you'd like to slow down and go over, please let me know.

The last time we met, I believe we reached a conclusion that there was no solution that everyone would be happy with. So you decided to hold the public hearing, receive public input, and then make the best decision you can make so that this can get up to the Board of Supervisors for their part of the process.

To recap the amendment, the current requirement is that every lot to be used for dwelling purposes must front on a public street for at least 50 feet. There are several sound public policy reasons why we require that. Access for fire, rescue, and public safety vehicles has been the main thing we've focused on.

There is an exception in the subdivision regulation now to allow family divisions without review by the County and by the Planning Commission. While it seems reasonable to require developers generally to provide public street frontage to every dwelling that they propose, it has been the practice to allow an exception for family subdivisions. In the past, that was done through the Board of Zoning Appeals, but that has become problematic since the Virginia Supreme Court passed down the Cochran decision.

So we are proposing an amendment to the subdivision regulations that would allow the Planning Commission to review family subdivisions and to approve them even if there are lots within the subdivision that do not front on a public street. Some requirements would be placed on a private drive that would take the place of public streets; first of all that the lots must meet all other zoning requirements—lot area, width, setbacks, that sort of thing; there would be only one division per family member (statutory language there); there would be a restrictive covenant that a family member must own each lot for at least five years. And then we get to the contentious part.

Each lot shall be served by a private drive that would connect to an existing public street located within a recorded easement 30 feet wide, unobstructed from the ground up. No more than three dwellings would be served by any one private drive and utility easements would be required where necessary. Department of Public Works requirements for public streets would be adhered to for sight distance, horizontal and vertical curves, and points of access. On the construction of the drive itself, the preparation would require clearing, grading, and compaction of the sub-base to a CBR of 10 or higher and the installation of drainage improvements as necessary. We don't really have a specification for that; it would just be whatever the particular site requires in terms of its topography and drainage areas. The drive itself would have to be 24 feet wide, 6 inches of #21A stone with 2 inches of asphalt over it. All homes would have to

75 be within 1,000 feet of the public street. The address of each home would have
76 to be posted at the entrance from the public street, which is required now. And in
77 addition to that, wherever a driveway branches off of the private drive there
78 would have to be a sign so that emergency crews would know which direction to
79 go. And finally a maintenance agreement would have to be recorded binding all
80 the owners of all the lots on the private drive to share in the cost of maintenance.

81
82 Those are, again, my remarks. I think everyone is aware that there are different
83 opinions on the Commission. We don't expect this to be recommended in its
84 current form, but this is the form that we were asked to bring back for your
85 discussion and hopefully for a vote tonight to go to the Board of Supervisors.

86
87 Mr. Vanarsdall - What did you do about Page 10, G Section—

88
89 Mr. Jernigan - He's saying that's what it was before. That's what the
90 Board had.

91
92 Mr. Emerson - It was not on the last draft that you were provided
93 with, that's correct. The decision was made after the last work session that there
94 is no solution that is going to make everybody happy and the Commission just
95 needs to take whatever action you feel is appropriate.

96
97 Mr. Branin - Mr. Blankinship, who made that decision?

98
99 Mr. Blankinship - I've been in so many meetings on this I couldn't even
100 pinpoint who it was. Mr. Emerson, do you know?

101
102 Mr. Emerson - I'm sorry, I missed the question.

103
104 Mr. Blankinship - Whose decision was it to advertise this draft for public
105 hearing rather than the one with the gravel road?

106
107 Mr. Emerson - The Commission. The Commission decided to go
108 forward with this ordinance, as it was sent from staff and back to us by the Board
109 of Supervisors to take public comment before making any changes. The
110 Commission made that decision.

111
112 Mr. Branin - Let me rephrase it. Paved versus just stone and the
113 width were the two points that we were struggling with in our numerous meetings.
114 Can you tell me why we went with paved?

115
116 Mr. Blankinship - That recommendation came jointly from the
117 Department of Public Works and the Division of Fire.

118
119 Mr. Branin - Okay.

120

121 Mr. Emerson - I think also to add to that we did do some research
122 regarding family subdivisions within our area and I guess outside of our area
123 somewhat. We found that the majority of those did require paved roads. The
124 widths were sometimes different. Ben, do you have that information?
125

126 Mr. Blankinship - I'm looking for it.
127

128 Mr. Emerson - Mrs. Jones has her copy. If you could, you might
129 want to go over that information.
130

131 Mr. Blankinship - We looked at Albemarle County, Chesterfield County,
132 Hanover County, New Kent County, and the VDOT Rustic Road Program.
133 Albemarle County does not require a paved surface for one or two dwellings. But
134 for three to five dwellings they require 14 feet of paved road. For six or more
135 dwellings, they require 22 feet of paved road. All of those are within a 30-foot
136 right-of-way.
137

138 Chesterfield County simply requires that all lots must front on a public street.
139

140 Hanover County, for one to four dwellings, does not have any standard at all. For
141 five or more dwellings they require 50 feet of right-of-way and 18 feet of gravel.
142

143 New Kent County, for one or two dwellings, requires a 20-foot right-of-way and
144 12 feet wide of gravel. And for three or more dwellings, they require a 50-foot
145 right-of-way and 16 feet of paved surface.
146

147 The VDOT Rustic Road Program provides for a bare minimum of 30 feet of right
148 of way—they prefer 50 feet—and a travel way of 18 feet wide, paved.
149

150 Mr. Emerson - So predominantly there is a requirement in family
151 subdivisions for paved roads from our research. Correct, Mr. Blankinship?
152

153 Mr. Blankinship - Yes sir.
154

155 Mr. Jernigan - But our surrounding counties are gravel. Chesterfield
156 doesn't have any requirement.
157

158 Mr. Blankinship - Well they just don't allow it. Every dwelling has to
159 front on a public street.
160

161 Mr. Jernigan - New Kent, one to two dwellings is gravel.
162

163 Mr. Emerson - Right. After two you have to pave there.
164

165 Mr. Jernigan - And Hanover is gravel, five or more dwellings gravel.
166 One to four is nothing.

167
168 Mrs. O'Bannon - I do notice that they all have a right-of-way, but the
169 area that's either graveled or paved is smaller or narrower. First thing I notice
170 right off the bat.
171
172 Mr. Jernigan - Mr. Blankinship—
173
174 Mrs. Jones - May I ask, has anyone received any calls from
175 citizens? Has anybody had any input at all from the public about this issue?
176 Anybody on staff or?
177
178 Mr. Blankinship - No ma'am, not for quite some time.
179
180 Mrs. Jones - Well, we need to make good public policy here.
181
182 Mr. Jernigan - Do you want to hear me now?
183
184 Mr. Blankinship - Yes sir.
185
186 Mr. Jernigan - I know that you've heard it before.
187
188 Mr. Emerson - Before you start, just for procedure's sake, we may
189 want to open and close the public hearing.
190
191 Mr. Jernigan - Well it's still a public hearing.
192
193 Mr. Emerson - Correct. But normally you discuss after taking public
194 comment.
195
196 Mr. Jernigan - We don't have anybody here.
197
198 Mr. Emerson - Well that's what I was saying for procedure's sake to
199 open and close the public hearing.
200
201 Mrs. Jones - Is this gentleman here for this particular case? Okay.
202
203 Mr. Archer - To all of you I apologize for being late; it couldn't be
204 helped. I'm sorry. Would you close sir?
205
206 Mr. Branin - Are we going to close?
207
208 Mr. Jernigan - We're going to close the public hearing.
209
210 Mr. Branin - I would like to close the public hearing and open up
211 for—adjourn the public hearing.
212

213 Mr. Emerson - Just close the public hearing—
214
215 Mr. Branin - Close the public hearing and open up for discussion.
216
217 Mr. Jernigan - All right. Does anybody want to go before me
218 because I get longwinded? So if you want to say something, go ahead and let me
219 bring it up last.
220
221 Mr. Archer - Mr. Jernigan, I think you should go first.
222
223 Mr. Jernigan - Okay. All right. First of all on the road length, I think it
224 should be 1320 feet, which is the standard.
225
226 The second thing, on Section (f) on page 9 of 12, the last two sentences: A
227 drainage system adequate to carry surface runoff and ground water away from
228 the finished sub-grade elevation should be installed. I think we're looking for
229 trouble there when we put a drainage system. I would rather see terminology that
230 ample drainage from the road would be required, but not a drainage system.
231
232 The third thing, I'm okay with a 30-foot right-of-way clear of trees and everything.
233 Twelve feet of gravel, crushed stone.
234
235 Mrs. Jones - Are you on (g)?
236
237 Mr. Jernigan - We're on (g) now.
238
239 Mrs. Jones - Did you read that the way you'd like it to read?
240
241 Mr. Jernigan - Ma'am?
242
243 Mrs. Jones - Did you read that the way you just told me you
244 wanted it to read? I lost you there.
245
246 Mr. Jernigan - I said I'm okay with a 30-foot right-of-way. But 12 feet
247 wide of crushed stone.
248
249 Mrs. O'Bannon - When they say, "compacted #21A stone," is that
250 crush and run?
251
252 Mr. Emerson - I don't think it's quite the same as crusher run. Mike
253 might know.
254
255 Mrs. O'Bannon - What is 21A?
256
257 Mr. Emerson - He's saying yes.
258

259 Mrs. O'Bannon - It's referred to as "crush and run"? That's what they
260 often refer to it as.

261
262 Mr. Branin - Fifty-seven and twenty-one stones are about the
263 same size; 21A is referred to a lot of times as crush and run. It's a small stone
264 with a lot of fines—

265
266 Mrs. O'Bannon - Dust. Yes. It compacts down very, very well, yes.
267 That was why I was asking. I hate to say it this way, but whenever you get that
268 specific, I mean 21A stone, is that a real standard? Is it going to be standard for a
269 long time? You know how we've been too specific sometimes and had to come
270 back.

271
272 Mr. Branin - Yes ma'am. The word "crush and run," if you were
273 going to be specific, would not be the term that would actually be used. Crush
274 and run is almost a slang term. Twenty-one A is the specific type of stone with
275 the amount of fines in it.

276
277 Mrs. O'Bannon - I just want to make sure of that because we've been
278 too specific in other cases. Okay, I'm fine.

279
280 Mr. Archer - Mr. Branin, does crush and run have to be round or
281 can it be regular shaped?

282
283 Mr. Branin - Crush and run is just type of stone not the size of the
284 stone.

285
286 Mr. Archer - So it can be round, smooth stone or it can be—

287
288 Mr. Jernigan - No, it's not round.

289
290 Mrs. O'Bannon - No, it's a mix.

291
292 Mr. Jernigan - It's that gray stone. They hit it in a rock grinder and it
293 comes out rough. It's not smooth.

294
295 Mr. Archer - I've seen some of both kinds described as crush and
296 run.

297
298 Mr. Emerson - Were there any other changes?

299
300 Mr. Jernigan - The marker, the distance to the house. That would be
301 when you leave the County road, right?

302
303 Mr. Blankinship - Yes.

304

305 Mr. Jernigan - What do you have for the distance for that, that you
306 have to mark it?
307
308 Mr. Blankinship - When we changed the distance to 1,000 feet, we just
309 said at the public street there has to be a marker and then anywhere the drive
310 branches. If you have a private driveway going off of the drive, then there has to
311 be a sign saying which addresses and which direction.
312
313 Mr. Jernigan - What I recommend is that any house that's 800 feet
314 off the road you have the marker at the street because they carry a thousand feet
315 of line on a fire truck. That will get you to the end of the driveway, but you don't
316 know how far the house is from the driveway. I like that recommendation, but I
317 make it 800 feet. You know, but the address of the house and also anything over
318 800 feet it will have—if it's 855 feet, that's how far it is to the house.
319
320 Mrs. Jones - Question. To clarify what you were explaining, if you
321 don't mind. The driving surface, you'd like this to read: The driving surface shall
322 be at least 12 feet wide. Constructed of two inches of asphalt—strike that,
323 correct.
324
325 Mr. Jernigan - Yes, strike that.
326
327 Mrs. Jones - Okay. Constructed of—and you just want to go to
328 compacted #21A stone.
329
330 Mr. Jernigan - Right.
331
332 Mr. Emerson - Six inches?
333
334 Mr. Jernigan - Six inches is fine. It'll probably be at least six plus.
335
336 Mr. Emerson - So say constructed of six inches of compacted 21A.
337
338 Mrs. Jones - Okay. My only question is we discussed 14 feet as
339 the roadway needed for emergency vehicles, did we not? If I remember that
340 correctly, what made you suggest 12?
341
342 Mr. Jernigan - Because that's what I have on my notes.
343
344 Mrs. Jones - Well, that's an honest answer.
345
346 Mr. Jernigan - Mostly everything that's around has been 12 feet or
347 less. If you feel better with 14, I'm okay with that.
348
349 Mrs. Jones - I just had 14 on my notes and that's why I was asking.
350

351 Mr. Jernigan - I have so many notes, Mrs. Jones, that I just grab a
352 handful of them when I get into my briefcase. If you want to make it 14 feet, I'll be
353 all right with that.

354
355 Mrs. Jones - Here is what I would suggest. We could say
356 minimum, a minimum of 12, and perhaps that would lend itself to some decision-
357 making at the time based on the terrain and how many houses and that kind of
358 thing. I don't have the road-building experience that some of you have so I'll
359 leave it in your hands. But my notes from last time were 14 and I'm not sure
360 why. That's why I asked.

361
362 Mr. Jernigan - It doesn't really matter. I can tell you Public Works
363 and Fire are not going to be happy with either one. So if you want to make it 14,
364 I'm okay. If that's what we discussed last time, to make it 14, let's make it 14.
365 Ben, I've done a lot of thinking on this. The one thing that I thought of—and I told
366 Mr. Donati and he said it doesn't sound too bad. Fire is worried about getting fire
367 equipment back there. A lot of times a fire starts out small and ends up big. As
368 you go in buildings all over town, you'll see a fire hose in commercial buildings in
369 the walls. Maybe on any house that's over 800 feet away have a 50-foot garden
370 hose hooked up to a live faucet somewhere in the middle of the house that's in
371 the wall, that if you have a fire you'll have water accessible.

372
373 Mr. Archer - That would have to be a condition.

374
375 Mr. Jernigan - Yes. Any house that's 800 feet off the road, let's have
376 a live water hose that you can pull out of the wall in the house.

377
378 Mrs. Jones - Is this common practice that you're aware of?

379
380 Mr. Jernigan - No, it's not. But as you know, you go up to a lot of
381 commercial buildings and they have fire hoses in the wall. This is just something
382 I thought about to kind of ease up Fire a little bit.

383
384 Mr. Blankinship - We can check with the Division of Fire and see what
385 they think of it.

386
387 Mr. Emerson - We'll also have to check with Building Inspections
388 whether or not that's a viable thing as well.

389
390 Mrs. Jones - There would be some cost to that as well.

391
392 Mr. Jernigan - What I'm saying is on your average—we don't have to
393 do this; it's just an idea. Everybody's worried about safety. When a fire starts,
394 people are scrambling to grab a rag or most people don't use salt or use a
395 powder to extinguish it. They go and try to get a cup or a bucket. I'm thinking if

396 you had a hose that had 50 feet on it, located somewhere in the middle of the
397 house inside, it could squelch any small fire.
398
399 Mr. Archer - Years ago people had water buckets, they had sand
400 buckets.
401
402 Mrs. O'Bannon - The last two fires in my own neighborhood, one was
403 the dishwasher caught on fire and it was an electrical fire. She put water on it and
404 it made it worse.
405
406 Mr. Jernigan - Common sense along with this now.
407
408 Mrs. O'Bannon - Another one was a grease fire on the stove.
409
410 Mr. Jernigan - Don't want to put water on that either.
411
412 Mrs. O'Bannon - A fire extinguisher, yes, in an accessible location.
413
414 Mr. Jernigan - Everybody should have a fire extinguisher anyway.
415
416 Mrs. O'Bannon - Your insurance company will give you a discount if
417 you have so many fire extinguishers in the house in certain locations. So I think
418 maybe fire extinguishers. I don't know if you can require them, but I do know that
419 that would be preferable to a water hose. There are A, B, and C fire extinguishers
420 that take care of different types of fires.
421
422 Mr. Jernigan - I'm thinking about people using fireplaces and they
423 catch the carpet on fire and things like that.
424
425 Mrs. O'Bannon - And a fire extinguisher can put something like that out
426 also. The hose may be in the wrong place.
427
428 Mr. Jernigan - You don't want to put water on electrical, from the
429 sink or anywhere. Or grease. Well, if it's not a good idea, can it. It was just an
430 idea.
431
432 Mr. Blankinship - We'll investigate it with Fire.
433
434 Mr. Vanarsdall - Went over like a lead balloon, but.
435
436 Mr. Emerson - I think we'll have to look into it; it's certainly a novel
437 idea.
438
439 Mrs. Jones - I think there is probably a lot that we can do to ensure
440 that we've created an atmosphere that is conducive to folks being able to do
441 what they'd like to do with family subdivisions, but without having it be so

442 onerously expensive. You've taken a lot of time to make sure this is brought
443 down to the basics that they need without being so terribly oppressive with the
444 cost and all this that no one feels they can do it. On the other hand, we can't
445 create good sense for personal responsibility for how to handle fires and this kind
446 of thing. I understand where you're going with the hose in the wall. I just have
447 visions of mischievous children and—you know. Anyway, I think it could be a
448 system possibly that would work, but I have never thought that that would be a
449 solution.

450
451 Mr. Jernigan - I was trying think, for public safety, something that we
452 could do.

453
454 Mrs. Jones - I think recommending fire extinguishers and having
455 them available in places like the kitchen and high-risk areas is certainly what we
456 would do with anybody or anyone would discuss with us. That's common sense.
457 You can't take it beyond that.

458
459 Mr. Jernigan - Unfortunately most everybody has those little
460 extinguishers that have Purple K in them. They sit there for years and they don't
461 check to see if it's still charged.

462
463 Mrs. O'Bannon - You have to check them, yes, every year.

464
465 Mr. Jernigan - But a lot of people don't.

466
467 Mrs. O'Bannon - I've had two fires in my house; I am acutely aware.

468
469 Mrs. Jones - Smoke detectors and fire extinguishers I think are
470 good advice.

471
472 Mr. Jernigan - You can run it up the flagpole and see what Fire says.
473 But if they think it's a lousy idea, then just can it.

474
475 Mrs. Jones - I'd like to boil this down to the simplest framework
476 possible.

477
478 Mr. Jernigan - Let's say that we can get this straight. If we can't, we
479 may have to come out with a separate ordinance. We're doing a TND ordinance,
480 right?

481
482 Mr. Emerson - We have several ordinances under development right
483 now, yes.

484
485 Mr. Jernigan - When the BZA had this it was a whole lot simpler than
486 what it is when Planning gets it.

487

488 Mrs. Jones - If your recommendations for the length—I mean for
489 the distance of a public street, for the surface requirements and drainage
490 requirements are incorporated into new language, would you be content with how
491 this reads?

492
493 Mr. Jernigan - Yes. The main thing I have is the road and the
494 drainage. Whoever came up with having the distance marked—I don't remember
495 who suggested it—that's a good idea. It lets you know what's going on.

496
497 Mr. Branin - You had one comment and I was going to ask if Mr.
498 Jennings could come up. He might be able to help me with this one, but I don't
499 know. You said eight inches is enough stone without paving. If you're not going
500 to pave and it's going to be a long-term road that's not going to be surfaced or
501 kept up like it should, I don't know if eight is enough. I would probably go twelve-
502 inch. Wouldn't you agree with twelve inches of stone? You're going to lose at
503 least an inch or two inches through dissipation over a period of time because
504 they're not going to do much sub-grade work probably.

505
506 Mr. Jennings - Well, it depends on the maintenance of it.

507
508 Mr. Branin - If you're not going to push for paving, I would think
509 you'd want. If Mr. Jernigan's voice is heard and the hard surface is taken out,
510 wouldn't you recommend twelve inches over eight?

511
512 Mr. Jennings - Yes.

513
514 Mr. Branin - Eight is substantial for sub-grades.

515
516 Mr. Jernigan - I'm all right with that. We have to have a decent
517 driveway, if it takes twelve inches to do it.

518
519 Mr. Branin - Right. That moved on by and I thought it's just not
520 going to cut it in the long term without paving.

521
522 Mr. Jernigan - You are more of a professional in that than I am. If
523 you think that's what it takes. Mr. Blankinship?

524
525 Mr. Blankinship - Duly noted.

526
527 Mrs. Jones - Just a comment from an English standpoint. Things
528 like *Director of Planning, Planning Commission, Department of Public Works*, I
529 believe those need to be capitalized.

530
531 Mr. Blankinship - The County Attorney's Office always makes us take
532 those down to lower case.

533

534 Mrs. Jones - Really?
535
536 Mr. Blankinship - Yes ma'am.
537
538 Mrs. Jones - I am so sorry.
539
540 Mr. Blankinship - I agree with you. As long as it's referring to a specific
541 person or a specific department that's more appropriate.
542
543 Mrs. O'Bannon - The words *County Attorney* are in capitals.
544
545 Mrs. Jones - Well there you go.
546
547 Mr. Branin - Maybe that's the reason?
548
549 Mr. Emerson - Could be.
550
551 Mrs. Jones - I will ask. Okay, duly noted.
552
553 Mr. Branin - Are we taking action on this or are we just making
554 more recommendations?
555
556 Mr. Emerson - We're open for a motion to send this forward to the
557 Board of Supervisors.
558
559 Mr. Branin - With our recommendation?
560
561 Mr. Emerson - I would suggest if you're comfortable with what you've
562 discussed tonight that you take action and send this on. You've discussed it quite
563 a bit.
564
565 Mr. Branin - I think our recommendations have been made several
566 times. So with that, do you want to move it forward, Mr. Jernigan?
567
568 Mr. Jernigan - Yes sir. I make a motion that we move this forward to
569 the Board of Supervisors for their approval.
570
571 Mrs. Jones - Second.
572
573 Mr. Emerson - With changes as noted.
574
575 Mr. Jernigan - With changes as noted.
576
577 Mr. Archer - Go right ahead.
578

579 Mr. Branin - Motion made by Mr. Jernigan, second by Mrs. Jones.
580 All in favor say aye. All opposed say no. The ayes have it; the motion passes.
581
582 Mr. Blankinship - Thank you very much.
583
584 Mr. Jernigan - Thank you, Mr. Blankinship.
585
586 Mr. Branin - Mr. Blankinship, I thought you did a fantastic job.
587 Thank you. Mr. Chairman?
588
589 Mr. Archer - Yes sir, Mr. Vice Chairman.
590
591 Mr. Branin - I would like to move over and let you take over.
592
593 Mr. Archer - You're very kind, sir, and I appreciate you acting in
594 my stead. Again, I apologize for being late. I'd rather be absent than late.
595
596 Mr. Jernigan - Yes, we thought you drowned so we're glad to see
597 you.
598
599 Mr. Archer - No, I didn't drown. Do we need to reopen this
600 meeting, Mr. Secretary?
601
602 Mr. Emerson - No sir, you don't. But we have not done the Pledge.
603 Beginning at the Pledge of Allegiance, we have not had any items on the
604 agenda. So we can begin with the Pledge.
605
606 Mr. Archer - Let us do that now. Let's stand and pledge allegiance
607 to the flag.
608
609 Okay. Is there any news media present tonight? I don't think I see any.
610
611 With that, Mr. Secretary, I'll turn it over to you and you can guide us through the
612 rest of the meeting.
613
614 Mr. Emerson - Thank you, Mr. Chairman. The next item on your
615 agenda are requests for withdrawals and deferrals. You have two deferral
616 requests tonight to consider. Those will be presented by Mr. Jim Strauss.
617
618 Mr. Archer - Good evening, Mr. Strauss.
619
620 Mr. Strauss - Good evening. As the secretary said, staff is aware of
621 two requests for deferrals this evening. The first one is in the Varina District,
622 page two of the agenda. That would be case C-3C-11. This is Mr. Eugene Ray
623 Jernigan. It's a request to conditionally rezone from R-4 One-Family Residence

624 District to B-3C Business District. The applicant is requesting a deferral to the
625 May 12, 2011 meeting.

626

627 **(Deferred from the February 10, 2011 Meeting).**

628 **C-3C-11 Alvin S. Mistr, Jr. for Eugene Ray Jernigan:**

629 Request to conditionally rezone from R-4 One-Family Residence District to B-3C
630 Business District (Conditional) Parcels 815-714-1027, -0737, and -1837
631 containing .8 acres, located at the northeast corner of Williamsburg Road (US
632 Route 60) and Leonard Avenue. The applicant proposes retail or office uses. The
633 uses will be controlled by zoning ordinance regulations and proffered conditions.
634 The Land Use Plan recommends Commercial Concentration and Suburban
635 Residential 2, density should not exceed 3.4 units per acre. The site is in the
636 Airport Safety Overlay District.

637

638 Mr. Archer - Is anyone present who is opposed to deferring case
639 C-3C-11, Alvin S. Mistr, Jr. for Eugene Ray Jernigan, to the May 12th meeting? I
640 see no opposition. Motion?

641

642 Mr. Vanarsdall - I move that C-3C-11, Alvin S. Mistr, Jr. for Eugene
643 Ray Jernigan, be deferred until May 12, 2011, at the applicant's request.

644

645 Mr. Branin - Second.

646

647 Mr. Archer - Motion by Mr. Vanarsdall, second by Mr. Branin. All in
648 favor say aye. All opposed say no. The ayes have it; the motion passes.

649

650 Mr. Jernigan - Mr. Chairman, I abstain from that vote.

651

652 Mr. Archer - Mr. Jernigan, so noted.

653

654 At the request of the applicant, the Planning Commission deferred C-3C-11, Alvin
655 S. Mistr, Jr. for Eugene Ray Jernigan, to its meeting on May 12, 2011.

656

657 Mr. Strauss - The next request for deferral is on page two of the
658 agenda in the Brookland District. That would be C-21C-10, Old Glen Allen
659 Properties, LLC. This is a request to conditionally rezone from R-2A One-Family
660 Residence District to B-1C Business District. The applicant is requesting a
661 deferral to the April 14, 2011 meeting.

662

663 **(Deferred from the February 10, 2011 Meeting).**

664 **C-21C-10 Fred S. Kirby for Old Glen Allen Properties, LLC:**

665 Request to conditionally rezone from R-2A One-Family Residence District to B-
666 1C Business District (Conditional), Parcel 770-767-3587 containing
667 approximately 1.83 acres located along the north line of Mountain Road
668 approximately 150' west of its intersection with John Cussons Drive. The
669 applicant proposes retail and office uses. The uses will be controlled by zoning

670 ordinance regulations and proffered conditions. The Land Use Plan recommends
671 Suburban Residential 1, density should not exceed 2.4 units per acre.

672

673 Mr. Archer - Anyone present who is opposed to this deferment?
674 You're opposed to the deferral, sir? Okay.

675

676 Mr. Jernigan - He'll have to come up.

677

678 Mr. Archer - Your name and address for the record, if you would,
679 sir.

680

681 Mr. Kirby - Yes sir. I'm Fred Kirby with Old Glen Allen Properties.
682 I received some additional data from the County and we are going to need to
683 prepare a Plan of Development before we can move forward with the rezoning.
684 We need time to do that. I don't even know if one month is enough time to get a
685 complete Plan of Development approved, but we need to do that. That's why
686 we're asking for the deferral. If the Board would consider two months, then we
687 would like that.

688

689 Mr. Vanarsdall - I'm glad you're here, Mr. Kirby, because I'm going to
690 deny the 30 days or any other number of days.

691

692 Mr. Kirby - Okay.

693

694 Mr. Vanarsdall - I'm going to do that because we told you 30 days ago
695 that there wouldn't be any more.

696

697 Mr. Kirby - Yes sir. Okay.

698

699 Mr. Vanarsdall - We'll hear the case and you'll find out you'll have 30
700 more days.

701

702 Mr. Kirby - Okay.

703

704 Mr. Archer - Thank you, Mr. Kirby.

705

706 Mr. Vanarsdall - I move the deferral for C-21C-10, Fred S. Kirby for
707 Old Glen Allen Properties, LLC, be denied.

708

709 Mr. Branin - Second.

710

711 Mr. Archer - Motion by Mr. Vanarsdall, second by Mr. Branin. All in
712 favor say aye. All opposed say no. The ayes have it; the deferment is not
713 granted.

714 Mr. Emerson - Mr. Chairman, that takes us to the next item on your
715 agenda, which is Requests for Expedited Items. There are no expedited items

716 this evening, so we will move on to the next item, which is C-22C-10, Felts &
717 Kilpatrick Construction Company, Incorporated.

718

719 *(Deferred from the January 13, 2011 Meeting).*

720 **C-22C-10 Felts & Kilpatrick Construction Co. Inc.:** Request to
721 conditionally rezone from R-3 One-Family Residence District and B-1 Business
722 District, to R-3 One-Family Residence District and B-1C Business District
723 (Conditional), Parcels 802-702-8535, -8929, -9916, and 803-702-2315 containing
724 3.08 acres (.58 acres R-3 and 2.50 acres B-1C), located at the northeast
725 intersection of New Market Road (State Route 5) and Midview Road. The
726 applicant proposes retail and single family uses. The uses will be controlled by
727 zoning ordinance regulations and proffered conditions. The Land Use Plan
728 recommends Suburban Residential 2, density should not exceed 3.4 units per
729 acre.

730

731 Mr. Archer - Thank you, Mr. Secretary. Good evening, Mr. Sehl. Is
732 there anyone present who is opposed to this case in the Varina District, C-22C-
733 10, Felts & Kilpatrick Construction Company, Incorporated? No opposition.

734

735 Mr. Sehl - Good evening, Mr. Chairman, members of the
736 Commission.

737

738 This request would rezone 3.08 acres from R-3 and B-1 to R-3 and B-1C to allow
739 commercial uses and additional residential development within North James
740 Estates. Since the staff report was issued, the applicant has reduced the scope
741 of this request and removed one parcel and part of two parcels from the
742 proposed development. New proffers have also been provided and were handed
743 out to you this evening.

744

745 The concept plan shown here has been proffered by the applicant and was
746 included in your handout. This plan differs from the plan contained in the staff
747 report in several ways. The largest change is the removal of properties adjacent
748 to Midview Road from the request. This change was accompanied by reducing
749 the number of access points to the development from three to one. This access
750 would be located on New Market Road and has been determined to be adequate
751 for the scale of development proposed by the applicant.

752

753 The concept plan also illustrates several of the revised proffers, including a 100-
754 foot building setback from New Market Road and the inclusion of a 40-foot buffer
755 along this roadway. This buffer would contain a berm similar to properties to the
756 south and would be planted to the Transitional Buffer 35 standard.

757

758 Other proffers submitted by the applicant address signage, lighting, trash pick-up,
759 permitted uses, and outdoor speakers.

760

761 A proffer regarding building design and materials has also been provided. The
762 building would be of Colonial design and would be brick, except for architectural
763 features. The design of any building would be consistent with the building shown
764 in this photo, which is located just to the south of the subject site.

765
766 The site is designated SR2 on the 2026 Land Use Plan. While the requested
767 zoning is not consistent with this designation, the existing B-1 zoning, other
768 business zoning in the area, and the site's location along a major thoroughfare
769 means a well-regulated commercial use could be appropriate at this location.
770 The applicant has revised this request to address staff concerns regarding the
771 site's appearance from Route 5, and the reduction in the project's scale and
772 removal of the entrance to North James Estates Drive has addressed staff's
773 concerns regarding possible impacts to adjacent residential uses. For these
774 reasons staff supports this request. Staff notes time limits would need to be
775 waived on the revised proffers, as some housekeeping changes were made this
776 afternoon.

777
778 This concludes my presentation, I would be happy to try and answer any
779 questions you might have.

780
781 Mr. Archer - Thank you, Mr. Sehl. Are there questions from the
782 Commission for Mr. Sehl?

783
784 Mr. Jernigan - Mr. Chairman, I don't have any. I tell you, Mr. Sehl
785 and Messers. Kirk Kilpatrick and Felts have gotten together and got this case in
786 very good shape. I want to thank you for your help.

787
788 Mr. Sehl - You're very welcome.

789
790 Mr. Jernigan - I don't even need to hear from the applicant unless
791 you all want to get up and say something. I didn't figure you did.

792
793 Mr. Archer - Drove all that way in the rain.

794
795 Mr. Jernigan - But anyway, this case looks good now. Everybody is
796 happy. First of all, I'd like to waive the time limits on C-22C-10, Felts & Kilpatrick
797 Construction Company, Incorporated.

798
799 Mr. Vanarsdall - Second.

800
801 Mr. Archer - Motion by Mr. Jernigan, second by Mr. Vanarsdall to
802 waive the time limits. All in favor say aye. All opposed say no. The ayes have it;
803 the motion passes.

804

805 Mr. Jernigan - With that, I will move for approval of zoning case C-
806 22C-10, Felts & Kilpatrick Construction Company, Incorporated, be sent to the
807 Board of Supervisors for their approval.

808

809 Mr. Vanarsdall - Second.

810

811 Mr. Archer - Motion by Mr. Jernigan, second by Mr. Vanarsdall. All
812 in favor say aye. All opposed say no. The ayes have it; the motion passes.

813

814 **REASON:** Acting on a motion by Mr. Jernigan, seconded by Mr.
815 Vanarsdall, the Planning Commission voted 5-0 (one abstention) to recommend
816 the Board of Supervisors **grant** the request because it is reasonable in light of
817 the business and residential zoning in the area and the proffered conditions will
818 assure a level of development otherwise not possible.

819

820 *(Deferred from the January 13, 2011 Meeting).*

821 **P-1-11 J. Thomas O'Brien, Jr. and Michael J. Rothermel**
822 **for Regal Cinemas, Inc.:** Request for a Provisional Use Permit under Section
823 24-58.2(a), 24-120 and 24-122.1 of Chapter 24 of the County Code in order to
824 allow extended hours of operation for an existing movie theater on part of Parcel
825 739-762-4639, located on the north line of W. Broad Street (U.S. Route 250)
826 approximately 600' west of its intersection with Pouncey Tract Road (State Route
827 271). The existing zoning is B-2C Business District (Conditional) and M-1 Light
828 Industrial District. The Land Use Plan recommends Commercial Arterial. The site
829 is located in the West Broad Street Overlay District.

830

831 Mr. Archer - Good evening, Ms. Taylor.

832

833 Ms. Taylor - Good evening.

834

835 Mr. Archer - Is anyone present who is opposed to case P-1-11, J.
836 Thomas O'Brien, Jr. and Michael J. Rothermel for Regal Cinemas, Incorporated?
837 No opposition. Go ahead, ma'am.

838

839 Ms. Taylor - Thank you, Mr. Chairman.

840

841 This is a request for extended hours of operation for Regal Short Pump Stadium
842 14, commonly referred to as Regal Cinema in the Downtown Short Pump
843 Shopping Center located at the intersection of Pouncey Tract Road and West
844 Broad Street.

845

846 The site is split by two different zoning districts—B-2C and M-1. The majority of
847 the cinema lies within the B-2C portion. The Code allows uses in the B-2 District
848 to operate until midnight. The applicant would like to be able to have midnight
849 showings of first-run movies, which would occur no more than 26 days in the
850 calendar year. Other uses in the vicinity also operate beyond midnight either by

851 right or Provisional Use Permit, which indicates the requests for extended hours
852 could be appropriate.

853
854 A number of security conditions have been recommend by police that include the
855 provision of security cameras, a uniformed security guard, and adequate lighting.
856 These are contained in the recommended conditions outlined in Section 4 of this
857 report.

858
859 With adherence to these conditions, staff believes this request would be
860 consistent with the 2026 Plan and would not have an adverse effect on
861 surrounding property owners. For these reasons, staff supports this request
862 subject to the recommended conditions outlined in Section 4 of this report.

863

864 This concludes my presentation. I will be happy to take any questions.

865

866 Mr. Archer - Thank you, ma'am. Are there questions for Ms. Taylor
867 from the Commission?

868

869 Mr. Branin - I have none.

870

871 Mrs. Jones - Do we have other movie theaters that are open past
872 midnight?

873

874 Ms. Taylor - No ma'am.

875

876 Mr. Branin - But there have been movie theaters actually in your
877 district that have had a midnight [inaudible]. I don't know how often they happen.

878

879 Mrs. Jones - The drive-in?

880

881 Mr. Branin - No, the Ridge Cinema.

882

883 Mrs. Jones - Oh, the Ridge? Okay.

884

885 Mr. Branin - When this case first came up almost a year ago—it's
886 been a long time—the first thing I did was get in touch with Police and ask them
887 to review if they had any—what the effect of a midnight movie was at the Ridge.
888 The response came back that they didn't have any issues. But it's been quite a
889 few years. And I asked them to review all of the calls that have come in for the
890 cinema and I thought there were going to be a lot more than the actual report
891 came back with. Usually very minor stuff and very few. Also when this came into
892 us, it came in originally as premieres or just premieres. But they have now
893 requested to extend it to first-run movies for big blockbusters.

894

895 Mrs. Jones - The request for 26 times, this is every other weekend.
896 Is my math correct? I'm getting blank looks. This is not a casual thing; this is an

897 almost constant thing. We just need to understand that this is not just one or two
898 or three.

899
900 Mr. Branin - Right. Unless you took it as they were going to do it
901 for a week straight with a brand new movie that came out.

902
903 Mrs. Jones - Are there any [unintelligible]? I read these a while
904 ago. Are there any restrictions on successive evenings?

905
906 Ms. Taylor - No ma'am.

907
908 Mrs. Jones - This is just of their choosing.

909
910 Mr. Branin - No.

911
912 Mrs. Jones - Okay.

913
914 Mr. Branin - Ms. Taylor, do you know what the original number
915 was that they had requested?

916
917 Ms. Taylor - The original condition was going to be six events with
918 three consecutive days for those six events, which would turn out to be eighteen
919 days. And now it's just twenty-six days in a calendar year.

920
921 Mrs. Jones - You know, I think everybody in their own business
922 can make the best decision on how to handle when they do their own special
923 events and I'm not presupposing to judge that. I do find some comfort in knowing
924 that as with a Provisional Use Permit, we do have some discretion should this be
925 problematic.

926
927 Mr. Branin - You read my e-mail didn't you?

928
929 Mr. Vanarsdall - Have they agreed to all these things?

930
931 Mrs. O'Bannon - They don't have to agree; we just have to tell them.
932 They don't have to agree. They're not required to agree; they are just required to
933 do it. It's a Provisional Use Permit.

934
935 Mr. Branin - Right.

936
937 Mr. Vanarsdall - If they didn't agree, I wouldn't pass it. And the one
938 other thing I'd like to say is that I'm glad to see that "provide adequate lighting" is
939 in there because I was out there last fall some time and it's not very bright out in
940 the parking lot. It's not really bad, but it's not good.

941
942 Mrs. O'Bannon - How many movie theaters do we have in the County?

943
944 Mr. Vanarsdall - Three.
945
946 Ms. Taylor - I believe there are three.
947
948 Mr. Emerson - Three—West Tower, Virginia Center Commons, and
949 Regal Short Pump.
950
951 Mrs. O'Bannon - So this would be setting a precedent?
952
953 Ms. Taylor - Yes ma'am.
954
955 Mr. Archer - I have a question. The hours stipulated are 12
956 midnight or later. I guess I have a little bit of concern about how late is "or later."
957
958 Ms. Taylor - Three a.m.
959
960 Mr. Archer - That has been stipulated?
961
962 Ms. Taylor - Yes sir. It's in the conditions.
963
964 Mr. Archer - I'm sorry; I missed it. For it to start at 3 a.m.?
965
966 Ms. Taylor - No later than 3 a.m.
967
968 Mr. Emerson - Mr. Chairman, 1B states that show times shall
969 commence no later than 12:45 a.m. And then 1C states that no more than four
970 movie theaters showing movies extending into the hours of up till 3 a.m. shall be
971 in operation at any time.
972
973 Mr. Archer - Okay. I did see that; I'm sorry.
974
975 Mr. Branin - Mrs. Jones, when they originally came to Mr.
976 Kaechele and myself with the 18 and it being premieres, we were very good with
977 that. When they came back and extended the number, put it as first-run, one of
978 the e-mails I sent to them was, "You do understand that if we have any issues we
979 can pull this PUP." They said they did understand. As a Commission, before this
980 is recommended to the Board, I am 100% open for any comments or things that
981 you guys are looking to as far as safety.
982
983 Mrs. Jones - You've done your research as far as the Police
984 Department and I haven't heard any concerns raised there should the
985 recommended techniques and enhanced lighting and all of this and a security
986 officer and all that be followed. So I have to respect their perspective on this. As
987 a mother, I'm not sure my teenager would be there at 3 a.m., but that is a whole
988 other issue.

989
990 Mrs. O'Bannon - I do have a grammatical thing that I'd like to point out.
991 The first provisional use says, "The hours of operation for Regal Short Pump
992 Cinema 14 shall be extended until 3 a.m. to allow the showing of *only* first-run
993 movies."
994
995 Mr. Branin - Correct. There's a reason for that.
996
997 Mrs. O'Bannon - No, no. But it says now, "First-run movies only," which
998 means you're limiting limitations. But say "showing of only first-run movies." Put
999 the *only* in front of *first-run*. And I know you cannot—that indicates only first-run
1000 movies. The other way indicates only the following limitations. Grammatical. I do
1001 have a concern for a lot of reasons with this, but I get to vote on it later.
1002
1003 Mr. Archer - All right, any further questions? Would you like to hear
1004 from the applicant, Mr. Branin?
1005
1006 Mr. Branin - I do. But I'm going to ask Mrs. Jones one question.
1007 Mrs. Jones, do you have any other comments?
1008
1009 Mrs. Jones - No sir.
1010
1011 Mr. Branin - I've struggled back and forth with this, extending it to
1012 that amount. Ms. Taylor will tell you we have talked to Ms. Vann and I have also
1013 spoken with the Community Police Officer. They're not taking issue with it. I think
1014 I might be more sensitive to it than the police are. When you raised a question,
1015 obviously you have some other questions. So if you have any other questions or
1016 comments, I'd like you to have it on record.
1017
1018 Mrs. Jones - I will make one comment that we're jumping into what
1019 is a very full schedule. This is flushing out my previous comment. It's a full
1020 schedule of these late-night showings. I don't know whether there is a way in
1021 which we can move into this a little more gradually with the first year having six
1022 and then moving up to—or some restriction so that you test the waters and kind
1023 of get used to the system without jumping full bore into a very full schedule of
1024 late-night showings. Not meaning to be so overly restrictive, but I think it's a big
1025 step, and it's a late-night, and it's a special part of town and we want to handle it
1026 correctly.
1027
1028 Mr. Jernigan - Mr. Secretary, what is the process for canceling?
1029
1030 Mr. Emerson - You have to have a hearing basically. We call them
1031 back in, it goes through a public hearing, and the Board can revoke the PUP.
1032
1033 Mrs. O'Bannon - Has any Provisional Use Permit ever been revoked?
1034

1035 Mr. Emerson - No ma'am.
1036
1037 Mrs. Jones - It's a show-cause hearing.
1038
1039 Mr. Jernigan - We have the ability if there's a problem to knock it
1040 down.
1041
1042 Mr. Emerson - That's correct, yes sir.
1043
1044 Mr. Jernigan - So rather than going through the process again of
1045 letting six and then twelve and then on up the numbers, I'd rather just go ahead
1046 and let them have the twenty-six days. And if we have a problem, we'll handle it.
1047
1048 Mr. Branin - In discussing with the police, that was pretty much
1049 their opinion as well. If there's an issue, they will make it clear to us that it needs
1050 to be pulled.
1051
1052 Mr. Vanarsdall - Not too long ago they didn't recommend all the stuff
1053 they recommend now—cameras, video systems. They like to see us have them
1054 have it, but they're not going to tell the theater how to do business, a grocery
1055 store or whatnot.
1056
1057 Mr. Branin - I have nothing more.
1058
1059 Mr. Archer - All right. Then if the applicant would come forward
1060 please and state your name for the record.
1061
1062 Mr. Rothermel - Good evening members of the Commission. My name
1063 is Mike Rothermel. I'm with the law firm of Spotts Fain. We represent Regal. With
1064 me tonight is Mr. Paul Saylor. He is the general manager of the Short Pump
1065 Theater for Regal. He's been out there several years.
1066
1067 I guess I'll just try to address some of the questions that have been asked here
1068 tonight. The reason that we requested the change from the original language on
1069 the condition from six weekends, which would have allowed three consecutive
1070 nights, to individual nights was to accommodate—really what Regal is striving for
1071 here is to accommodate, more than anything, the events like a new Harry Potter
1072 movie or a new Avatar movie that comes out on Friday, that they can have a pre-
1073 showing shortly after midnight. They have lost a little bit of business to the Bow
1074 Tie Theater down in the City of Richmond who is able to get some of that crowd.
1075 So that is what was really driving this.
1076
1077 My client has no objection to lowering that number of 26 back down to say 18 or
1078 20. Mr. Saylor can come up and talk about his experiences running other Regal
1079 theaters in the general area as well as here in Richmond. The odds that they
1080 would use this 26 are remote and so for that reason they have no objection to

1081 lowering that number. Honestly, I'm not sure how we arrived at 26, but 18 or 20
1082 would be more than sufficient if it's the Commission's desire to do that.

1083
1084 The fact that we've put a limitation on first-run movies, there's not going to be any
1085 Rocky Horror Picture Show being shown at 12:30. This is designed for first-run
1086 movies and more than anything that big premiere event with a spillover of big first
1087 weekends.

1088
1089 If there are any other questions—I think that was the primary concern.

1090
1091 Mr. Archer - Thank you, sir. Are there other questions?

1092
1093 Mr. Branin - You're very familiar with the 11 conditions.

1094
1095 Mr. Rothermel - Yes. In fact, the Police Department will do a further
1096 security survey. We obviously realize all those conditions need to be met as well
1097 as any recommendations by the Police Department.

1098
1099 Mr. Vanarsdall - So you're in agreement with what we have here.

1100
1101 Mr. Rothermel - Right. Yes, absolutely. We realize we can't operate if
1102 we don't agree to it.

1103
1104 Mr. Jernigan - I have a question. On number two, the owner/operator
1105 of the Regal Cinema shall ensure that patrons leave the parking area within 30
1106 minutes. What if somebody is going to somebody's car that's sitting there 45
1107 minutes later beating on the window?

1108
1109 Mr. Branin - Mr. Jernigan, I can tell you this. If you also look at the
1110 condition—and let me find it—where there will be an off-duty police officer
1111 working there. One of the things that the police did have concern about—and Mr.
1112 Kaechele had a concern about as well—was 3:00 is 3:00. The people that are
1113 there, we don't need them loitering and staying longer. So to put a condition in
1114 where they do have to get the people moving so they're not loitering, moving out
1115 towards their homes and not staying in that area that's more subject to mischief
1116 or problems and issues. So that's why that condition was put in there. They are
1117 mandated to also have police presence there. It won't be some popcorn girl
1118 knocking on a window.

1119
1120 Mrs. O'Bannon - We also put that type of condition on drugstores in the
1121 area. I know Westbury Pharmacy has one. It did have to do, again, with safety.
1122 Pharmaceuticals late at night. But people get sick late at night, too. But in this
1123 case, I think it's a reasonable condition.

1124
1125 Mr. Archer - All right, any further discussion?

1126

1127 Mr. Branin - You are comfortable with the 18?
1128
1129 Mr. Rothermel - Yes, that would be fine.
1130
1131 Mr. Branin - Move 26 to 18. Ms. Taylor, are you okay with that?
1132 You all can come in and request an increase if we do see there are no issues.
1133 I'm in agreement. When we sat down in our first meeting it was 18. And as I said,
1134 I've been struggling with changing the language and changing the number.
1135
1136 Mr. Vanarsdall - Keep this in mind, a security office can hold
1137 somebody but off-duty—the police can arrest them, can write tickets—or the
1138 deputy sheriff.
1139
1140 Mr. Rothermel - I want to make sure I'm not speaking out of turn. The
1141 Theater does employ off-duty Henrico officers.
1142
1143 Mr. Branin- Always have, yes.
1144
1145 Mr. Archer - Anything further?
1146
1147 Mr. Rothermel - I just want to thank staff and Mr. Branin. This case did
1148 arise a long time ago and we've worked on it. I appreciate everybody's
1149 assistance and feedback. Thank you.
1150
1151 Mr. Archer - Thank you, sir.
1152
1153 Mr. Branin - Thank you, Mr. Rothermel.
1154
1155 Mr. Archer - All right. Mr. Branin.
1156
1157 Mr. Branin - Mr. Chairman, I would like to move that P-1-11, J.
1158 Thomas O'Brien, Jr. and Michael J. Rothermel for Regal Cinemas, Incorporated,
1159 move forward with a recommendation for approval with conditions 1 through 11
1160 and the alteration of 26 events to 18.
1161
1162 Mr. Jernigan - Second.
1163
1164 Mr. Archer - Motion by Mr. Branin, second by Mr. Jernigan. All in
1165 favor say aye. All opposed say no. The ayes have it; the motion passes.
1166
1167 **REASON:** Acting on a motion by Mr. Branin, seconded by Mr.
1168 Jernigan, the Planning Commission voted 5-0 (one abstention) to recommend
1169 the Board of Supervisors grant the request because the conditions should
1170 minimize the potential impacts on surrounding land uses and it is reasonable in
1171 light of surrounding uses and existing zoning on the property.
1172

1173 (Deferred from the February 10, 2011 Meeting).

1174 **C-21C-10 Fred S. Kirby for Old Glen Allen Properties, LLC:**

1175 Request to conditionally rezone from R-2A One-Family Residence District to B-
1176 1C Business District (Conditional), Parcel 770-767-3587 containing
1177 approximately 1.83 acres located along the north line of Mountain Road
1178 approximately 150' west of its intersection with John Cussons Drive. The
1179 applicant proposes retail and office uses. The uses will be controlled by zoning
1180 ordinance regulations and proffered conditions. The Land Use Plan recommends
1181 Suburban Residential 1, density should not exceed 2.4 units per acre.

1182
1183 Mr. Archer - Thank you, sir. Good evening Mr. Props.

1184
1185 Mr. Props - Good evening.

1186
1187 Mr. Archer - Is there anyone present who is opposed to C-21C-10,
1188 Fred S. Kirby for Old Glen Allen Properties, LLC? Go right ahead, sir.

1189
1190 Mr. Props - Mr. Chairman, members of the Commission, this is a
1191 request to conditionally rezone 1.83 acres from R-2A One-Family Residence
1192 District to B-1C Business District (Conditional) to allow the continuation and
1193 expansion of business and office uses at 3016 Mountain Road. Expansion of
1194 these uses is not permitted under current R-2A zoning regulations, which is why
1195 the applicant is seeking rezoning to B-1.

1196
1197 The 2026 Comprehensive Plan recommends Suburban Residential 1 at a density
1198 not to exceed 2.4 units per acre. The requested B-1 zoning is not consistent with
1199 the Plan's recommendation. However, if properly regulated and supported by
1200 basic site improvements this request could make the site more consistent with
1201 certain uses established on the property and developed in the immediate area.

1202
1203 The subject site originally consisted of three parcels. Commercial uses currently
1204 occupy the first floor while the second floor has been historically used for
1205 residential purposes. This request would allow the expansion of commercial uses
1206 to the second floor and eliminate the non-conforming status of the current uses.
1207 A detached, vacant 3,400-square-foot storage structure located to the rear of the
1208 property could be used for accessory uses.

1209
1210 Because of the site's size, relative isolation from single-family uses, and frontage
1211 along Mountain Road, B-1 uses could be acceptable with proper regulations and
1212 essential site improvements. The applicant has submitted proffers, dated March
1213 7, 2011, which excludes certain objectionable uses, prohibits additional new
1214 development, phases certain site improvements, and includes a concept plan.

1215
1216 However, staff continues to have concerns about the potential to over-intensify
1217 the site without adequate site improvements. Because the applicant has been
1218 granted sufficient time to incorporate code-regulated site improvements, and

1219 further restrict permitted uses to reduce the threat of over-intensifying the site,
1220 staff does not support this request as submitted.
1221
1222 This concludes my presentation, and I would be happy to answer any questions.
1223
1224 Mr. Archer - Thank you, Mr. Props. Are there questions for Mr.
1225 Props from the Commission?
1226
1227 Mr. Emerson - Mr. Chairman, if I might just clarify one point. Mr.
1228 Props, you indicated the uses had a non-conforming status. I thought it had been
1229 verified by staff that there was a two-year gap in the uses and we had not been
1230 provided any information substantiating that there was a non-conforming status
1231 of the uses within the structure.
1232
1233 Mr. Props - That is correct. We did do research and found that
1234 there was a potential two-year gap.
1235
1236 Mr. Emerson - Right. So we don't have a substantiated or verified
1237 non-conforming use at this point.
1238
1239 Mr. Props - That would be correct.
1240
1241 Mr. Emerson - Thank you.
1242
1243 Mr. Archer - Thank you, Mr. Secretary. Any other questions?
1244
1245 Mr. Vanarsdall - [Voice is fading in and out; inaudible] [1:05:53]*.
1246
1247 Mr. Branin - Can I get some clarification, Mr. Props? Is the
1248 property in use currently?
1249
1250 Mr. Props - Yes sir.
1251
1252 Mr. Branin - What is it currently?
1253
1254 Mr. Props - There are currently three different uses on the first
1255 floor of the building. They are commercial or retail uses and some service uses.
1256 And there is a use on the second floor—which is currently not permitted to be
1257 there—that is a massage therapist. They are in violation of using the second
1258 floor—
1259
1260 Mr. Branin - Because that's zoned as residential.
1261
1262 Mr. Props - That was used as residential all through the years and
1263 does not have any status for use.
1264

1265 Mr. Archer - Thank you, Mr. Props. Mr. Kirby, would you come
1266 down?

1267
1268 Mr. Kirby - My name is Fred Kirby with Old Glen Allen Properties.
1269 I thank you for the chance to speak to you tonight.

1270
1271 Mr. Archer - Good evening, sir.

1272
1273 Mr. Kirby - I would like to comment on the non-conforming use. I
1274 can't give you documentation, but I have spoken to the daughter of the owner at
1275 the time from 1976 to 1980 who said that her father used it but he ran his
1276 business out of house but he used that property also. So I heard from Virginia
1277 Power on the telephone that it did have electric service, but when I contacted
1278 them for written records, they told me couldn't find written records and I'm not
1279 sure why that happened. So in my opinion, which I cannot document for you, it
1280 was used, there was no business with a business license, which is the basis for
1281 the County saying that there was a gap. There was no business with a business
1282 license from 1976 to 1980. But it's my belief in talking to the family of the owner,
1283 who is since deceased, that he did work out of the building at that point in time.

1284
1285 Mr. Branin - You're referring to the second story?

1286
1287 Mr. Kirby - I'm referring to the first floor actually, sir.

1288
1289 Mr. Branin - The second story was used as?

1290
1291 Mr. Kirby - I don't know.

1292
1293 Mr. Branin - And the second story is currently being used as?

1294
1295 Mr. Kirby - Business.

1296
1297 Mr. Branin - And it's zoned as?

1298
1299 Mr. Kirby - I don't know what it's zoned as. I thought we had a
1300 non-conforming variance until just recently. We got a Certificate of Occupancy in
1301 2009; I thought we were fine. We renovated in 2008 and occupied before we got
1302 a Certificate of Occupancy. I thought we were doing everything right until there
1303 was a complaint about some trash outside. It was at that point Community
1304 Revitalization and Planning determined that we shouldn't have expanded
1305 upstairs without—we did that out of ignorance, I guess you would say.

1306
1307 Mr. Branin - Okay. But staff has shown you that it is zoned as
1308 residential, correct?

1309
1310 Mr. Kirby - No.

1311
1312 Mr. Branin - Did you hear that it's zoned residential?
1313
1314 Mr. Kirby - It should have been used as residential. I didn't know
1315 it was zoned as residential.
1316
1317 Mr. Branin - No, it's zoned as residential.
1318
1319 Mr. Kirby - Okay, the whole property—
1320
1321 Mr. Branin - Have you had a chance to read the report, sir?
1322
1323 Mr. Kirby - Not that one. I do know the property is zoned as R-
1324 2A; I'm sorry.
1325
1326 Mr. Branin - Do you own this property?
1327
1328 Mr. Kirby - Yes sir.
1329
1330 Mr. Branin - Okay.
1331
1332 Mr. Kirby - Old Glen Allen Properties owns the property. I'm a
1333 manager there. When you say the upstairs, that's what threw me. The whole
1334 property is zoned as residential. I was under the impression until just recently
1335 that we had a non-conforming variance. That's why we moved into the upstairs
1336 because it was vacant and it seemed to be the best way to do it.
1337
1338 Mr. Branin - Okay.
1339
1340 Mr. Archer - All right. Anything further or any further questions?
1341
1342 Mr. Vanarsdall - Mr. Kirby.
1343
1344 Mr. Kirby - Yes sir.
1345
1346 Mr. Vanarsdall - The reason that you didn't know about the deferment
1347 is that you were asked by more than one staff member to call me and they just
1348 called to say I wasn't going to honor it.
1349
1350 Mr. Kirby - Okay. I sent you an e-mail.
1351
1352 Mr. Vanarsdall - First of all, this is an unusual case. Staff said you
1353 have been very cordial, polite and so forth. You really have made all the progress
1354 that we thought you would because this was filed in October of last year. I have
1355 several letters here. The first one was sent to you in 2006.
1356

1357 Mr. Kirby - Okay.
1358
1359 Mr. Vanarsdall - Mr. O'Kelly, who is the Assistant Director of Planning,
1360 tells you that uses are not allowed in the area—the dance studio, business office,
1361 beauty parlor, and so forth. Then I believe you had one December 23, 2010, from
1362 the Director of Planning. Mr. Emerson there told you the same thing and spelled
1363 out in very much detail what you had to do to get into compliance. And then
1364 again Mr. Props on February 17, 2011, wrote you a letter telling you what you
1365 needed to do. You have a lot of complaint history that starts in 2005 and 2009. I
1366 believe that what brought you in was a complaint from some neighbors for a lot of
1367 noise in the mornings out there. There has been a general knowledge in the area
1368 that this building has been all kinds of different things ever since it's been
1369 residential.
1370
1371 You said that you needed more time. I think that we have done everything we
1372 can do; the Planning Commission can't do anything else. So I'm going to send it
1373 on to the Board of Supervisors, dealing with Mr. Glover and the Board. I would
1374 suggest that you try to do more than you have done.
1375
1376 Mr. Archer - Are you ready for a motion, Mr. Vanarsdall?
1377
1378 Mr. Vanarsdall - I move that C-21C-10, Fred S. Kirby for Old Glen
1379 Allen Properties, LLC, be recommended to the Board of Supervisors for denial.
1380 The reason for denial is because it's incomplete. This gives you your 30 days you
1381 wanted because it won't come before the Board before 30 days or whenever they
1382 choose to hear the case. Thank you.
1383
1384 Mr. Jernigan - Second.
1385
1386 Mr. Archer - Motion by Mr. Vanarsdall, second by Mr. Jernigan. All
1387 in favor say aye. All opposed say no. The ayes have it; the motion passes for
1388 denial.
1389
1390 **REASON:** Acting on a motion by Mr. Vanarsdall, seconded by
1391 Mr. Jernigan, the Planning Commission voted 5-0 (one abstention) to
1392 recommend the Board of Supervisors **deny** the request because it failed to
1393 include the proffered conditions deemed necessary to lessen the impact of B-1
1394 Business zoning in the area.
1395
1396 Mr. Branin - Mr. Kirby, before you leave the room, Mr. O'Kelly who
1397 was the original person that sent you a letter is sitting directly behind you. You
1398 might want to get his ear and start working through this process before you get to
1399 the Board.
1400
1401 Mr. Kirby - Yes sir.
1402

1403 Mr. Branin - Okay?
1404
1405 Mr. Kirby - Thank you; appreciate that.
1406
1407 Mr. Vanarsdall - Thank you to all the staff members for working with
1408 Mr. Kirby. Mr. Kirby, I will tell you this. We would like to see you get it rezoned
1409 and make some money there. The number one reason for business is to make a
1410 profit.
1411
1412 Mr. Kirby - Thank you, sir.
1413
1414 Mr. Archer - Thank you, Mr. Kirby. Mr. Secretary?
1415
1416 Mr. Emerson - Mr. Chairman, that now takes us to the next item on
1417 your agenda, which will be the approval of your minutes of the Planning
1418 Commission meeting of February 10, 2011.
1419
1420 Mr. Archer - Were there any corrections to the minutes of February
1421 10, 2011? If not, may we have a motion for approval?
1422
1423 Mr. Jernigan - So moved, Mr. Chairman.
1424
1425 Mr. Branin - Second.
1426
1427 Mr. Archer - Motion by Mr. Jernigan, second by Mr. Branin. All in
1428 favor say aye. All opposed say no. The ayes have it; the motion passes.
1429
1430 Mrs. O'Bannon - I think Mr. Mawyer's name is spelled incorrectly. Bill
1431 Mawyer's name is M-a-w-y-e-r. Oh, I'm sorry. It's in several places. Line 410,
1432 starting there. I apologize. Mawyer, it sounds like M-o-y-e-r, but M-a-w-y-e-r is
1433 how he spells it.
1434
1435 Mr. Emerson - M-a-w-y-e-r, that's correct.
1436
1437 Mr. Archer - Thank you, Mrs. O'Bannon.
1438
1439 Mrs. O'Bannon - It's there on 414, 417, 430. M-a-w-y-e-r.
1440
1441 Mr. Emerson - We'll fix that.
1442
1443 Mr. Archer - There are several of them. Thank you, Mrs.
1444 O'Bannon.
1445
1446 Mrs. O'Bannon - All right. I'm sorry; I meant to speak up sooner.
1447

1448 Mr. Emerson - We will go through and correct that. Mr. Chairman, I
1449 promised at the last meeting I would provide each of you a copy of the
1450 presentation on the census data and the redistricting that we provided to the
1451 Board of Supervisors in a work session previously. I'm passing out to you now a
1452 copy of that for your information. I'll note that we have public information
1453 meetings on the redistricting process and we're soliciting public input next week
1454 on the 15th in this room at 6:00 and then again on the 17th at 6:00 at the Eastern
1455 Government Center in the multipurpose room.
1456

1457 Mrs. Jones - Could you say those dates and times—3:15 at?
1458

1459 Mr. Emerson - At the Western Government Center at 6 p.m. And
1460 then at the Eastern Government Center on the 17th at 6 p.m. again.
1461

1462 Mr. Vanarsdall - I believe your article in the paper, Mr. Secretary, said
1463 the goal was to try to get close to 61,000 in each district, wasn't it?
1464

1465 Mr. Emerson - That is correct, 61,000 and some change. And of
1466 course you can deviate plus or minus 5% with an overall deviation not to exceed
1467 10%. Ideally it would be 0%, but that's hard to do sometimes.
1468

1469 Mr. Archer - All right, any further business to come before the
1470 Commission?
1471

1472 Mr. Branin - I have one more. Mr. Secretary, did you say March or
1473 April 15th?
1474

1475 Mr. Emerson - I said March; it's next week.
1476

1477 Mr. Branin - Okay.
1478

1479 Mr. Emerson - March 15th in this room at 6 p.m. And then March
1480 17th—it's next Tuesday and next Thursday. Thursday the 17th at the Eastern
1481 Government Center at 6 p.m.
1482

1483 Mr. Archer - Anything further? I'll have a motion for adjournment.
1484

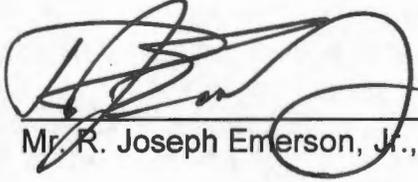
1485 Mr. Branin - So moved.
1486

1487 Mr. Vanarsdall - Second.
1488

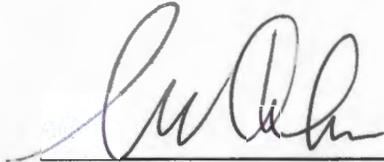
1489 Mr. Archer - Motion by Mr. Branin, second by Mr. Vanarsdall. All
1490 in favor say aye. All opposed say no. The ayes have it; the motion passes.
1491

1492 The meeting adjourned at 8:02 p.m.
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Mr. R. Joseph Emerson, Jr., Secretary



Mr. C. W. Archer, Chairperson