

1 Minutes of the regular monthly meeting of the Planning Commission of the County of  
2 Henrico, held in the County Administration Building in the Government Center at Parham  
3 and Hungary Springs Roads, beginning at 6:30 p.m. Thursday, September 14, 2006.  
4 Display Notice having been published in the Richmond Times-Dispatch on August 24,  
5 2006 and August 31, 2006.  
6

Members Present: Mr. C. W. Archer, C.P.C, Chairperson (Fairfield)  
Mr. Tommy Branin, Vice Chairperson (Three Chopt)  
Mr. Ernest B. Vanarsdall, C.P.C., (Brookland)  
Mrs. Bonnie-Leigh Jones (Tuckahoe)  
Mr. E. Ray Jernigan, C.P.C., (Varina)  
Mrs. Patricia S. O'Bannon (Tuckahoe), Board of Supervisors  
Representative  
Mr. Randall R. Silber, Director of Planning, Secretary

Also Present: Ralph J. Emerson, Jr., AICP, Assistant Director of Planning  
Mr. Jean M. Moore – Principal Planner  
Mr. Lee Tyson, County Planner  
Mr. Thomas Coleman, County Planner  
Ms. Nathalie Neaves, County Planner  
Mr. Livingston Lewis, County Planner  
Mr. Benjamin Sehl, County Planner  
Ms. Ann Cleary, Recording Secretary  
David D. O'Kelly, Assistant Director of Planning  
Benjamin Blankinship, Secretary, Board of Zoning  
Appeals

7 **Ms. O'Bannon abstains from voting on all cases unless it is necessary to break a**  
8 **tie.**

9  
10 Mr. Archer: The meeting will come to order. Good evening, lady. I see no  
11 gentlemen.

12  
13 Mr. Archer: Welcome to the public hearing. This is a public hearing to discuss  
14 an ordinance to amend and re-ordain Subsections D and E of Section 14-8 of the Code  
15 of the County of Henrico to modify existing requirements for repair of non-conforming  
16 buildings damaged by natural disasters. We're glad you all came. At this point, I'm  
17 going to turn it over to our secretary, Mr. Silber, to do the introduction of speakers.

18  
19 Mr. Silber: Thank you, Mr. Chairman, I appreciate that. You did a great job  
20 calling the first public hearing item; there is not much more for me to say. Welcome  
21 everyone this evening. We do have two public hearings on two ordinance amendments  
22 starting at 6:30 p.m. and the regular agenda will start at 7:00 p.m. to talk about the  
23 rezoning requests. The first one involves the repair of non-conforming buildings that  
24 have been damaged by natural disasters. This relates to a State Code amendment that  
25 occurred this past year. This is an amendment to simply bring our Code in line with the  
26 State Code. With that, I'll turn it over to Mr. Blankinship.  
27

28 **PUBLIC HEARING: AN ORDINANCE** to amend and reordain subsections (d) and (e) of  
29 Section 24-8 of the Code of the County of Henrico to modify existing requirements for  
30 repair of nonconforming buildings damaged by natural disasters.

31

32 Mr. Blankinship: Mr. Chairman, this is an amendment that is more or less  
33 necessitated by an amendment to the State Code. The General Assembly has adopted  
34 new language in the State Code for how we should treat non-conforming buildings and  
35 structures. The purpose of this amendment is merely to keep the County Code  
36 consistent with the new provisions of the State Code. I have a presentation that was  
37 loaded briefly. I don't want to go through this too quickly for you, so please slow me  
38 down. Otherwise, all I'm really going to be doing is reading these slides. The General  
39 Assembly has added language to the Code stating that if a residential or commercial  
40 building is damaged or destroyed by a natural disaster or other act of God, the zoning  
41 ordinance may require that such building be repaired, rebuilt, or replaced to eliminate or  
42 reduce the non-conforming features to the extent possible without the need to obtain a  
43 variance, as provided in Section 15.2-2310. The first thing you notice are those words,  
44 "to the extent possible." There will be cases where rebuilding a building could not be  
45 done unless they continue the non-conformity. In those cases, the way I read the statute,  
46 the owner will be allowed to rebuild even though the building is non-conforming.

47

48 Ms. O'Bannon: Can you give an example of that? For instance, some of the  
49 buildings that they're rebuilding now have to be put up on stilts, a certain distance up if  
50 they're in the flood plain. Do you have an example of this?

51

52 Mr. Blankinship: For example, if a lot were too narrow, didn't meet the Code  
53 because it is too narrow and the building on the lot were destroyed, there's no way you  
54 can rebuild the building that's going to make the lot any wider. Assuming that the owner  
55 is unable to buy additional land on either side, he's going to be allowed to rebuild the  
56 building even though the lot remains non-conforming.

57

58 Ms. O'Bannon: In the past, I believe they would pursue a variance for that. I know  
59 processes where I've known people to do that. Is that what usually happens?

60

61 Mr. Blankinship: Right. In the past, depending on whether the use of the building  
62 was conforming. We had two different rules for a non-conforming structure where the  
63 use was conforming versus a non-conforming use on the property. So, for example, if  
64 you had residential property with an old business on it and that were destroyed, you had  
65 a much stricter set of rules than if you had residential property with a non-conforming  
66 residence on it. That distinction has been removed now and they'll all be treated the  
67 same. They'll all be treated, essentially, under the more liberal rule of allowing rebuilding  
68 where they are asked to conform to the extent possible. That's one of those things we'll  
69 have to judge case-by-case.

70

71 Mr. Archer: In the beginning, it was built and then destroyed and you couldn't  
72 build it back because, in other words, it wouldn't meet the setback. In the beginning,  
73 they may not of had setbacks.

74

75 Mr. Blankinship: Right.

76

77 Mr. Archer: Mr. Blankinship, one more question. Who has the ultimate  
78 authority to determine what the "extent possible" consists of? Is that left up to the  
79 localities to do?  
80  
81 Mr. Blankinship: I would think that would be done under building permit review and  
82 would just get moved up the chain of command and eventually would come to Mr. Silber.  
83 Of course, his decision could be appealed to the Board of Zoning Appeals.  
84  
85 Mr. Archer: I was wondering if there was any kind of appeal process if  
86 somebody didn't agree with "the extent possible."  
87  
88 Mr. Blankinship: I think that would be the normal course of events.  
89  
90 Ms. Vanarsdall: It would eventually be appealed to you, the BZA.  
91  
92 Mr. Blankinship: Yes sir.  
93  
94 Mr. Archer: Okay, thank you, sir.  
95  
96 Mr. Blankinship: Moving on to the next paragraph of that, it still requires that the  
97 owner apply for the building permit and it does specifically point out that they are still  
98 bound by the Building Code requirements. So, even though they may be considered  
99 non-conforming under zoning, they would have to bring an older building up to the  
100 current Building Code standards. Also note the last phrase on this slide: Any work done  
101 to repair, rebuild, or replace such building shall be in compliance with the provisions of  
102 the local flood plain regulations. You were mentioning a minute ago, Mrs. O'Bannon,  
103 what about a building that is destroyed, would they have to rebuild on stilts even if the  
104 original building were not. The answer to that is yes, they would be required, in some  
105 way, to bring it into compliance with the Flood Plain Ordinance. Stilts is not the only way  
106 that can be done.  
107  
108 Ms. O'Bannon: I've seen some of these buildings that were in a flood area.  
109 Actually, they're closer to the water, down like in White Stone, for instance, and they built  
110 them up on stilts because they're in a flood area. They lifted the house up. When you  
111 talk about the Statewide Uniform Building Codes, that's the Code. The building's part of  
112 it. The wiring, the plumbing, and so on. What Mr. Silber would rule on would be whether  
113 it meets the so many feet setback or side yards and all that. So, that's the whole point.  
114 Thank you.  
115  
116 Mr. Jernigan: Mrs. O'Bannon talking about stilts, do we have anything around  
117 here on stilts?  
118  
119 Mr. Blankinship: There are a few off River Road between the canal and the river in  
120 the Tuckahoe District. The Board of Zoning Appeals granted a variance from the height  
121 regulation a few years ago, is how I happen to know that. Somebody wanted to put it up  
122 on such tall stilts that the roof got above 35 feet.  
123  
124 Mr. Jernigan: Mr. Archer, remember the case we had in your district right there  
125 in the bottom and I suggested that we put him on stilts and they said no way.  
126  
127 Mr. Archer: I've even thought that might have been what spawned this action.

128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177

Mr. Silber: There are a number of house on stilts down, like Mr. Blankinship said, in the Tuckahoe District near the James River. There are even some businesses that are up on stilts.

Ms. O'Bannon: I know the businesses are one foot above flood stage and that's the way they built them. There are several houses down there, as you said, near the river along River Road. When they were flooded, they used \$150,000—I know one of them was in FEMA money—to build the house up so they didn't have to just destroy it and move out. They received a very large grant from FEMA directly to build that house up on stilts.

Ms. Vanarsdall: I wonder why we couldn't have done that in Mr. Archer's case? That would have solved everything. That individual used fill on the property.

Mr. Silber: That also had a zoning issue.

Ms. O'Bannon: That was really more of it. I remember that he could build it one foot above flood stage and it wouldn't have been too high; we discussed that. That's what I was just getting at. It's not a Building Code violation, it was more of a zoning code violation. That's exactly what we're talking about here, the fact that he was a C-1 zoning. I don't know, we don't have setbacks and things like that in C-1 zoning.

Mr. Silber: His issue was a residential unit was not permitted in a Conservation District.

Ms. O'Bannon: No matter how high you build it, I guess.

Mr. Blankinship: The last thing I'd want to point out here is that the time limit for rebuilding the non-conforming structure that's destroyed is two years. They have added new language, beginning in the middle of this slide; however, if the non-conforming building is in an area under a Federal Disaster Declaration and the building has been damaged or destroyed as a direct result of conditions that gave rise to the declaration, then the Zoning Ordinance shall provide for an additional two years. If we have another Isabel or another Gaston, we have a federal disaster declared and buildings are destroyed as result of that disaster, they would have four years to rebuild rather than the two that has been standard for many, many years. Again, these are the changes to the State law and the draft that we put before you merely keeps the County Code consistent with the State law. This is the existing ordinance. 24-7 is the Section that states that non-conforming use of buildings and structures may be continued. 24-8 prohibits non-conforming buildings or structures from being enlarged, extended, reconstructed, substituted, or structurally altered except under certain exceptions. Paragraph D is one of those exceptions. That's what is being changed by the draft that is before you. Paragraph D would be completely replaced with new language drawn directly from the recent state code amendment. We've already gone over the highlights, but any non-conforming building damaged by a natural disaster may be rebuilt, provided it's done within two years. In an area under federal disaster declaration, the time is extended to four years. The building must conform to the zoning ordinance "to the extent possible," and in all cases must comply with the flood plain regulations.

178 Mr. Silber: This is a public hearing. We will need to see if there's anyone  
179 here that's interested in speaking to this amendment.

180  
181 Mr. Archer: Well said, Mr. Secretary. Is there anyone in the audience that  
182 wishes to speak to this Amendment? Anyone else?

183  
184 Mr. Silber: It may be appropriate, then, to have a recommendation to the  
185 Board of Supervisors and we would carry this on to the Board. Okay.

186  
187 Mr. Archer: I will note the recommendation. We just need a recommendation  
188 for approval.

189  
190 Mr. Branin: Mr. Chairman, I'd like to move for approval of this to move forward  
191 to the Board of Supervisors.

192  
193 Mr. Vanarsdall: Second.

194  
195 Mr. Archer: Motion by Mr. Branin, seconded by Mr. Vanarsdall. Those in favor  
196 of the motion say aye. Those opposed say no. The ayes have it. Thank you.

197  
198 Mr. Jernigan: Just something quick. I know we have to get on the other one. I  
199 had a gentleman call me the other day and said, "Can I take a couple minutes of your  
200 time?" He was a father in New Orleans, but his son is moving to Varina and he told me  
201 where he was going and all, and wanted to know what the terrain and all was like. I  
202 said, "Mister, you're gonna feel good when I tell you this. We don't build in flood plains  
203 here." I said, "But while I got you on the phone, why do you all building a bowl down  
204 there?" We got to laughing. Anyway, we ended up having a real good conversation and  
205 he filled me on a lot of things going on in New Orleans. He was concerned, but he felt a  
206 whole lot better.

207  
208 **PUBLIC HEARING: AN ORDINANCE** to amend Sections 24-50.11:1, 24-58.2, 24-59,  
209 24-62.2, 24-63, 24-94, 24-94.1 and 24-101 of the Code of the County of Henrico to allow  
210 buildings up to 200 feet in height in the O-3, B-2 and B-3 districts by provisional use  
211 permit.

212  
213 Mr. Archer: Thank you, Mr. Jernigan. All right. The second public hearing is an  
214 ordinance to amend parts of Section 24-50.11, 24-58.2, 24-59, 24-62.2, 24-63, 24-94,  
215 24-94.1, and 24-101 of the Code of the County of Henrico to allow buildings up to 200  
216 feet in height in the O-3, B-2, and B-3 districts by provisional use permit. Mr.  
217 Blankinship, looks like you're elected again.

218  
219 Mr. Blankinship: Mr. Chairman, we are passing out a new copy of this Amendment,  
220 a new version, I should say, a new draft. If you brought one with you, it's now outdated.  
221 We've held a work session on this subject already, so you have already had one  
222 opportunity to hear this presentation and to ask some questions, so I'll try not to go too  
223 slowly again. As you're well aware, the Board has recently approved 12- and 14-story  
224 buildings in the West Broad Village Urban Mixed-Use District. It has been discussed  
225 that there may be other sites where tall buildings are appropriate, but a UMU would not  
226 be the appropriate zoning. Currently, the UMU is about the only zoning in which the  
227 Board has the authority to grant a building that tall. We have had meetings with a large  
228 economic development prospect that has expressed interest in building a 10-story office

229 building and also with a hotel developer that has expressed interest in building a 10-  
230 story hotel in the Short Pump vicinity. There is a perceived need for the Board of  
231 Supervisors to have the authority to grant, as a provisional use permit, with all the  
232 protections that go along with that, the permission to build buildings up to 200 feet tall.  
233 I've included here just the last two paragraphs of the resolution that you adopted some  
234 time ago authorizing the Planning Department to draft this Amendment. You see the  
235 purpose of it there. This Amendment is a little bit lengthier than the other and has  
236 several different paragraphs. I'll just touch on each of them briefly. The first paragraph  
237 would add a new sub-section in the uses permitted by provisional use permit in the O-3  
238 District, simply allowing buildings or structures up to 200 feet in height. Currently,  
239 they're allowed by right, up to 110 feet in height. The second and fourth paragraphs are  
240 almost identical, but the second is in the B-2 District and the fourth is in the B-3 District.  
241 In each case, it is, again, adding a new use under provisional use permits, buildings or  
242 structures up to 200 feet in height. Paragraph (h) in the B-2 and (m) in the B-3 districts.  
243 Currently, the buildings are allowed up to 45 by right and can be built up to 110 feet by  
244 special exception, which is normally approved by you at the time of Plan of  
245 Development. The third and fifth paragraphs are also two versions of the same  
246 language, one for the B-2 District and one for the B-3 District. Currently, the Code  
247 regulates the height sometimes in feet and sometimes in stories and sometimes in both.  
248 We have recommended changing the language to make it more clear and more  
249 consistent, and to always regulate the height of buildings in feet and to remove the idea  
250 of regulating the height by stories. We discussed that at length in the work session and I  
251 won't go into that unless you have specific questions. Paragraph 6 is the complicated  
252 part because there are quite a few changes in the Table of Regulations. One of those is  
253 a simple clerical error. There was a previous amendment—and nobody's certain how it  
254 happened—where a requirement was changed from 100 feet to 400 feet, and we want to  
255 change that back to 100 feet to make it consistent with all the other districts. As I was  
256 just saying, we would like to remove the regulation of stories completely from this table,  
257 just completely delete that column of the table. So, in every district for use, the regulation  
258 will be by height and not by the number of stories. Having both is really cumbersome  
259 and difficult for us. Having just stories would work, but wouldn't be very precise. We  
260 recommend that you go to regulating only by feet. Then in the O-3 District, you'll see that  
261 we've removed the maximum number of stories again, and added note (b), which is  
262 where we would allow the Board of Supervisors to approve a provisional use permit for  
263 buildings or structures up to 200 feet tall. In the B-2 District, you see essentially the  
264 same change. The B-3 District, again, it's the same. The M-1, M-2, and M-3 districts, in  
265 addition to those changes — taking out the reference to stories and adding that note (b)  
266 — we also recommended that you delete note (g), which has been in the Code, I  
267 believe, since 1960, authorizes the Board of Zoning Appeals to approve, "greater heights  
268 when required for a particular use." There is no limitation on that, no restriction. It's a  
269 very open-ended authority. In keeping with several other changes that have taken place  
270 over the years, we believe it's more appropriate for the Board of Supervisors to hold that  
271 authority, and also to be consistent with the other sections to have it limited at 200 feet.  
272 As you get into the notes at the back of the table, there are several changes there. I  
273 mentioned already the note in (b), removing the reference to height in stories, regulating  
274 it only by feet, adding a second sentence to allow buildings up to 200 feet by provisional  
275 use permit. Note (g) is the one that allows the Board of Zoning Appeals the unlimited  
276 authority and we would suggest deleting that. The others are mostly correctly  
277 inconsistencies and removing these references to height in stories. Moving on the  
278 Paragraph 7, the next section of the Code following the table and the notes to the table  
279 is 94.1, which includes yard and setback standards for tall buildings. Any building in

280 excess of 45 feet in height has some specific provisions for greater side yard and rear  
281 yard setbacks. The taller the building, the greater the setback. This would, again,  
282 simplify that by removing references to stories and also bring it into consistency with the  
283 notes in the table. Finally, in Paragraph 8, there is another reference under "Shopping  
284 Centers," to regulating the height in stories. For some reason, shopping centers are  
285 limited to 100 feet rather than 110 feet, so we would recommended making those  
286 consistent so that in all of these situations, 110 feet would be allowed by special  
287 exception at the time of POD, and up to 200 feet would be allowed by provisional use  
288 permit from the Board of Supervisors.

289

290 Ms. O'Bannon: I'm going to ask a simple question. A provisional use permit is  
291 revocable. We discussed this before, I know, but how would you revoke it if it's to give  
292 them an extra story, extra height? How does that work? I can understand that we've  
293 given provisional use permits for a restaurant to be open until 1 a.m. or 2 a.m. or  
294 something, and you can revoke that if they don't follow all of the list of restrictions. You  
295 can revoke something like that. How would you go about revoking this?

296

297 Mr. Silber: Ms. O'Bannon, I think typically as the title implies, a provisional  
298 use permit, it is typically applied for a use and uses can be revoked. The Board has  
299 begun to stretch its authority to other realms besides uses. In this case, we're talking  
300 about expansion of the height of a building. So, you raise a good point. This does give  
301 the Board of Supervisors additional latitude in reviewing on a case-by-case basis the  
302 appropriateness of taller buildings. Frankly, I think once you give the use for a taller  
303 building, I think it would be very hard to revoke that and tell them to remove the upper  
304 stories of the buildings. I think for all practical purposes, when this use permit is granted,  
305 I think it would be very difficult to revoke it.

306

307 Ms. O'Bannon: Okay. You can still put specific restrictions on it as you do that  
308 provision?

309

310 Mr. Silber: Yes. You can still apply conditions to the use permit. There are  
311 many conditions that can be applied. You can expand the setbacks because the  
312 building's taller, you can require additional screening or buffering. So, the County does  
313 have the right to apply any condition that they see fit with a use permit.

314

315 Ms. O'Bannon: More sprinklers, a fire station on certain floors. You could do all  
316 those things, which is why, I think, we'd want it with that kind of control. Okay.

317

318 Mr. Vanarsdall: I have a question. What does this do for the buildings in the  
319 UMU? Anything?

320

321 Mr. Blankinship: I don't believe so. Since the authority is already there to grant a  
322 provisional use permit for taller buildings in a UMU, that will not be changed by this  
323 amendment.

324

325 Mr. Vanarsdall: The other question I have refers to stories. Did you say remove  
326 stories entirely and measure by feet?

327

328 Mr. Blankinship: Yes sir.

329

330 Mr. Vanarsdall: Has there been a problem with measuring by stories?

331  
332 Mr. Blankinship: Well, it's an ongoing problem in the sense that we frequently will  
333 unroll a set of plans and it's five stories on one side and six stories on the other.  
334  
335 Mr. Vanarsdall: The bottom story, sometimes, throws it off, doesn't it.  
336  
337 Mr. Blankinship: Right. So, we're trying to determine exactly what a story is. I was  
338 looking at one yesterday that had what the developer is calling an "ornamental tower" at  
339 the top, but it looks like a story to me. So, Mr. Wilhite and I had quite a long  
340 conversation trying to determine whether or not that was a story when it shouldn't  
341 matter. It's the same height whether that space is a story or not.  
342  
343 Mr. Vanarsdall: So, the public will probably like feet-only. They can't say I have a  
344 13-story building, we have so-and-so feet.  
345  
346 Mr. Blankinship: I would say the development community would find it easy to  
347 comply with the regulations, easier to design a building. They'd be able to tell without  
348 guessing.  
349  
350 Mr. Archer: I think we did mention last time that we don't have any recognized  
351 numbers that we consider a story. Could be 14 feet, could be 20 feet.  
352  
353 Mr. Branin: When you have an atrium in the lobby, that can be 30 feet high  
354 and that creates problems.  
355  
356 Mr. Jernigan: I have a question. When you measure the 200 feet, that's the  
357 parapet walls. Can you have equipment above that?  
358  
359 Mr. Blankinship: Yes. There are provisions that are pretty specific in 24-95(a) that  
360 allow elevator penthouses and mechanical equipment and that sort of thing to be above  
361 the height regulation.  
362  
363 Mr. Branin: So, you could have maybe two penthouses above that 200 foot.  
364  
365 Mr. Blankinship: It's limited to 25% of the surface area of the roof.  
366  
367 Mr. Archer: What did you say the cap is on the height?  
368  
369 Mr. Blankinship: I don't remember offhand how tall—  
370  
371 Mr. Archer: Do we go 30?  
372  
373 Mr. Blankinship: —that equipment can be. I think there is a restriction on it.  
374  
375 Mr. Archer: On the height?  
376  
377 Mr. Blankinship: I don't know off the top of my head.  
378  
379 Mr. Jernigan: So, another structure could be above the parapet wall that's 25%  
380 of what the roof area is.  
381



382 Mr. Blankinship: Right, 25% percent in area. That applies only to mechanical  
383 equipment and elevator, penthouses, and that sort of thing, not occupied space.  
384  
385 Mr. Archer: Anything else? Is that it? Are there any further questions from the  
386 Commission? Again, this is a public hearing. If there is discussion, questions, or  
387 whatever from the audience, we welcome your comments at this time. I don't think  
388 anyone's going to comment. So, we will need, then, a motion to make a  
389 recommendation one way or other to the Board of Supervisors.  
390  
391 Mr. Jernigan: Well, Mr. Chairman, I will make a motion that we approve the  
392 resolution and send it to the Board of Supervisors for their approval for the height  
393 restriction of 200 feet.  
394  
395 Mr. Vanarsdall: Second.  
396  
397 Mr. Archer: Motion by Mr. Jernigan, seconded by Mr. Vanarsdall. All in favor  
398 of the motion say aye. Those opposed say no.  
399  
400 Mr. Vanarsdall: You want to add the zoning category or just leave it?  
401  
402 Mr. Silber: I think it's understood with the way it's been read.  
403  
404 Mr. Archer: Since we have about three minutes before our regular public  
405 hearing starts, I just want to mention something. About 10, maybe 15 years ago, the  
406 insurance industry began to provide an optional coverage called, "Law and Ordinance  
407 Coverage." It provides funds that would take care of a situation in which a building might  
408 have been destroyed in a fire or whatever and had to be rebuilt, and according to the  
409 new law and ordinance had to be rebuilt for more coverage than the policy's carrying.  
410 It's an optional coverage that you don't have to buy, but that's what would apply in this  
411 instance. It is specifically called, "Law and Ordinance Coverage." For example, if the  
412 City of Richmond had a new ordinance that said any building in the City must be made  
413 of masonry and a wooden building burns down. If you couldn't replace it with a wooden  
414 building, but it costs more to replace it with masonry, then they would pay the additional  
415 coverage to replace it.  
416  
417 Mr. Jernigan: That's interesting.  
418  
419 Mr. Branin: So, it's a rider.  
420  
421 Mr. Archer: It's a rider. It's optional. You don't have to buy it.  
422  
423 Mr. Branin: Is that expensive?  
424  
425 Mr. Archer: It's not really all that expensive. It's usually a small percentage of  
426 the premium. That's free information provided by me.  
427  
428 Mr. Archer: Mr. Secretary, do we leave this one out there for the next one?  
429  
430 Mr. Silber: No, I don't think we do. We can't call the first item until 7:00, but I  
431 do have an announcement that I could make at this time since it's not quite 7:00 yet and  
432 we can't move onto zoning. We do have some guests with us this evening I wanted to

433 point out. They're some very special guests because they've come a long way to attend  
434 this Planning Commission hearing. They are guests from Mali, which is a country in  
435 Africa. In fact, we have a slide, if Fred could pull this up, that would show where Mali is  
436 for those who may need a refresher. It's in the northwestern part of Africa and it has a  
437 population of slightly over 13 million people. It's about twice the size of Texas. The  
438 guests are in the back of the room. Mr. Povar, are you here? Do you want to introduce  
439 the guests to us?

440

441 Mr. Povar: I'll be glad to. I'll introduce [unintelligible].

442

443 Mr. Silber: Okay.

444

445 Mr. Povar: With me is Mohamed Coulibaly. He is president of the Institute for  
446 Global Training in Washington, DC. He works with a number of African countries  
447 [unintelligible] in Richmond [unintelligible]. One of the things we do is work with Mr.  
448 Coulibaly to expose their visitors who are under U. S. VIP programs to work on  
449 decentralization in their countries. [Unintelligible]. So, these two gentleman are here  
450 and I'll turn to Mohamed to introduce them.

451

452 Mr. Silber: Can I interrupt you for just a minute? We're recording this. Could  
453 we have you come down to the microphone so we can better hear you, please? Thank  
454 you.

455

456 Mr. Archer: Good evening, sir.

457

458 Mr. Coulibaly: Good evening, everyone. My name is Mohamed Coulibaly and  
459 I'm the president of IGT. IGT stands for Institute for Global Training. We organize in the  
460 Washington, DC area some management training for executives from developing  
461 countries. Tonight we're dealing with two gentlemen from Mali who are attending a  
462 program reorganizing how services are delivered for citizens of the local level. Mali has  
463 studied the decentralization process, so they have some laws in place, but they are  
464 traveling around the United States to find out how you can better serve in a local citizen.  
465 So, for them to attend this kind of meeting is great because Mali does not have yet this  
466 kind of system to create an opportunity for elected officials and citizens to communicate.  
467 I thank you very much. The two folks work for the Ministry of Decentralization. The first  
468 one is Mr. Miga. He's in charge of designing the policy. Mr. Toure works with local  
469 entities to implement those policies. Thank you.

470

471 Mr. Archer: Thank you so much.

472

473 Mr. Archer: I think we ought to be honored of all the planning commissions in  
474 the United States they could have come to, they chose us. We appreciate that. They  
475 came all the way from Africa and got here on time, too.

476

477 Mr. Silber: If I could have a staff person come forward and maybe provide  
478 them each with a copy of the agenda. We also have a small gift here for them. It's a pin  
479 for Henrico County. We wanted to give you a pin from Henrico County.

480

481 Mr. Archer: With that, we'll call to order the regular meeting. We welcome  
482 everyone to the September 14, 2006 Rezoning Meeting of the Henrico County Planning  
483 Commission. I'll turn it over to Mr. Silber.

484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534

Mr. Silber: Thank you, Mr. Chairman, I appreciate that. We have on the agenda first is the consideration of the withdrawals and deferrals. I believe we have several withdrawals and several deferrals. Ms. Moore, can you tell us about those please?

Ms. Moore: Yes, Mr. Secretary. We have two requests for withdrawals. The first is on page 1 of your agenda.

**C-31C-05 Courtney Fisher for Richmond Land Company:** Request to conditionally rezone from O-2C Office District (Conditional) to R-3C One Family Residence District (Conditional), Parcel 818-716-1579, containing 0.762 acre, located at the southwest intersection of Audubon Drive and Oakley's Lane. The applicant proposes a single-family residential development. The R-3 District allows a minimum lot size of 11,000 square feet with a maximum gross density of 3.96 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. The site is in the Airport Safety Overlay District.

Ms. Moore: They have withdrawn their application, therefore no action is required. The next is on page 4 of your agenda.

**C-75C-05 John J. Hanky III, for Barrington Development, Inc.:** Request to conditionally rezone from R-3C One Family Residence District (Conditional) to O-2C Office District (Conditional), Parcel 740-758-4797, containing 2.215 acres, located on the east line of the proposed John Rolfe Parkway right-of-way approximately 310 feet south of Three Chopt Road. The applicant proposes an office development. The use will be controlled by zoning ordinance regulations and proffered conditions. The Land Use Plan recommends Suburban Residential 2, 2.4 to 3.4 units net density per acre, and Environmental Protection Area. The site is in the West Broad Street Overlay District.

Ms. Moore: This has been withdrawn by the applicant.

Mr. Silber: Okay. Deferrals?

Ms. Moore: In deferrals, the first in on page 2 of your Agenda.

**Deferred from the August 10, 2006 Meeting.**

**C-35C-06 E. F. Moseley, LLC:** Request to conditionally rezone from A-1 Agricultural District to R-2AC One Family Residence District (Conditional), Parcels 820-689-0994 and -3688, and part of Parcels 819-689-8194, 820-689-1644, and 818-688-9639, containing 21.33 acres, located on the west line of Doran Road approximately 3,300 feet north of New Market Road (State Route 5). The applicant proposes a single-family residential subdivision at a density of not more than 2.3 units per acre. The R-2A District allows a minimum lot size of 13,500 square feet and a maximum gross density of 3.23 units per acre. The Land Use Plan recommends Suburban Residential 1, 1.0 to 2.4 units net density per acre. The use will be controlled by zoning ordinance regulations and proffered conditions. The site is in the Airport Safety Overlay District.

Ms. Moore: The deferral's requested to the October 12, 2006, meeting.

535 Mr. Branin: I'm sorry, which case was that, Ms. Moore?  
536  
537 Ms. Moore: C-35C-06.  
538  
539 Mr. Archer: Page 2, right? Is there anyone present who is opposed to the  
540 deferral of C-35C-06, E. F. Mosely, LLC? I see no opposition.  
541  
542 Mr. Jernigan: Mr. Chairman, with that, I will move for deferral of case C-35C-06,  
543 E. F. Mosely, LLC, to October the 12, 2006, by request of the applicant.  
544  
545 Mr. Vanarsdall: Second.  
546  
547 Mr. Archer: Motion by Mr. Jernigan, seconded by Mr. Vanarsdall. Those in  
548 favor of the motion say aye. Those opposed say no. The ayes have it, the motion is  
549 granted.  
550  
551 At the request of the applicant, the Planning Commission deferred Case C-35C-06, E. F.  
552 Mosely, LLC, to its meeting on October the 12, 2006.  
553

554 **Deferred from the August 10, 2006 Meeting.**

555 **C-36C-06 Gloria Freye for Waypoint Development, LLC:** Request to  
556 conditionally rezone from R-4 One Family Residence District, B-1 Business District and  
557 M-1 Light Industrial District to R-5AC General Residence District (Conditional), part of  
558 Parcel 805-710-1834, containing 13.15 acres, located on the southwest line of  
559 Darbytown Road at its intersection with Oregon Avenue. The applicant proposes a  
560 single-family residential subdivision with a maximum of 40 lots. The R-5A District allows  
561 a minimum lot size of 5,625 square feet and a maximum gross density of 7.7 units per  
562 acre. The use will be controlled by zoning ordinance regulations and proffered  
563 conditions. The Land Use Plan recommends Multi-Family Residential, 6.8 to 19.8 units  
564 net density per acre, Commercial Concentration, and Environmental Protection Area.  
565

566 Ms. Moore: The deferral is requested to the October 12, 2006, meeting.  
567  
568 Mr. Archer: Okay. Is anyone present who is opposed to the deferment of C-  
569 36C-06, Gloria Freye for Waypoint Development, LLC? No opposition.  
570  
571 Mr. Jernigan: Mr. Chairman, I move for deferral of Case C-36C-06, Gloria Freye  
572 for Waypoint Development, LLC, to October the 12<sup>th</sup>, by request of the applicant.  
573  
574 Mr. Vanarsdall: Second.  
575  
576 Mr. Archer: Motion by Mr. Jernigan, seconded by Mr. Vanarsdall. All in favor  
577 of the motion say aye. Those opposed say no. The ayes have it, that motion is granted.  
578  
579 At the request of the applicant, the Planning Commission deferred Case C-36C-06,  
580 Gloria Freye for Wavepoint Development, LLC to its meeting on October 12, 2006.  
581

582 **C-45C-06 Caroline L. Nadal for Raj Jain:** Request to amend proffered  
583 conditions accepted with Rezoning Case C-10C-89, on part of Parcel 818-717-5830,  
584 containing 3.071 acres, located between the north line of Audubon Drive and the  
585 southern terminus of International Trade Court. The applicant proposes to amend Proffer

586 6 to include hotels in the list of permitted uses. The applicant proposes an extended-stay  
587 hotel. The existing zoning is M-1C Light Industrial District (Conditional). The Land Use  
588 Plan recommends Planned Industry. The site is in the Airport Safety Overlay District and  
589 Enterprise Zone

590

591 Ms. Moore: The deferral is requested to the October 12, 2006 meeting.

592

593 Mr. Archer: Is there anyone present who is opposed to the deferment of C-  
594 45C-06, Caroline Nadal for Raj Jain? No opposition.

595

596 Mr. Jernigan: Mr. Chairman, with that, I'll move for deferral of Case C-45C-06,  
597 Caroline Nadal for Raj Jain to October the 12, 2006, by request of the applicant.

598

599 Mr. Vanarsdall: Second.

600

601 Mr. Archer: Motion by Mr. Jernigan, seconded by Mr. Vanarsdall. Those in  
602 favor say aye. Those opposed say no. The ayes have it, deferment is granted.

603

604 At the request of the applicant, the Planning Commission deferred Case C-45C-06,  
605 Caroline Nadal for Raj Jain to its October 12, 2006 meeting.

606

607 **P-17-06 Jacqueline Karp for Verizon Wireless:** Request for a Provisional  
608 Use Permit under Sections 24-92.2, 24-95(a), 24-120 and 24-122.1 of Chapter 24 of the  
609 County Code in order to construct a 150' monopole telecommunications tower on part of  
610 Parcel 802-736-8028, located at the northwest intersection of E. Laburnum Avenue and  
611 Mechanicsville Turnpike (US Route 360). The existing zoning is B-2 Business District.  
612 The Land Use Plan recommends Commercial Concentration. The site is in the Airport  
613 Safety Overlay District

614

615 Ms. Moore: The deferral is requested to the October 12, 2006 meeting.

616

617 Mr. Archer: Okay. Is there anyone present who is opposed to this deferment,  
618 P-17-06, Verizon Wireless? Seeing no opposition, I move deferment of P-17-06 to the  
619 October 12, 2006 meeting at request of the applicant.

620

621 Mr. Jernigan: Second.

622

623 Mr. Archer: Motion by Archer, seconded by Mr. Jernigan. All in favor say aye.  
624 Those opposed say no. The deferral is approved.

625

626 At the request of the applicant, the Planning Commission deferred Case P-17-06,  
627 Verizon Wireless to its October 12, 2006 meeting.

628

629 **C-49C-06 Caroline L. Nadal for Rockwood, Inc:** Request to conditionally  
630 rezone from A-1 Agricultural District to R-2AC One Family Residence District  
631 (Conditional), Parcels 738-771-6301, -4105, and -2400, containing approximately 7.081  
632 acres, located on the east line of Pouncey Tract Road approximately 1,412 feet north of  
633 its intersection with Shady Grove Road. The applicant proposes a single-family  
634 residential subdivision with a maximum density not to exceed 2.0 units per acre. The R-  
635 2A District allows a minimum lot size of 13,500 square feet and a maximum gross  
636 density of 3.23 units per acre. The use will be controlled by zoning ordinance regulations

637 and proffered conditions. The Land Use Plan recommends Suburban Residential 1, 1.0  
638 to 2.4 units net density per acre.

639  
640 Ms. Moore: The deferral is requested to October 12, 2006 meeting.

641  
642 Mr. Archer: Okay, thank you. Is there anyone present opposed to the  
643 deferment of C-49C-06, Caroline Nadal for Rockwood, Inc.? I see no opposition.

644  
645 Mr. Branin: Mr. Chairman, I'd like to move for deferral of Case C-49C-06,  
646 Caroline Nadal for Rockwood, Inc., until the October 12, 2006 meeting as requested by  
647 the applicant.

648  
649 Ms. Jones: Second.

650  
651 Mr. Archer: Motion by Mr. Branin, seconded by Ms. Jones. All in favor of the  
652 motion say aye. Those opposed say no. The ayes have it.

653  
654 At the request of the applicant, the Planning Commission deferred Case C-49C-06,  
655 Caroline Nadal for Rockwood, Inc., to its October 12, 2006 meeting.

656  
657 Mr. Silber: Any other deferrals?

658  
659 Ms. Moore: No sir, that's it.

660  
661 Mr. Silber: Okay. Next on the agenda would be items placed on the  
662 expedited agenda. These are rezoning requests that are somewhat minor in nature. The  
663 County staff is recommending approval of these requests. There are no outstanding  
664 issues known to the County or the Commission members, and the applicant has asked  
665 this to be placed on the expedited agenda. It allows us to move forward with this without  
666 hearing from the applicant. If there is opposition to any of those on the expedited  
667 agenda, they will be pulled off this agenda and heard in the order in which they're found  
668 on the full agenda. I believe we have three items that have been requested for  
669 expedited consideration.

670  
671 Ms. Moore: That's correct.

672  
673 **C-38C-06 James Theobald for CA, LLC:** Request to amend proffered  
674 conditions accepted with Rezoning Case C-67C-03, on part of Parcels 762-773-4696  
675 and 764-774-3512, located between the north line of Interstate 295, the south line of  
676 Hunton Park Boulevard, the east line of Hunton Park Lane, and the west line of The  
677 Manor at Hunton Park subdivision. The applicant proposes amending RTHC Residential  
678 Townhouse District (Conditional) proffers 2, 3, 4, 9, 18, and 20 related to architectural  
679 treatment, minimum house size, buffers, entry signage, and sound suppression, and  
680 amending R-2AC One Family Residence District (Conditional) proffers 15 and 21 related  
681 to fences and sound suppression. The applicant proposes adding four new proffers  
682 related to building setbacks, landscaping, dead tree removal, and lighting. The existing  
683 zoning is RTHC Residential Townhouse District (Conditional), R-2AC One Family  
684 Residence District (Conditional), and C-1 Conservation District. The Land Use Plan  
685 recommends Office/Service, Urban Residential 3.4 to 6.8 units net density per acres,  
686 and Environmental Protection Area.

687

688 Mr. Archer: Okay. Is there opposition present to Case C-38C-06? I see no  
689 opposition. Mr. Vanarsdall.

690  
691 Mr. Vanarsdall: I move that C-38C-06, James Theobald for CA, LLC, by  
692 recommended to the Board of Supervisors for approval.

693  
694 Mr. Jernigan: Second.

695  
696 Mr. Archer: Motion by Mr. Vanarsdall and seconded by Mr. Jernigan. All in  
697 favor of the motion say aye. Those opposed say no. The ayes have it.

698  
699 **C-47-06** **George Haw:** Request to rezone from R-3 One Family Residence  
700 District and C-1 Conservation District to M-2 General Industrial District, part of Parcels  
701 798-738-7146 and 798-738-9090, containing 0.43 acre, located on the west line of  
702 Vawter Avenue approximately 600 feet north of its intersection with E. Laburnum  
703 Avenue. The applicant proposes parking and a storage shed for the existing  
704 office/warehouse uses. The use will be controlled by zoning ordinance regulations. The  
705 Land Use Plan recommends Heavy Industry. The site is in the Airport Safety Overlay  
706 District.

707  
708 Mr. Archer: Is there anyone present who is opposed to C-47-06, George Haw.  
709 No opposition, then I will move for recommendation of approval of C-47-06 to the Board  
710 of Supervisors.

711  
712 Mr. Branin: Second.

713  
714 Mr. Archer: Motion by Archer, seconded by Mr. Branin. All in favor of the  
715 motion, say aye. Those opposed say no. The ayes have it. The recommendation is  
716 granted.

717  
718 **P-18-06** **David Du:** Request for a provisional use permit under Sections  
719 24-58.2(d), 24-120 and 24-122.1 of the County Code to permit an outside dining area for  
720 DD-33 restaurant Asian Bistro in the Shoppes at Twin Oaks, on part of Parcel 748-759-  
721 3503, located at the southeast intersection of Westerre Parkway and Cox Road. The  
722 existing zoning is B-2C Business District (Conditional). The Land Use Plan recommends  
723 Office.

724  
725 Mr. Archer: Is there anyone present who is opposed to P-18-06, David Du? I  
726 see no opposition. Mr. Branin.

727  
728 Mr. Branin: Mr. Chairman, I'd like to move that P-18-06, David Du, be  
729 forwarded to the Board of Supervisors with a recommendation for approval on the  
730 expedited agenda.

731  
732 Ms. Jones: Second.

733  
734 Mr. Archer: Motion by Mr. Branin, seconded by Ms. Jones. All in favor of the  
735 motion say aye. Opposed say no. The ayes have it. The recommendation is granted.

736  
737 Ms. Moore: Thank you.

738

739 Mr. Archer: Thank you, Ms. Moore.

740

741 Mr. Silber: First on the agenda would be on page 2. This is a rezoning  
742 request that was deferred from the August 10, 2006 meeting.

743

744 **Deferred from August 10, 2006 Meeting**

745 **C-79C-06 Larry Horton for StyleCraft Homes Development Corp.:**

746 Request to conditionally rezone from A-1 Agricultural District to R-5AC General  
747 Residence District (Conditional), RTHC Residential Townhouse District (Conditional),  
748 and B-3C Business District (Conditional), Parcel 813-701-0425, containing 81.45 acres,  
749 located at the southwest intersection of Darbytown Road and Laburnum Avenue. The  
750 applicant proposes a retail and residential development with density of no more than one  
751 hundred and eighty three (183) single family and townhouse units. The uses will be  
752 controlled by zoning ordinance regulations and proffered conditions. The R-5A District  
753 allows a minimum lot size of 5,625 square feet with a maximum gross density of 7.7  
754 units per acre. The maximum density in the RTH District is nine (9) units per acre. The  
755 Land Use Plan recommends Urban Residential, 3.4 to 6.8 units net density per acre,  
756 Office, and Environmental Protection Area.

757

758 Mr. Archer: All right. Thank you, Mr. Secretary. Is there anyone present who  
759 is opposed to Case C-79C-05, Larry Horton for Stylecraft Homes Development Corp.? I  
760 see no opposition. Good evening, Mr. Tyson, how are you, sir.

761

762 Mr. Tyson: Very well, thank you. Mr. Chairman, members of the Commission,  
763 Ms. O'Bannon, and Mr. Secretary, the applicant is proposing to rezone approximately 81  
764 acres from A-1 to R-5AC, RTHC Residential Townhouse, and B-2C Business  
765 Conditional. The applicant is proposing development of approximately 181 resident units  
766 composed of 57 detached single-family units and 124 townhouse units. The applicant  
767 did originally propose B-3 business zoning, but has since amended the application to B-  
768 2C Business Conditional. The 2010 Land Use Plan recommends Urban Residential,  
769 Office, and Environmental Protection area land uses for the parcel. According to the  
770 figures shown on the conceptual plan that's been included in your packet, the densities  
771 for the R-5AC and RTHC districts would be 2.28 and 5.17 units, per acre respectively.  
772 The proposed residential uses are consistent with the recommendations of the plan.  
773 The proposed retail use may also be appropriate given the sites location at an  
774 intersection and along the four-lane divided highway. The property to the east of the site  
775 is zoned M-1C and is the site of the Highwoods Distribution facility. To the north, the  
776 property is also zoned M-1C and is the site of the Wyeth office warehouse facility, as  
777 well as Henrico County Fire Station #2. Baker Elementary School and existing single-  
778 family residential uses are located to the west of the property. There's an extensive  
779 wetland and stream system on the property that effectively breaks it into three  
780 developable areas. One is along Darbytown Road, which is where the residential units  
781 are slated to be developed. The second is the intersection of Willson and South  
782 Laburnum, which would be commercial, and the third is another small developable area  
783 along Willson Road adjacent to Baker Elementary School. In an effort to mitigate  
784 potential impacts to adjacent uses, the applicant are proffered the following: The  
785 conceptual plan, which you see before you, and then a number of proffers that are  
786 applicable to either the commercial or residential areas. For the B-2 portion, the exterior  
787 appearance of any building would be in a colonial or Georgian style. Materials would  
788 consist of brick, stone, Dryvit, split-faced block or EFIS, and all buildings would be  
789 designed and constructed of compatible materials. A four-foot sidewalk with a two-foot



790 planning strip would be installed along the Willson Road frontage to the Laburnum  
791 Avenue intersection. Any detached signage would be ground-mounted and externally  
792 illuminated. A landscape berm would be installed along the developable portion of the  
793 Laburnum Avenue frontage, with details of that landscaping to be determined at the time  
794 of plan and development. Applicable to the R-5AC and RTHC portions of the site, the  
795 applicant has committed to no more than 183 units in the written proffers, but 181 units  
796 on the conceptual plan. The applicant does need to rectify that so that it's either one or  
797 the other. Single-family dwellings would have a minimum of 2,000 square feet.  
798 Townhouses would have a minimum of 1,650 square feet for two-bedroom homes and  
799 1,900 square feet for three-bedroom homes. The homes would be comparable to the  
800 elevations that are before you. These are elevations of the single-family dwellings.  
801 They've also proffered elevations for the townhouse development. A 2,000-square-foot  
802 clubhouse and pool would be provided with construction to be completed prior to the  
803 issuance of the 90<sup>th</sup> Certificate of Occupancy and the amenity packages would be  
804 located approximately in the center of the site. A four-foot sidewalk with a two-foot  
805 planning strip would be provided along all interior streets, and a walking path through the  
806 wetland and natural areas would connect to the existing nature trail at Baker Elementary  
807 School. It is the County's policy to require sidewalks along public streets if within one  
808 mile of a public building; however, the applicant has not proposed constructing  
809 sidewalks along the Darbytown frontage. He has proposed a 50-foot landscape buffer  
810 would be provided on that frontage with the details of the buffer to be provided at the  
811 time of Plan of Development. Other proffers relate to BMP's, yard irrigation, sound  
812 suppression between attached units in the townhouses, and street trees. Development  
813 of the property for the proposed residential use is consistent with the 2010 Land Use  
814 Plan or portions of the 2010 Land Use Plan. The commercial development is not  
815 consistent with the Plan; however, given that the site is located along a four-lane divided  
816 highway and the limited uses that have been proffered, the retail use may be an  
817 acceptable deviation from the Plan recommendations. The applicant is here tonight and  
818 I'd be happy to try to answer questions you may have.

819  
820 Mr. Archer: Thank you, Mr. Tyson. Are there questions from the Commission?  
821

822 Ms. O'Bannon: I have one on the B-2 part under #7 where it says, "Identification  
823 signs located within the landscape buffer shall be monument style."  
824

825 Mr. Tyson: Yes.  
826

827 Ms. O'Bannon: Can they have a moveable message?  
828

829 Mr. Tyson: It is not the intent that they would have moveable messages.  
830

831 Ms. O'Bannon: They're not prohibited from having a moveable message sign.  
832 That's just a question.  
833

834 Mr. Tyson: No, they are not.  
835

836 Ms. O'Bannon: It could be a moveable message sign.  
837

838 Mr. Silber: I believe they are permitted in the B-2 District. So, if it's not  
839 prohibited by proffer, then they could do that.  
840

841 Ms. O'Bannon: That's what I'm getting at.  
842  
843 Mr. Silber: Our regulations, as you know, Ms. O'Bannon, on the frequency of  
844 the change of the message and all that, but they could have a changeable message  
845 sign.  
846  
847 Ms. O'Bannon: Okay. So, there could be a changeable message. Okay.  
848  
849 Mr. Silber: Mr. Tyson, you indicted there's a sidewalk proposed along Willson  
850 Road. You said there's none proposed along Darbytown Road. What about Laburnum?  
851  
852 Mr. Tyson: In speaking with the applicant, his concern—and the applicant can  
853 certainly to speak this during his presentation—is this extensive wetland area along this  
854 frontage really would preclude for development off the site. This is the developable area  
855 of the Laburnum Avenue frontage. This area would be accessible via the internal  
856 network here to the sidewalk here and down. There was a discussion about having a  
857 sidewalk provided along Laburnum Avenue, but it did not make it into the proffers.  
858 There was no discussion about having Darbytown Road sidewalks.  
859  
860 Mr. Branin: I'm not sure where Mr. Jernigan is on this, but my  
861 recommendation is that we give serious consideration to sidewalks. When the County is  
862 building roads now, certainly on four-lane roads, we're putting sidewalks on both sides of  
863 our roads. I think as private development occurs along major roadways, I'd like to at  
864 least give serious consideration to sidewalk along major roads. This is certainly is a  
865 location where someone might want to walk from his or her home to the shopping area.  
866 I realize you could go out and around and up Willson Road, but it seems like you almost  
867 could have it on Darbytown and Laburnum.  
868  
869 Mr. Tyson: Staff's position was that given the dense nature of the  
870 development and the pedestrian orientation that they were trying to achieve here, that  
871 walkability was certainly a factor that should be considered. In the staff report, we did  
872 recommend sidewalks on all three frontages.  
873  
874 Ms. O'Bannon: We do see a walkway. You mentioned a pathway. Where is that,  
875 to Baker? Is that it right there?  
876  
877 Mr. Tyson: There's a walking trail proposed from the main portion of the  
878 residential site through this wetland area to these townhouses and then connecting to a  
879 walking trail that's already existing at Baker Elementary. I believe the applicant has  
880 already had some discussions with representatives from Baker Elementary about the  
881 desirability of connecting there.  
882  
883 Ms. O'Bannon: But there's no walking trail over to the B-2 zone?  
884  
885 Mr. Tyson: There isn't any walking trail proposed, but the applicant is  
886 proposing sidewalks down Willson Road to that portion.  
887  
888 Mr. Jernigan: Ms. O'Bannon, it's about 600 feet through that wetland. I did  
889 discuss that with the applicant, but that's a pretty long bridge to be putting through the  
890 wetland.  
891

892 Ms. O'Bannon: That was going to be my next question.  
893  
894 Mr. Jernigan: Mr. Silber, the reason—I did discuss with Mr. Horton on the  
895 Darbytown, but as you see when you bring the picture back up, the wetlands extend all  
896 the way down to Laburnum and Darbytown. If it wasn't for Laburnum being there,  
897 there'd be a stream right through the street. There would be a stream coming through  
898 there. All that land is un-useable there and that's the reason that we did it. Two,  
899 because of it's location near the school, within a thousand feet we're supposed to have  
900 sidewalks. We put the walking trail through to hit the sidewalk that would come down  
901 Willson and will come down. At the time of POD for the B-2 on the Laburnum, they will  
902 have to furnish sidewalks.  
903  
904 Mr. Silber: Okay, that's fine, Mr. Jernigan. I think you also need to keep in  
905 mind that I realize there are wetlands there, but obviously, the sidewalk, or more than  
906 likely a sidewalk would be within the right-of-way. I would assume there's location there  
907 to be able to place a four-foot sidewalk in the right-of-way that is well above the flood  
908 plain area so you could get it along Laburnum.  
909  
910 Mr. Tyson: The Department of Public Works did note in the their comments  
911 that the applicant may need to dedicate additional right-of-way for just those sorts of  
912 improvements. So, it was noted in their Department of Public Works' comments.  
913  
914 Mr. Archer: Mr. Tyson, I have one question. Proffer #13, the mailboxes. "All  
915 improved single-family lots shall be required to have a mailbox with supporting posts of  
916 standard design." Maybe I need to ask the applicant. What exactly does that mean?  
917  
918 Mr. Tyson: He would be able to answer that. I'm assuming that there would  
919 be standard design for the mailbox post and they would all be uniform, but he can  
920 provide that answer to you.  
921  
922 Mr. Jernigan: I think "uniform" would be the word.  
923  
924 Mr. Archer: "Standard," I guess, is a little bit confusing. I think "uniform" would  
925 fit better. I don't know what a standard mailbox is.  
926  
927 Mr. Tyson: "Uniform" would be the preferred term, though.  
928  
929 Mr. Archer: I guess the applicant can address that and change it.  
930  
931 Mr. Archer: All right. Any further questions from the Commission?  
932  
933 Mr. Jernigan: I want to thank Mr. Tyson. You did a nice job on this case, Lee, I  
934 appreciate your help.  
935  
936 Mr. Archer: Thank you, Mr. Tyson. I guess you're ready to hear from the  
937 applicant, Mr. Jernigan?  
938  
939 Mr. Jernigan: Yeah, I think he needs to come down.  
940  
941 Mr. Archer: Mr. Horton, if you'd come down, please, sir.  
942

943 Mr. Jernigan: I think Mr. Tyson has done an excellent job of explaining  
944 everything in here and I guess we may have more questions for Larry.

945  
946 Mr. Horton: Good evening. My name is Larry Horton. Lee did do a good job.

947  
948 Mr. Archer: Good evening, Mr. Horton.

949  
950 Mr. Horton: Good evening. Mr. Jernigan and I have been working on this  
951 thing for months to bring it forward tonight and I think we've got a good case. A couple  
952 of questions you had, I guess, I can clarify them at the podium. As far as for the  
953 mailboxes, it was for them to be all alike. As far as for the wording, if what I had is  
954 confusing, then if Mr. Silber thinks that "similar" or "uniform" is more appropriate, I'll be  
955 glad to [unintelligible] or whatever. But that's the intent, to have all the mailboxes look  
956 exactly alike.

957  
958 Mr. Archer: Okay. It seemed like it would be difficult to define.

959  
960 Mr. Horton: Yes sir. As far as the Darbytown on having the sidewalks there,  
961 we want to buffer the single-family from the Wyeth warehouses. I want to use the footing  
962 dirt from my units to build the berm and, of course, landscape it. As far as for the  
963 sidewalk there, I know you all have heard the term "sidewalk to nowhere," but the steep  
964 slopes along that portion of the property there when you get to the corner and get up to  
965 Laburnum, as Mr. Jernigan indicated, where the wetlands is, I don't know how Works  
966 even cuts the grass. It's designed to get the water off Laburnum and Darbytown right  
967 there at the stoplight. Those slopes are so drastic that you would almost need to build a  
968 bulkhead just to try to get a sidewalk in. As far as in front of the property, having it there,  
969 I don't see where it serves any benefit because we have the tie going back through the  
970 complex. The townhouse part is sort of a TND, if you will. We do have rear-loaded  
971 garages and alleyways and whatnot. I thought that was more an appropriate way  
972 because the sidewalk, it's very drastic topography wise to try to get it along Laburnum  
973 because of the wetlands there. Going the other way, that is developed with bungalows,  
974 three or four of them up along Darbytown. Then when you cut back onto Willson back to  
975 Baker, it's the same thing. There again, they are very steep slopes because Cornelius  
976 Creek that comes through here handles a lot of water. The ditches are three and four  
977 feet deep. They've got culverts. You're talking about getting on a major collector. On  
978 Darbytown, it's over 10,000 vehicles a day. So really, the only decent land on the whole  
979 Darbytown frontage is the 1900 feet in front of us and the rest of it just falls off  
980 drastically. That's why I didn't think they were appropriate because of the physical site  
981 constraints of deep ditches, culverts, and people having to get out in the road on a major  
982 collector to try to get somewhere if they used the sidewalk in front of us. I want to use  
983 that berm as much as possible to buffer, and had the connector to the school, which is  
984 very important for the children, and to tie into the existing trail. Then they can get back to  
985 the B-2 portion, when that's developed, through the site with the sidewalk over on  
986 Willson, which only had about 600 vehicles a day. Laburnum's about 18,000 a day at  
987 this point in time.

988  
989 Mr. Silber: Mr. Horton, is there room for someone to walk along Laburnum, if  
990 they wanted to walk from your proposed development and some of those houses that  
991 are close to the intersection of Darbytown and Laburnum? If they want to come out onto  
992 Darbytown by the fire station and walk down to the future business location, I would  
993 presume they would probably try to walk along there, even if there wasn't a sidewalk,

994 instead of walking all the way through the residential development, over to the path, and  
995 then up Willson Road and around. Is there a safe place for them to walk?  
996  
997 Mr. Horton: Not in my opinion, Randy. The slopes are really drastic. Like I  
998 say, Cornelius is a running creek all the time. The flood plain, you can look at the map  
999 and see how extensive it is. If it wasn't for Laburnum being like a dam or a berm — you  
1000 probably would not be able to build Laburnum through there because of Cornelius  
1001 Creek. If this was extrapolated and caddy corner through the intersection to head back  
1002 up to the industrial park across from Nabisco, it's the same thing up that way. It's very  
1003 unsafe to try to come walking down from my parcel around that curve to get to  
1004 Laburnum. Then also, it's a right-turn lane, so someone going south on Laburnum  
1005 doesn't have to stop at the stoplight. That further cuts into the little bit of property there.  
1006 That's not showing on this sketch, but it is a right-turn lane. It would be very difficult to  
1007 walk on that, very difficult.  
1008  
1009 Mr. Archer: Do you think it would be unsafe?  
1010  
1011 Mr. Horton: Absolutely. That's why Mr. Jernigan and Mr. Tyson and I tried to  
1012 make the connection by going back through our piece and having the less traffic on the  
1013 collector over at Willson to come back that way to have some connectivity.  
1014  
1015 Mr. Archer: That's what I'd be worried about, the safety.  
1016  
1017 Mr. Jernigan: You met with the teachers from Baker Elementary.  
1018  
1019 Mr. Horton: I had met with teachers. Initially, it doesn't show up very well, but  
1020 I have a little thin piece that borders Baker on the other side. Originally, I planned on  
1021 putting the path connector up toward where the school buses are. After talking to Ms.  
1022 Lacy, which is the Biology teacher that has this nature trail there, in her opinion, she  
1023 thinks it's better for the kids to come this way because it is a sidewalk along Willson by  
1024 Baker. I'm going to tie into that. That's a much safer way. So, the kids can either take  
1025 the trail to go through the woods to tie into the nature trail, or they could use the  
1026 sidewalk to get on a bona fide sidewalk. So, they could go Willson or they could go  
1027 through the nature trail, ride their bicycles. So, it's two ways over that way and much less  
1028 traffic than getting on the other road with 10,000 vehicles a day. So, I think that's a much  
1029 safer route for the kids to get to school.  
1030  
1031 Mr. Jernigan: Mr Silber, it's hard to see, but there's a fine line. There is a  
1032 walking trail all around the perimeter of the RPA that comes back over to Darbytown.  
1033  
1034 Mr. Horton: I sort of had that tied in for people to walk it since it is a real nature  
1035 area and some people take their pets. Getting to the school in a safe aspect was  
1036 something that I thought long and hard about to try to achieve that, knowing that  
1037 sidewalks are normally required. In this case, it's a real safety issue in my opinion. I  
1038 grew up in East End. I've been going by this site for many, many years.  
1039  
1040 Mr. Silber: I think in this circumstance, it may not be appropriate to try and  
1041 squeeze a sidewalk in. I'm just thinking that in the future, we're always needing to look  
1042 for opportunities for sidewalks on major road. This may not be the place for it.  
1043

1044 Mr. Jernigan: I discussed that with him. We had a lengthy conversation. We  
1045 discussed that after a meeting one night about sidewalks. At first, I told him that we had  
1046 to put it all the way around, but after we sat and talked about it, after evaluation of it, I  
1047 think he is right. That is a tough area to put it. I'm okay with it coming down Willson and  
1048 coming around for the B-2 section.  
1049

1050 Mr. Horton: Going west towards Willson, if that was vacant property where it  
1051 would make sense where it was from there to Baker, it would make perfect sense. But  
1052 these bungalows have been there for 40, 50 years. You'd need ditches and culverts  
1053 trying to take care of the drainage that comes. Everything from Willson up at the far end  
1054 of Wyeth, that all comes down to Cornelius Creek.  
1055

1056 Mr. Archer: Okay, thank you. Any further questions for Mr. Horton.  
1057

1058 Mr. Horton: We finally brought it ahead and it'll be good complex for Eastern  
1059 Henrico and it'll set the tone for future building down there.  
1060

1061 Mr. Archer: It'll be a better mousetrap, won't it?  
1062

1063 Mr. Horton: Yes sir, it will. Thank you all very much, I appreciate it.  
1064

1065 Mr. Archer: Thank you, sir. All right, Mr. Jernigan, I didn't note any opposition,  
1066 so I suppose we're ready for a motion.  
1067

1068 Mr. Jernigan: Mr. Chairman, with that, I will—  
1069

1070 Mr. Tyson: Sorry. The proffers were submitted late, so you will have to waive  
1071 the time limits.  
1072

1073 Mr. Jernigan: First thing, I'd like to wave the time limits on the case, C-79C-05.  
1074

1075 Mr. Branin: Second.  
1076

1077 Mr. Archer: Motion by Mr. Jernigan, second by Mr. Branin to wave the time  
1078 limits. All in favor of the motion say aye. Opposed say no.  
1079

1080 Mr. Jernigan: With that, I will move for approval of Case C-79C-05, StyleCraft  
1081 Homes Development Corporation to send to the Board of Supervisors for their approval.  
1082

1083 Mr. Branin: Second.  
1084

1085 Mr. Archer: Motion by Mr. Jernigan, second by Mr. Branin. All in favor of the  
1086 motion say aye. Opposed say no. The ayes have it. Send to the Board for approval.  
1087

1088 **C-46C-06 James Theobald for the Rebkee Company:** Request to  
1089 conditionally rezone from B-2C and B-3C Business Districts (Conditional) to B-2C  
1090 Business District (Conditional), Parcel 824-720-8799, containing approximately 1.784  
1091 acres, located on the southeast line of S. Airport Drive approximately 244 feet southwest  
1092 of its intersection with E. Nine Mile Road. The applicant proposes a drug store or other  
1093 retail uses. The use will be controlled by zoning ordinance regulations and proffered

1094 conditions. The Land Use Plan recommends Commercial Concentration. The site is in  
1095 the Airport Safety Overlay District and the Enterprise Zone.

1096  
1097 Mr. Archer: Thank you, Mr. Secretary. Is there anyone present who is  
1098 opposed to C-46C-06, James Theobald for The Rebkee Company? I see no opposition.  
1099 Good evening, Ms. Croft.

1100  
1101 Ms. Croft: Good evening, Mr. Chairman. The subject site is located on the  
1102 southeastern line of South Airport Drive, just southwest of the intersection with East Nine  
1103 Mile Road. The site is currently undeveloped and partially wooded. The parcel is  
1104 located between the Airport Shops to the west and a gas station with convenience store  
1105 to the east. The applicant is now requesting B-2C zoning in order to develop the site with  
1106 a drugstore or other retail uses. Revised proffers dated September 12<sup>th</sup> include  
1107 elevations for any drugstore use; exterior materials of brick, EIFS, stone, split-faced  
1108 block, cementitious, vinyl, or composite siding; a prohibition on more intense uses  
1109 normally permitted in the B-2 District; a revised conceptual plan; a brickcrete wall at least  
1110 eight feet in height would be constructed along the eastern property line regardless of  
1111 the use developed on the property; cross access would be provided to the north and  
1112 south, provided agreements are in place between the respective owners; limited hours  
1113 for construction, trash pickup, and parking lot cleaning; a maximum height of 20 feet for  
1114 parking light fixtures; street trees a minimum of 2-1/2 inches in caliper at the time of  
1115 installation would be planted along Airport Drive at intervals of no more than 50 feet on  
1116 center. The 2010 Land Use Plan recommends Commercial Concentration uses be  
1117 developed on the property. This designation corresponds to retail and/or wholesale  
1118 sales and service establishments with coordinated design for shared parking areas and  
1119 points of access to the roadway. This property is also located within the Airport Safety  
1120 Overlay District and the Enterprise Zone, Nine Mile Road sub-zone. If properly designed  
1121 and regulated, the proposed drugstore or retail uses would be consistent with these  
1122 designations, as well as their goals. The revised proffers have addressed staff's  
1123 previous concerns regarding potential residential impacts, connectivity, and corridor  
1124 enhancements, and would provide assurances of development in a high-quality manner  
1125 consistent with the goals of the Land Use Plan and Enterprise Zone. For these reasons,  
1126 staff supports this request. The time limits would need to be waived on these proffers, as  
1127 they were received yesterday. This concludes my presentation. I would be happy to  
1128 answer any questions that you might have.

1129  
1130 Mr. Archer: Thank you, Ms. Croft. We'll keep in mind that the time limits need  
1131 to be waived. Are there any questions from the Commission?

1132  
1133 Ms. O'Bannon: Since we don't see a proffer that prohibits a moveable message  
1134 sign, that means there could be a moveable message sign, is that correct?

1135  
1136 Ms. Croft: Yes ma'am.

1137  
1138 Ms. O'Bannon: So, they can have a moveable message sign out front.

1139  
1140 Ms. Croft: The proffers right now do not prohibit it.

1141  
1142 Ms. O'Bannon: Thank you.

1143  
1144 Ms. Croft: You're welcome.

1145  
1146 Mr. Archer: All right. Any further questions from the Commission?  
1147  
1148 Mr. Jernigan: They have them in the West End.  
1149  
1150 Ms. O'Bannon: Not if I have anything to do with it.  
1151  
1152 Mr. Jernigan: We did go through and make sure that they had to have that time  
1153 limit on them of 10 seconds, but I don't know that we have any in the Varina District now.  
1154 If we want to come up with a code to get rid of all of them, I'm all right with that.  
1155  
1156 Ms. O'Bannon: No, we just changed the Code to allow them just about anywhere,  
1157 in my opinion. It just reminds me of something Mary Wade—I don't know if all of you  
1158 know who Mary Wade was—said years ago. She would always add in the zoning cases  
1159 things like, "no billboard," or "no loopable message signs." Everybody would say, "But  
1160 the zoning ordinance says that you can't do that." She said, "Yeah, but some day that  
1161 zoning ordinance may change," and sure enough it has. So, because she paid  
1162 particular attention to details like that, she kept the quality she was looking for. That's  
1163 one thing I learned from her years ago. I only point it out just to make sure. It's the type  
1164 of thing that comes up if you're concerned about impact on residential property. I just  
1165 put that out there as impacts on residential property. It's something I'm very conscious  
1166 of because, as you know, in the Tuckahoe District, it's very tight with a lot of residential  
1167 property, usually, in a case like this. I just thought I'd point it out.  
1168  
1169 Mr. Jernigan: When it comes through POD, we'll see if it's appropriate, if that's  
1170 what they have.  
1171  
1172 Ms. O'Bannon: But the ordinance says that it's allowed. I think the ordinance  
1173 even says for churches and schools. There were some things that were done for that,  
1174 too.  
1175  
1176 Mr. Jernigan: We have a church on Williamsburg Road that has a moveable  
1177 sign.  
1178  
1179 Ms. O'Bannon: Mmm-hmm.  
1180  
1181 Mr. Silber: I think it would be hard to stop it at the POD stage. I think you  
1182 really have to look at it on a case-by-case basis to determine whether this is a place you  
1183 want to prohibit those or not. I think if it is a location that you have concerns with, I  
1184 would prefer that it happen with the proffered conditions than to try to condition with a  
1185 POD, because I think that would be hard to do.  
1186  
1187 Ms. O'Bannon: I only mention it because we do have the residential property. If  
1188 it's in the front, maybe they can't see it, the building would block it. It depends on where  
1189 it's located.  
1190  
1191 Mr. Jernigan: Everything along Airport Drive is commercial. Nathalie, the only  
1192 question that we have, I guess, is everything okay and are you happy with the joint  
1193 agreement for the access?  
1194



1195 Ms. Croft: Yes sir. I think at this point, it's possibly the best that the applicant  
1196 can do under the time circumstances. I know that the applicant can speak to that a little  
1197 bit more than I could, though.  
1198  
1199 Mr. Jernigan: I don't remember that coming up in the Wendy's case.  
1200  
1201 Ms. Croft: I believe the Wendy's POD did show cross access to the BP  
1202 station to the east.  
1203  
1204 Mr. Jernigan: It did, but not the second point.  
1205  
1206 Ms. Croft: Right.  
1207  
1208 Mr. Silber: Mr. Jernigan, perhaps we could have the applicant address that,  
1209 because that was a concern I had, too. The way it's proffered, there is no assurance that  
1210 we won't have cross access to either side.  
1211  
1212 Mr. Jernigan: Well, what they were uneasy about was giving cross access  
1213 without a joint agreement. That's the reason, when I spoke to Caroline, I told her to draw  
1214 up something that would be acceptable to staff. It shows that they're willing to give cross  
1215 access as long as there's an agreement to take care of it. Anyway, we can let her  
1216 address that.  
1217  
1218 Mr. Silber: I don't have any more questions for Nathalie.  
1219  
1220 Mr. Archer: Thank you, Ms. Croft.  
1221  
1222 Ms. Croft: Thank you.  
1223  
1224 Mr. Archer: Will the applicant or applicant's representative come forward  
1225 please?  
1226  
1227 Mr. Jernigan: Mr. Chairman, while they're getting that straight, this is actually a  
1228 downzoning case. This property was zoned B-3C and B-2C for Wendy's. Wendy's had  
1229 planned on coming in. I met with the representatives and they were excited to go in  
1230 there and then something happened that CVS decided they want to move, and I guess  
1231 they just came in there and gave them a pile a money.  
1232  
1233 Mr. Archer: [Unintelligible] to make you nervous.  
1234  
1235 Ms. Nadal: I'm not nervous.  
1236  
1237 Mr. Archer: Good evening, ma'am.  
1238  
1239 Ms. Nadal: Good evening, Mr. Chairman, members of the Commission. You  
1240 had asked specifically about the cross access.  
1241  
1242 Mr. Archer: Excuse me, ma'am, would you give us your name?  
1243  
1244 Ms. Nadal: Oh, sure. I'm Caroline Nadal with Hirschler Fleischer here on  
1245 behalf of the applicant, The Rebkee Company. If you look on this, the access to the right

1246 is the BP station. We actually do have an agreement in place with BP for cross access  
1247 and are willing to proffer that. However, we are concerned particularly about the access  
1248 to the shops at Airport Drive because we currently don't have a cross access agreement  
1249 in place. We feel like proffering something where we don't actually have an agreement in  
1250 place and attempting to bind another party to an agreement is just not something we  
1251 would feel comfortable proffering.

1252  
1253 Mr. Archer: Mr. Schwartz can help you out there, can't he?

1254  
1255 Ms. Nadal: There's a recorded easement all the way across?

1256  
1257 Mr. Jernigan: I guess we can't hear you from where you're sitting.

1258  
1259 Mr. Archer: Mr. Schwartz, you look like you've been dying to say something.

1260  
1261 Mr. Schwartz: You know I wasn't going to say anything, but I had come out  
1262 [unintelligible]. Okay. I'm John Schwartz. I represented the Wendy's in this property  
1263 and actually owned this property. Wendy's bought it from me and my partner. There's a  
1264 cross easement agreement that's been recorded for sometime from Nine Mile Road all  
1265 the way to the Wachovia bank, which is at the other end of the property, which will be  
1266 inclusive of the shops on Airport Drive next door, Wachovia further to the south, and the  
1267 BP to the north. So, there is an existing recorded cross easement in all directions for all  
1268 people, as well as a cross maintenance agreement, which they had to assume when  
1269 they bought the property from Wendy's. Wendy's assumed it from us when they bought  
1270 it from us.

1271  
1272 Mr. Jernigan: I guess we'll be looking for a proffer, then, that just says there will  
1273 be access both to the north and south.

1274  
1275 Ms. Nadal: We're willing to give the cross access. Thank you, Mr. Schwartz.  
1276 We'll remove that it's contingent upon getting an agreement in place between the two,  
1277 since we do have a recorded instrument that gives us that cross access. We're happy to  
1278 amend it, if that's all right.

1279  
1280 Mr. Jernigan: Yeah, that's fine. Mr. Silber, does that take care of things?

1281  
1282 Mr. Silber: Yes.

1283  
1284 Mr. Jernigan: We'll go ahead and approve it and then change the proffer prior to  
1285 Board.

1286  
1287 Mr. Silber: That would be fine.

1288  
1289 Mr. Archer: All right. Any further questions for Ms. Nadal?

1290  
1291 Ms. Nadal: Thank you all.

1292  
1293 Mr. Jernigan: I don't have any further questions, Mr. Chairman.

1294  
1295 Mr. Archer: All right.

1296

1297 Mr. Jernigan: All right, Mr. Chairman, I will move for approval of Case C-46C-06,  
1298 The Rebkee Company, to send to the Board of Supervisors for their approval.  
1299  
1300 Mr. Vanarsdall: Second.  
1301  
1302 Mr. Archer: Motion by Mr. Jernigan—  
1303  
1304 Mr. Jernigan: I have to waive the time limits.  
1305  
1306 Mr. Archer: And I [unintelligible].  
1307  
1308 Mr. Jernigan: I make a motion to waive the time limits on Case C-46C-06.  
1309  
1310 Mr. Vanarsdall: Second.  
1311  
1312 Mr. Archer: Okay. Motion by Mr. Jernigan, second by Mr. Vanarsdall. All in  
1313 favor of the motion say aye. Opposed say no. The time limits are waived.  
1314  
1315 Mr. Jernigan: Now I will move for approval of Case C-46C-06, the Rebkee  
1316 Company, to send to the Board of Supervisors for their approval.  
1317  
1318 Mr. Vanarsdall: Second.  
1319  
1320 Mr. Archer: Motion by Mr. Jernigan, second by Mr. Vanarsdall. All in favor of  
1321 the motion say aye. Opposed say no. The recommendation is approved.  
1322  
1323 **Deferred from August 10, 2006 Meeting**  
1324 **P-14-06 Gloria Freye for Richmond 20MHz, LLC (nTelos):** Request for a  
1325 provisional use permit under Sections 24-95(a), 24-120 and 24-122.1 of the County  
1326 Code in order to construct a PCS wireless communications facility with a 102' high  
1327 flagpole style antenna, on part of Parcel 752-749-9473, located on the east side of  
1328 Three Chopt Road at its intersection with Ridgefield Road. The existing zoning is A-1  
1329 Agricultural District and R-3 One Family Residence District. The Land Use Plan  
1330 recommends Semi Public and Environmental Protection Area.  
1331  
1332 Mr. Archer: All right. Is there anyone present who is opposed to P-14-06,  
1333 Gloria Freye for Richmond 20MHz, LLC. I do see opposition. We'll get to you, sir. All  
1334 right. Mr. Lewis, good evening, sir.  
1335  
1336 Mr. Lewis: Good evening. Thank you, Mr. Chairman. nTelos is requesting to  
1337 construct a 102-foot high communication tower designed to look like a flagpole. The  
1338 equipment lease area would be 237 square feet. Westhampton Masonic Lodge #302  
1339 owns the 5.9-acre subject property at 9310 Three Chopt Road. The 2010 Land Use  
1340 Plan recommends Semi-Public and Environmental Protection Area for the property. The  
1341 proposed site is zoned A-1, Agricultural, which allows communication towers over 50  
1342 feet, with approval of a provisional use permit. As illustrated by the applicant's site plan,  
1343 Code-required setbacks from adjacent dwellings and property lines would be met. Also,  
1344 construction and maintenance access would be via the driveway extending from Three  
1345 Chopt Road, as stated in Recommended Condition #10. As shown by this elevation, a  
1346 tapered monopole is being proposed in an effort to minimize the potential visual impact  
1347 of the tower on surrounding residential neighborhoods. The applicant's antenna set

1348 would be concealed inside the structure at 95 feet and an additional carrier may co-  
1349 locate antennae inside the structure at 87 feet. A 15-foot by 25-foot American flag would  
1350 be flown and maintained in accordance with the Federal Government's Flag Etiquette  
1351 Guidelines. This photo shows the proposed location of the monopole and the  
1352 applicant's support equipment. The pole structure would be situated approximately 12  
1353 feet off the building's southwestern corner between this pole that you see here and the  
1354 corner of the building. A 10-foot by 12-foot equipment compound would be placed  
1355 against the building's western wall between the stairway and two air conditioning units.  
1356 To provide visual buffering and sound suppression, both the equipment compound and  
1357 air conditioning units would be surrounded by a six-foot high opaque vinyl fence. Staff  
1358 has also recommended Condition #11 to maintain the existing tree line buffer around the  
1359 property. The applicant has provided propagation maps showing how the proposed  
1360 wireless facility would improve network coverage in the area. Given the structure's  
1361 relatively low height and the flagpole style design, staff believes this could be an  
1362 acceptable location for a low-impact communication structure with the recommended  
1363 conditions cited in the staff report. This concludes my presentation. I'll be happy to take  
1364 any questions.  
1365

1366 Mr. Archer: Thank you, Mr. Lewis. Are there questions from the Commission  
1367 for Mr. Lewis?  
1368

1369 Ms. O'Bannon: Approximately how tall is that pole that's there now, the one that's  
1370 going to be between this building and that pole?  
1371

1372 Mr. Lewis: I think it's about 40 feet. It is shown right here. Forty-foot power  
1373 pole.  
1374

1375 Ms. O'Bannon: All right. Can you go back to the photograph? So, it's between  
1376 the building and that 40-foot pole.  
1377

1378 Mr. Lewis: Correct.  
1379

1380 Ms. O'Bannon: Okay. Do we have any other towers that are similar to this and  
1381 that you could cite as to where we might have one in the County?  
1382

1383 Mr. Lewis: Similar in type, but not in height is at the North Carolina Furniture  
1384 Company at West Broad and Pemberton. I believe it's 120 feet.  
1385

1386 Ms. O'Bannon: So, it's taller than this.  
1387

1388 Mr. Lewis: It's 20 feet taller. It is a flagpole style design.  
1389

1390 Ms. O'Bannon: There's also one at Westhampton Memorial Park. How tall is that  
1391 one? Do you have that height?  
1392

1393 Mr. Lewis: I don't have that. It's shorter.  
1394

1395 Mr. Branin: There's also an additional one near Springfield. Where is that one  
1396 located?  
1397

1398 Ms. O'Bannon: So, that's a 50 foot and the other's 120.

1399  
1400 Mr. Lewis: Okay. Yes. The Springfield location, I'm not sure of the exact  
1401 details of that one, but I would be glad to assemble that analysis.  
1402  
1403 Mr. Branin: That won't be necessary.  
1404  
1405 Mr. Archer: All right. Any further questions for Mr. Lewis from the  
1406 Commission? We did have opposition, so if there are no further questions, we'll ask you  
1407 to come forward please and state your name for the record.  
1408  
1409 Mr. Rhudy: Good evening, Mr. Chairman and members of the County  
1410 Planning Commission. My name is Ralph Rhudy. I'm a resident at 1801 Murdock Road.  
1411 Tonight I'm speaking on behalf of the homeowners in the Windsordale Civic Association.  
1412  
1413 Mr. Archer: Mr. Rhudy, excuse me sir. I'm sorry to interrupt you, but I'm a little  
1414 bit out of order here. Did we want to bring the applicant forward first?  
1415  
1416 Mr. Silber: I'm comfortable with listening to Mr. Rhudy before the applicant,  
1417 unless the other Commissioners want it the other way.  
1418  
1419 Mr. Branin: Mr. Rhudy, the reason he stopped you is generally we'll listen to  
1420 the applicant and then opposition and the applicant has the opportunity to come back  
1421 and give any statements afterwards. We skipped the applicant and came right to you.  
1422  
1423 Mr. Archer: I apologize for interrupting you, sir, but I just got ahead of myself.  
1424 We allow 10 minutes for each side to make their point, so you have 10 minutes and the  
1425 applicant has 10 minutes also.  
1426  
1427 Mr. Silber: I see the applicant is seated in the back. Ms. Freye, do you want  
1428 to make your presentation—that would be in order—or do you want him to go ahead and  
1429 express his concerns?  
1430  
1431 Ms. Freye: I would prefer to wait for rebuttal.  
1432  
1433 Mr. Silber: Okay.  
1434  
1435 Mr. Archer: I'm sorry, Mr. Rhudy, go ahead, sir.  
1436  
1437 Mr. Rhudy: Tonight I'm here speaking on behalf of the homeowners in the  
1438 Windsordale Civic Association. Our Association's president, Jim Tyler, was not able to  
1439 attend this meeting this evening due to health problems. The residents of the  
1440 Windsordale Civic Association oppose the installation of nTelos' 102-foot cellular phone  
1441 tower displaying a large American flag on the Masonic Lodge property at 9310 Three  
1442 Chopt Road. Our request this evening is simple. We ask that you not support the  
1443 pending provisional use permit being requested by nTelos. There are several reasons  
1444 our Association and the neighboring residents are taking this position. First, the parcel  
1445 belonging to the Masonic Lodge is zoned A-1 and is surrounded by residential properties  
1446 on all sides. The presence of a 102-foot tower on the relatively high knoll is not in  
1447 balance with the scale of the surrounding 1- and 2-story homes abutting the Masonic  
1448 Lodge's property. The proposed display of an American flag on a commercial structure  
1449 containing cellular phone equipment is, in our judgment, not an appropriate display of

1450 our nation's flag. The flagpole is like a wolf in sheep's clothing. In looking at numerous  
1451 flagpole installations in the County's West End area, there are no flagpoles of this size in  
1452 residential neighborhoods. We believe that a better solution for this infrastructure is to  
1453 be on another nearby property, which is an area already zoned for more commercial  
1454 operations. We ask that you consider such sites as the Tuckahoe Library on Starling  
1455 Drive, the County's new water treatment plant near Three Chopt Road and Pemberton,  
1456 the County's water tower near Three Chopt Road, Cox Road, and Church Road. All of  
1457 these possible alternate sites are on neutral areas that are not surrounded by single-  
1458 family residences. In addition, an nTelos tower or flagpole in one of these locations  
1459 could represent additional revenue to the County of Henrico. Simply put, alternative  
1460 sites related to this proposed provisional use permit have not been formally presented to  
1461 this Commission, to our knowledge. We are requesting that both nTelos and the  
1462 Commission explore these options with the same energy that has gone into the Masonic  
1463 Lodge site, which is in the midst of a residential neighborhood. Also, it is important to  
1464 remember there are some properties near the Masonic Lodge that will have virtually  
1465 unobstructed views of the proposed tower year-round. Likewise, there were some  
1466 covenants placed on the Masonic Lodge property related to other expansions or  
1467 utilizations of the land resources when the Lodge moved to the site. While these 25-  
1468 year covenants have legally expired, the original spirit of the provisions or stipulations  
1469 was that the land would remain unchanged. We believe this initial spirit is being violated  
1470 by this proposed land use. I'd like to share that the Windsordale Civic Association  
1471 circulated a petition in August and obtained the signatures of approximately 75 residents  
1472 who oppose this 102-foot tower structure. It is true there was a mistake in that petition  
1473 that was corrected at the second informational gathering regarding the chain-link fence  
1474 around the pole. It was not the fence that the residents were concerned about, but  
1475 rather the massive size of this cellular tower disguised as a flagpole. Also another  
1476 concern mentioned, which is still unknown, is the affect this might have on our property  
1477 values. In closing, our Windsordale Civic Association, the Pinedale and Wedgewood  
1478 Park residents are requesting the Planning Commission and nTelos to one, explore and  
1479 examine alternate sites for this cellular tower installation requiring this proposed  
1480 provisional use permit, and two, allow the residential neighborhoods adjacent to the  
1481 Masonic Lodge property to continue in the spirit of the covenant made by the Lodge  
1482 when it was purchased from St. Bartholomew's Mission Church in March of 1971. Thank  
1483 you for the time to submit these comments to the Board. Are there any questions I might  
1484 answer?

1485  
1486 Mr. Archer: Thank you, Mr. Rhudy. We had a map there. Would you show us  
1487 on that map where you are talking about.

1488  
1489 Mr. Silber: The other locations.

1490  
1491 Mr. Archer: The other locations.

1492  
1493 Mr. Silber: I don't think they're on the map.

1494  
1495 Mr. Archer: They're supposed to look for more than one location when they're  
1496 putting these towers up. Where was the other location?

1497  
1498 Mr. Rhudy: The other locations, I think, are off this aerial photo. The first site  
1499 is over just east of Parham Road at the new County of Henrico Library that will open  
1500 later this month. It's just a couple blocks from the Topeka's Steakhouse. Another site is

1501 up near your water treatment plant. That would be in the northwest corner of Pemberton  
1502 Road and Three Chopt Road. The other site I mentioned is the County water tower up  
1503 near the intersection of Three Chopt Road, Cox Road, and Church Road. Those are  
1504 three alternate sites. In looking at them, perhaps the topography, the sites where the  
1505 land is a little different. This is a relatively high knoll, but perhaps the applicant could put  
1506 more powerful equipment in the station to get the signal they're trying to penetrate in this  
1507 area. They mentioned an area they're trying to fill a void in is surrounded roughly by  
1508 Interstate 64, Parham Road, Pemberton Road, and Gayton Road on the south. I think  
1509 these other options really ought to be looked at. It's kinda like saying you look at other  
1510 things related to roadway corridors. Oftentimes, you'll have people here and you'll see  
1511 several alignments and you'll have clarifications about this being the preferred site for  
1512 this thing, but you've gone through an analysis looking through the alternatives. I don't  
1513 believe this has been done with this particular application today.

1514  
1515 Mr. Vanarsdall: It's supposed to be done before we approve these, but sometimes  
1516 they can't move them because it doesn't connect with what they're doing. They call it a  
1517 hole. That might be the case.

1518  
1519 Mr. Silber: I think that needs further clarification.

1520  
1521 Mr. Branin: Mr. Rhudy, one thing. They have the propagation map. They  
1522 come out with their equipment and show where the signals are coming in. When you  
1523 were speaking of the alternative spots, but you said it's not on this aerial photo, they're a  
1524 pretty good distance away. So, that tower may not be able to be used on those  
1525 locations.

1526  
1527 Mr. Vanarsdall: That's what I just said; they call it a hole.

1528  
1529 Ms. O'Bannon: You did mention about the appropriateness of the flagpole. We did  
1530 just mention two flagpoles that are in use as telecommunication towers in that area in  
1531 the West End. We need telecommunication towers, we generally must have them to  
1532 provide service. If I may add, more recently, the need has even expanded because we  
1533 need more bandwidth. Number one, more people are buying cell phones, just in  
1534 general. Their kids are buying cell phones. So, there's a capacity issue in all towers  
1535 across the County. Another thing is that because more people have phones that take  
1536 photographs or they're instant messaging, they're using all that bandwidth and you can  
1537 only get about 125 signals at any given time at any tower. So, they say we need another  
1538 tower. This is where we're going now. I'm sure that's part of what you may hear, but it's  
1539 the idea that as more people demand the service, companies are simply providing it.  
1540 They don't want to build towers just to build towers. So, between the capacity needs and  
1541 new companies coming in for competition for lower costs—What you've heard from other  
1542 members of the Planning Commission has to do with the fact that there's some technical  
1543 things that they have to address that we'll probably hear, and the fact that you can't  
1544 actually totally deny it. You can't totally deny towers, blanket coverage. You can't make  
1545 a blanket statement that we're not going to have any towers. We had found on the  
1546 Board of Supervisors that stealth towers, which is what they're called, are acceptable to  
1547 the extent you can hide them in the cross of a church, the tower of a church. They're all  
1548 over the place. We have lots of churches that have telecommunications equipment in  
1549 their towers. A flagpole, we decided, is very low profile. It's a pole. I understand where  
1550 you're coming from about the height and that's why we've asked a few questions here.  
1551 I'm sure we'll hear about that, too. A flagpole is treated with much respect. They have to

1552 light the pole all night if the flag's going to be on it. They have to take the flag up and  
1553 down. I'm sure the Masonic Lodge went into details on that. You are good and I'm glad  
1554 you have suggested some different locations. The Tuckahoe Library is right far away  
1555 and the signals don't carry very far. We'll probably hear more about that.

1556  
1557 Mr. Rhudy: I think that some of that information on those alternate sites ought  
1558 to be presented and made part of the public record in this case. I will say about the  
1559 concept of the flagpoles, I'll acknowledge the one on the north side of the North Carolina  
1560 Company. To me, it's truly a tower. It's about three feet in diameter at the base and  
1561 about 18 inches at the top. Most of the flagpoles you see around this area of the  
1562 County, in Three Chopt Road and everything, they're pretty much conventional  
1563 flagpoles. You see them over there in front of Freeman High School and everything.  
1564 They're probably in the range of 50 feet in height, nominal base somewhere between 8  
1565 and 12 inches. They don't have the mass to them that you're proposing to see on what  
1566 this is as truly a cellular tower. It may have a flag on it, but in terms of the structural size  
1567 of it, most of your other flagpoles in this area around Three Chopt Road are pretty  
1568 conventional in size. I think that's something to think about.

1569  
1570 Mr. Archer: Any further questions?

1571  
1572 Mr. Rhudy: I could give you a copy of this petition that's been signed by  
1573 roughly 75 people. I talked to Jim Tyler, our president, and he authorized me to present  
1574 this to you.

1575  
1576 Mr. Archer: We'll take it for the record.

1577  
1578 Mr. Branin: Mr. Rhudy, I would like a copy of that please. I wish you'd brought  
1579 it to one of the neighborhood meetings that we had.

1580  
1581 Mr. Archer: All right. Any further questions for Mr. Rhudy? Thank you sir, we  
1582 appreciate it.

1583  
1584 Mr. Rhudy: Thank you.

1585  
1586 Mr. Archer: All right, Ms. Freye. I'm sorry, I didn't mean to skip you, ma'am.  
1587 Come on up. We have about 5-1/2 minutes left.

1588  
1589 Ms. Rhudy: Good evening, Mr. Chairman, and members of the Board. My  
1590 name is Lillian Rhudy and I live at 1801 Murdock Road and I come to speak tonight as a  
1591 homeowner and also as a member of the Windsordale Civic Association. This property  
1592 that we're speaking of has a long history with Henrico County, dating to March 10, 1971,  
1593 when there was a Declaration of Covenants #1471 and the Board of Trustees of St.  
1594 Bartholomew's Mission Church. This tract of real estate contracted to Westhampton LP  
1595 Michael's Masonic Lodge #302, was conditioned upon the purchasers being able to  
1596 secure rezoning from R-3 One-Family Residence, to R-5, General Residences, as well  
1597 as being conditioned upon it being able to secure from Henrico County Board of Zoning  
1598 Appeals an additional use permit permitting it to use the real estate as a Masonic Lodge  
1599 and obtaining the consent from Pinedale Civic Association for the rezoning for the  
1600 conditional use permit. In that document in the second covenant, it stated that as long  
1601 as it was owned by the Masonic Lodge, the said tract of real estate shall not be used for  
1602 any purpose other than a Masonic Lodge. If the land is sold or conveyed to any person



1603 or firm other than another Masonic Lodge, it will make its best effort to cause it to  
1604 conform with the requirements of R-3 or one-family residences. Well, while that did  
1605 expire 25 years later, I ask is there not a moral obligation of intention portrayed here that  
1606 would negate the passing of this provisional use request? At some point, the zoning of  
1607 this property was changed to A-1. With the zoning, you can have a 100-foot flagpole and  
1608 I don't think our neighborhood opposes that at all. You can have a 50-foot  
1609 communication pole. However, in the requested provisional use permit with the 102 foot  
1610 infrastructure, it would not be consistent with the residential neighborhoods or the  
1611 traditional flagpoles that Mr. Rhudy mentioned that currently exist in our County. This  
1612 102-foot communication tower with an American flag on top is, we feel, an inappropriate  
1613 use of the American flag. As he mentioned, it feels to us like a wolf in sheep's clothing  
1614 for our neighborhoods in this part of Henrico County. As mentioned, we have a petition  
1615 that 75 residents signed. Our main concern in this is the 102-foot infrastructure. I ask  
1616 you as a Planning Commission and members of the Masonic Lodge, would you like to  
1617 see this 102-foot communication tower every time you opened your front door or every  
1618 time you drove down the neighborhood streets, or the member's of the Lodge that come  
1619 to monthly or weekly meetings? I'm asking would you please look at other nearby  
1620 locations that could be zoned and have the type of flagpole communication tower that is  
1621 being asked for here tonight. Also, I ask the Masonic Lodge representatives to think  
1622 about what their original intentions were as outlined in Document 1471 and please keep  
1623 that moral intention of using your property for the sole purpose of a fraternal  
1624 organization. You have been good neighbors to Windsordale, to Pinedale, and to  
1625 Wedgewood Park these many years. Let's keep with that intention in our fine  
1626 neighborhood without infiltrating it with commercial business. Thank you.

1627  
1628 Mr. Archer: Thank you, Ms. Rhudy. Are there questions for Ms. Rhudy before  
1629 she takes a seat? Thank you, ma'am. All right, Ms. Freye, I believe you can come  
1630 forward.

1631  
1632 Ms. Freye: Thank you. Good evening. My name is Gloria Freye, Mr.  
1633 Chairman, members of the Commission. I am an attorney for McGuire Woods here on  
1634 behalf of nTelos. I would like to thank the staff for all the work that they've put into this  
1635 case and attending two citizen meetings with us and pulling the conditions together. Ms.  
1636 O'Bannon, your explanation is very well on point. The need for this facility is to provide  
1637 in-building coverage and to add capacity to the network. There is a hole, just as Mr.  
1638 Vanarsdall was describing, in this targeted area. The company did look at other sites in  
1639 this immediate area, Mr. Vanarsdall, and at least one or two of the sites that Mr. Rhudy  
1640 alluded to are too close to the other antennas that they're trying to connect to. This  
1641 property was looked at for a lot of reasons as being an appropriate one. It's a large site.  
1642 It's over five acres. Two, it is surrounded with mature trees that will help provide some  
1643 coverage. The other nice thing about this property was pointed out by Mr. Rhudy, and  
1644 that's the fact that it's on a knoll. It's about 30 feet, I believe, above the elevation of  
1645 Three Chopt. With that added elevation, it gives the company the opportunity to connect  
1646 to those other towers and to fill that hole and limit the height of the flagpole to 102 feet,  
1647 which is very short for a telecommunications tower. They've been very wise in selecting  
1648 this site, not only for its ability to meet the need and provide the service, but do it in a  
1649 way that really has a very minimal impact on the surrounding area. That's very  
1650 important because they don't want to have a negative impact on the residences that are  
1651 around there. The whole objective of this is to service those residents with as minimal  
1652 impact as possible. That's why they also felt like this was an appropriate place for a  
1653 flagpole because this is a fraternal lodge. This is a service organization. It is one lone

1654 building there and having a flagpole associated with it would be just as in character and  
1655 in keeping as if it was with some other civic type building. Even though this is private, it  
1656 is a civic type use. The ground equipment is going to be screened. In addition, we do  
1657 have those exterior trees to help screen. So, even with the extra landscaping and  
1658 fencing that's being provided, the ground equipment will not be visible and it will be very  
1659 difficult for the neighbors, particularly from Mr. Rhudy's vantage point, to even see the  
1660 base of the pole. We've agreed to the condition that allows landscaping to be provided  
1661 there. nTelos has reviewed the conditions and is very accepting of those terms and  
1662 conditions, and believes that with the flagpole design, with the restricted height, with the  
1663 conditions, and also allowing room in that flagpole for co-location, that also is another  
1664 way to meet the County's goals and objectives. We feel that we have met the County's  
1665 goals, that this is a compatible site, that it is an appropriate design, it is a stealth design,  
1666 and that it would not have a negative impact on the surrounding properties. I am not  
1667 really the best person to speak to the 1971 covenants that Ms. Rhudy referred to. I have  
1668 not actually seen a copy of that, but Mr. Lewis has. My understanding, of course, is that  
1669 it has expired, but that that covenant was not one made by the Lodge; it was one by the  
1670 church that simply said if you don't get your zoning for a lodge, then it stays zoned the  
1671 way it is. If I'm not stating that correctly, then Mr. Lewis can fill us in on that. We did  
1672 have two citizen meetings. We had one in July and we were scheduled to come before  
1673 you in August. At that first meeting, we were very pleased with the response and the  
1674 questions that we got. It was very well attended. People had a lot of questions. We had  
1675 a lot of information to share and felt that when we left that meeting, that we had  
1676 responded to people's concerns and questions. We were a little surprised later on to  
1677 find out that there was a petition being circulated. We did try to get a copy of that, but  
1678 that, even though requested, was not provided to us. We asked for a deferral at the last  
1679 Commission hearing so that we could have another meeting. Since I couldn't get the  
1680 addresses of the folks signing the petition, we simply sent an invitation to everyone in  
1681 that subdivision using the County's records to get that information. We did have that  
1682 meeting September 6<sup>th</sup> and there were seven neighbors that came, four who had been  
1683 at the previous meeting and there were three new folks that came. We were able to  
1684 answer their questions, I believe, and felt that that was a good meeting as well. With  
1685 that, we would ask that you recommend approval of this to the Board of Supervisors as  
1686 being a use that is compatible not only with the Lodge, but can serve this neighborhood  
1687 without having a negative impact on them. I'll be glad to answer questions.  
1688

1689 Mr. Archer: Thank you so much, Ms. Freye. Are there questions from the  
1690 Commission for Ms. Freye?  
1691

1692 Mr. Branin: Mr. Chairman, I would like hear from a representative of the  
1693 Lodge, if there's a representative here.  
1694

1695 Mr. Archer: Is there someone here from the Lodge? Good evening, sir.  
1696

1697 Mr. Holley: Good evening, Mr. Chairman, members of the Commission. My  
1698 name Malcolm Holley and I'm a member of the Lodge there and had been requested by  
1699 the members of the Lodge to investigate this use and move forward with it. We feel that  
1700 this is not incompatible with the original use of the Lodge. We are civic minded. We feel  
1701 that this provides a community service in serving the residents of Henrico County in the  
1702 area, and fits within the County Plan. As far as some of the protocols, this was voted  
1703 upon at a meeting by the majority of the members present and was approved to move  
1704 forward with this, pending approval of both this body as well as the Board of

1705 Supervisors. We feel that we are not violating any moral obligation that we have,  
1706 because we have asked that it be not intrusive. We don't feel that the direction of the  
1707 flagpole that's hiding the antennas is intrusive in that this is an American flag that would  
1708 be displayed meeting all the Federal guidelines, as has been previously commented.  
1709 With that, I'd be happy to answer any questions.  
1710

1711 Mr. Archer: Thank you, sir. Are there questions from the Commission?  
1712

1713 Mr. Branin: Mr. Holley, the community has said that you have a moral  
1714 obligation and I just wanted to hear from you as a representative of the Masonic Lodge  
1715 that you guys are comfortable with the actions of proposing a cellular tower as a  
1716 flagpole.  
1717

1718 Mr. Holley: Mr. Branin, we are. The members voted on that and there was a  
1719 lot of discussion at the meeting that night—it actually went very long—about the whole  
1720 impact that this would have in the community and our obligations to it. With that, the  
1721 members voted to move forward with this and I've been trying to represent their desires.  
1722

1723 Mr. Branin: Okay, thank you sir.  
1724

1725 Mr. Holley: Thank you.  
1726

1727 Mr. Archer: All right. Is there any further discussion? There's about a minute  
1728 and ten seconds left for the opposition and you've got about four minutes left for the  
1729 presenter.  
1730

1731 Mr. Branin: Does anybody have any other comments?  
1732

1733 Mr. Archer: All right, Mr. Branin.  
1734

1735 Mr. Branin: Mr. Chairman, the only comment I would have is there was  
1736 another cellular tower in the West End that is over right off Springfield Road and it's  
1737 actually in a residential community. Townhouses, I believe. Are you familiar with that, Mr.  
1738 Secretary?  
1739

1740 Ms. Jones: Hungary and Springfield, I believe?  
1741

1742 Mr. Silber: Right, right.  
1743

1744 Mr. Branin: To all my other Commissioners, as we proceed forward in the  
1745 future with the use of communication towers, I've had several already that we've been  
1746 trying to work with the communication companies to come up with such a thing as a  
1747 stealth tower. As they come into your districts, ladies and gentlemen, good luck. With  
1748 that, Mr. Chairman, I'd like to move that Case P-14-06, Gloria Freye for Richmond  
1749 20MHz, LLC be forwarded to the Board of Supervisors with a recommendation for  
1750 approval.  
1751

1752 Mr. Jernigan: Second.  
1753

1754 Mr. Archer: Motion by Mr. Branin and seconded by Mr. Jernigan. All in favor  
1755 of the motion say aye. Those opposed say no. The recommendation's approved.

1756  
1757  
1758  
1759  
1760  
1761  
1762  
1763  
1764  
1765  
1766  
1767  
1768  
1769  
1770  
1771  
1772  
1773  
1774  
1775  
1776  
1777  
1778  
1779  
1780  
1781  
1782  
1783  
1784  
1785  
1786  
1787  
1788  
1789  
1790  
1791  
1792  
1793  
1794  
1795  
1796  
1797  
1798  
1799  
1800  
1801  
1802  
1803  
1804  
1805  
1806

Mr. Silber: The next request is an item that was deferred from the August 10<sup>th</sup> Planning Commission meeting. There are actually two cases. I'll call both of these. They are companion cases.

**Deferred from the August 10, 2006 Meeting**

**C-42C-06 James Theobald for Smith Packett Med-Com:** Request to conditionally rezone from A-1 Agricultural District, R-3 One Family Residence District, and R-5C General Residence District (Conditional), to R-6C General Residence District (Conditional), Parcels 752-753-3276 and 753-754-0908, containing approximately 46.73 acres, located on the east line of Pemberton Road (State Route 157) between the north line of Fordson Road and the south line of Interstate 64. The applicant proposes a life care facility with retail uses. The use will be controlled by zoning ordinance regulations and proffered conditions. The Land Use Plan recommends Suburban Residential 2, 2.4 to 3.4 units net density per acre, Multi-Family Residential, 6.8 to 19.8 units net density per acre, Semi-Public, and Environmental Protection Area.

Mr. Silber: The companion case is a provisional use permit.

**Deferred from the August 10, 2006 Meeting**

**P-15-06 James Theobald for Smith Packett Med-Com:** Request for a provisional use permit under Sections 24-36.1, 24-120 and 24-122.1 of the County Code to construct and operate a life care facility with accessory retail uses and exterior signage, on Parcels 752-753-3276 and 753-754-0908, containing approximately 46.73 acres, located on the east line of Pemberton Road (State Route 157) between the north line of Fordson Road and the south line of Interstate 64. The existing zoning is A-1 Agricultural District, R-3 One Family Residence District and R-5C General Residence District (Conditional). The property is the subject of rezoning case C-42C-06, which proposes to rezone the property to R-6C General Residence District (Conditional). The Land Use Plan recommends Suburban Residential 2, 2.4 to 3.4 units net density per acre, Multi-Family Residential, 6.8 to 19.8 units net density per acre, Semi-Public, and Environmental Protection Area.

Mr. Archer: Thank you, Mr. Secretary. Is there anyone present who is opposed to Smith Packett Med-Com? We do have opposition. We'll get to you. Thank you so much. All right, Ms. Croft.

Ms. Croft: Thank you, Mr. Chairman. As was stated, this case was heard at the August meeting and deferred for one month at the Commission's request. A second community meeting was held on August 24<sup>th</sup> and attended by approximately 50 nearby residents. Revised proffers were submitted on August 30, 2006, and have addressed all of staff's previous concerns by including the following changes: a revised conceptual plan and townhouse-style condominium elevation; a 15-foot buffer planted to a Transitional Buffer 25 standard with a black or green poly-coated chain link fence a minimum of 5 feet in height along the eastern most property lines and southern property line adjacent to homes on Minna Drive; a solid board wooden fence, a minimum, of 8 feet in height along the portion of the northern property line adjacent to Interstate 64 and parallel to Minna Drive; a decorative fence along the western perimeter of the property; a provision that any childcare facility would be located no closer than 150 feet to any property line of any adjacent residence; no construction entrances would be permitted through adjacent neighborhood streets including Fordson Road through the Westbriar

1807 subdivision; no more than four townhouse style condominium units would be located in a  
1808 row; supplemental plantings to be determined during landscape plan review would be  
1809 provided between the property line and Fordson Road; dedication of right-of-way and the  
1810 widening of Pemberton Road along the western frontage of the property; and installation  
1811 of northbound and southbound turn lanes serving the northern most entrance to the  
1812 property, as requested by the Department of Public Works. The conceptual plan has  
1813 been revised to show the additional fencing along the existing neighborhoods, and the  
1814 reduction of the number of townhouse style condominium units in a row. A life care  
1815 facility is permitted in the R-6 District as a provisional use, and a companion provisional  
1816 use permit application has been filed for exterior signage for the permitted retail uses  
1817 within the life care facility. Staff supports this request with the conditions that have been  
1818 distributed to you. The conditions limit the permitted retail and service uses, as well as  
1819 the maximum square footage and signage permitted for those uses. Staff believes these  
1820 conditions, as well as the submitted proffers, would provide assurances the life care  
1821 facility would not adversely affect the adjoining area. Overall, staff believes this case is  
1822 appropriate and of high quality, and supports the request. This concludes my  
1823 presentation. I'd be happy to answer questions for you.  
1824

1825 Mr. Archer: Thank you, Ms. Croft. Are there questions from the Commission  
1826 for Ms. Croft?  
1827

1828 Mr. Branin: Ms. Croft, I had requested the fence that runs along 64 because  
1829 upon my visit to the neighborhood, we walked through the woods, and the elevation of  
1830 64, and the elevation of Minna Lane are pretty much the same. I had asked about a  
1831 berm, possibly. Has that been suggested to the applicant?  
1832

1833 Ms. Croft: It is my understanding the applicant has indicated a four-foot high  
1834 berm would be approximately 25 feet wide, which would, in essence, clear more of the  
1835 property than a fence would. The applicant can probably speak more to that.  
1836

1837 Mr. Branin: Is that why the proffer for the fence along 64 has a minimum as  
1838 opposed to a maximum of 8 feet?  
1839

1840 Ms. Croft: I believe so. The minimum was discussed more at the community  
1841 meeting on August 24<sup>th</sup>.  
1842

1843 Mr. Branin: Thank you.  
1844

1845 Ms. Croft: Thank you.  
1846

1847 Mr. Archer: All right. Any further questions for Ms. Croft?  
1848

1849 Ms. O'Bannon: Mr. Branin, you're looking for a physical barrier?  
1850

1851 Mr. Branin: Yes ma'am, I am, and I'm sure I'll get into this with the applicant.  
1852 Upon my visit, a suggestion that was brought out was an excellent one, as I'm sure  
1853 there's going to be plenty of excess dirt. What if we put a berm along 64? If you were in  
1854 the neighborhood, when you're standing in the backyard, you are literally dead even with  
1855 64. I said, "That's a fantastic idea. I'll make a recommendation that we consider that."  
1856 From what I understand, and I'm sure the applicant will address this, their position is that  
1857 it could be more detrimental to taking down more trees to get that 25-foot width that you

1858 would need for the base, which I do agree with because there are great, beautiful trees  
1859 out there. I can understand where the applicant wouldn't want to do that. I think if we  
1860 give them the ability to go higher to a 10-foot, we could probably accomplish the same  
1861 thing and I would want to tackle that at POD. I do think we can do a little bit better than  
1862 a 6- or 8-foot fence. From what I understand, the applicant is more than happy to  
1863 investigate that and move forward, if we allow it.

1864  
1865 Ms. O'Bannon: Berms, by their nature, absorb sound.

1866  
1867 Mr. Branin: Great, they do.

1868  
1869 Ms. O'Bannon: Fences tend to reflect.

1870  
1871 Mr. Branin: Reflect. With the berm, we could absorb the bottom and deflect  
1872 the balance. That's why the combination would be great, but I don't know if it should be  
1873 at the expense of 25 feet.

1874  
1875 Ms. O'Bannon: Okay.

1876  
1877 Mr. Archer: All right. Anything further for Ms. Croft? Thank you, ma'am.

1878  
1879 Ms. Croft: You're welcome.

1880  
1881 Mr. Archer: All right. I suppose we need to hear from the applicant.

1882  
1883 Ms. O'Bannon: On this provisional use permit, do we need to put that this eight  
1884 square feet of sign area is not movable?

1885  
1886 Mr. Branin: If you wish. As being a fellow West End District, if you choose to,  
1887 I will—

1888  
1889 Ms. O'Bannon: I know we went through great discussion when it was presented  
1890 before and I don't want to make light of it, to make these low key.

1891  
1892 Mr. Branin: Absolutely. We did make a point of getting them low key.

1893  
1894 Ms. O'Bannon: It is commercial within a residential area.

1895  
1896 Mr. Branin: I invite you to make that comment.

1897  
1898 Ms. O'Bannon: Oh, no, I'm just kidding.

1899  
1900 Mr. Archer: All right, Ms. Nadal, good evening again.

1901  
1902 Ms. Nadal: Good evening again.

1903  
1904 Mr. Archer: There is opposition to this case. Our policy is to allow 10 minutes,  
1905 and you may want to reserve some time for rebuttal. The opposition will also have 10  
1906 minutes.

1907  
1908 Ms. Nadal: Yes sir, I'd like to reserve two minutes for rebuttal.

1909  
1910  
1911  
1912  
1913  
1914  
1915  
1916  
1917  
1918  
1919  
1920  
1921  
1922  
1923  
1924  
1925  
1926  
1927  
1928  
1929  
1930  
1931  
1932  
1933  
1934  
1935  
1936  
1937  
1938  
1939  
1940  
1941  
1942  
1943  
1944  
1945  
1946  
1947  
1948  
1949  
1950  
1951  
1952  
1953  
1954  
1955  
1956  
1957  
1958  
1959

Mr. Archer: So noted. Thank you, ma'am.

Ms. Nadal: Thank you. Good evening, again, Mr. Chairman and members of the Commission. I am here on behalf of Smith Packett and I have with me Bruce Hedrick from Smith Packett also to address any questions that may arise. Somewhere here I actually have a presentation. Some of this Ms. Croft has already covered, but we will address the issue just raised first before we move into anything else. There was a concern that we would end up having to remove trees that provide a natural sound buffer, and that would defeat the purpose of the berm. The applicant is willing to increase the fence size to somewhere between 10 to 12 feet. I think that in the end, with the trees remaining and the fence being 10 to 12 feet high, that would help with the problem that was discussed earlier.

Mr. Branin: Thank you for addressing that. There is one person in the audience that I will ask for comment who has not stated that he is in opposition. I'm going to ask this person in reference to that comment.

Ms. Nadal: Sure. When Jim Theobald was here last month, I understand he went through this case in great detail, so I wasn't going to do that again. I was just going to go through some of the recent proffer amendments, specifically to address the major concerns of the adjacent landowners. I'm going to jump ahead to my slide. This is the last presentation. Ms. Croft went through some of these, so I don't want to be too repetitive. This just has to do with us allowing more yardage in the back of the townhomes along Minna Drive. Specific to some of the adjacent landowners' concerns, we are also going to add the black or green poly-coated chain link fence along the single-family lots, and we already discussed the fence. We have also agreed to no construction access through Westbriar from Fordson Road. We are also proffering no more than four units in a row. Then we've addressed some transportation concerns. Instead of going through all those, I'm just going to address the three major issues of concern that I understand the adjacent homeowners have, and one is sound suppression. I think the applicant has really tried to do everything possible to reduce any sound issues. Those that I've listed cover those issues. I understand that there's concern that a bunch of trees will be removed, but with the addition of this wooden fence along—and I've got a picture of that fence. Like I said, we could increase that to 10 to 12 feet. That's going to really reduce some of the sound that they're complaining about now from 64. Also with respect to site distance, I understand there's a lot of concern about site distance because there are going to be structures that are four and five stories in height. What we have provided is that we're not constructing any residences that are going to be above one story around the single-family residences. This line of sight is from across Pemberton, if you can see. It's a little hard to read these. The applicant is going to put in vegetation to block the line of sight from Pemberton so you don't see the height of the building. This is across Pemberton.

Mr. Silber: As long as you state your name, we'd love it.

Mr. Hedrick: I'm Bruce Hedrick. I'm the Vice President of Development with Smith Packett. These are a little hard to discern, so I just wanted to clarify. What you can see in the shaded area is the line of sight from what would be a person standing at their back door on the left-hand side, and on the extreme right-hand side is the height of the building. Anything above that shaded triangle is existing vegetation. That's not new

1960 plantings that you see. What you can see is that existing vegetation is taller than the  
1961 line of sight for that person standing at their back door. Both from the top view, which is  
1962 the closest four-story building—and that's a depiction of someone standing right across  
1963 the street from that. As you can see, the trees in the front, as well as the trees closest to  
1964 the building, are in excess of where that line of sight is. Then the bottom view is actually  
1965 the five-story building, which is a little further down on Pemberton. Again, straight across  
1966 the street as if somebody's looking out their back door. Again, you can see the  
1967 vegetation is actually taller than that shaded area.

1968  
1969 Mr. Branin: Thank you, sir.

1970  
1971 Ms. Nadal: The last issue I know the residents have some concern about is  
1972 the traffic. Based on the traffic impact study, we tried to address those concerns, and  
1973 have addressed those concerns by agreeing to widen Pemberton Road on the eastern  
1974 side and also providing the turn lanes from the northern and southern directions. That's  
1975 all I have. I ask that you approve this, and I will take any of your question.

1976  
1977 Mr. Archer: All right, thank you, Ms. Nadal. Are there questions? All right. If  
1978 there are none, we will hear from the opposition, bearing in mind that there is also a 10-  
1979 minute time limit for the opposition. If there is someone who is a spokesperson for the  
1980 entire group and wants to use most or all of the time, feel free.

1981  
1982 Ms. O'Neill: Good evening.

1983  
1984 Several People: Good evening.

1985  
1986 Ms. O'Neill: Mr. Chairman, Mrs. O'Bannon, and Mr. Branin and other members  
1987 of the Commission. I am Barbara O'Neill at 9811 Three Chopt Road. I'm also with the  
1988 Three Chopt Pemberton Area Civic Association. We don't have any overall objection to  
1989 the concept of this plan. We do have some concerns. I did e-mail Mr. Hedrick and he  
1990 was kind enough to send me a reply. My concern that I put toward him was the density.  
1991 We are very concerned about the density. It seems to be too much living residences,  
1992 whether it's cottages, townhouses, whatever, for the space. We certainly understand the  
1993 concern for the people that are going to be affected by the noise. If I lived down there, I  
1994 would be just as concerned. But we're looking at the overall site, not just that one  
1995 particular area. We are concerned about the five-story building. We would like to see  
1996 that lowered down to three. The four-story buildings we would like to see lowered to  
1997 two. Mr. Hedrick sent me a reply indicating that the five-story building had been moved  
1998 away from Pemberton Road. In our opinion, it really doesn't make any difference where  
1999 it's located on the site, it's still five stories, whether you can see it or whether you can't.  
2000 If you take Pemberton Road, and you go from Quioccasin to Broad Street, you don't see  
2001 anything over two stories. We feel like the more floors that a building has and can be  
2002 occupied, the more people, and therefore, more traffic. Pemberton Road, I'm here to tell  
2003 you, can't take any more traffic. They are overloaded as it is. I just wanted to pass  
2004 along our concerns from the Civic Association. I do appreciate Mr. Hedrick replying to  
2005 my e-mail. If you need to have me forward that you, if I can just get an e-mail address  
2006 from you, I'll be glad to do so. If you have any questions, I'll be glad to answer them if I  
2007 can.

2008  
2009 Mr. Archer: Thank you so much, Ms. O'Neill. Are there questions from the  
2010 Commission?



2011  
2012 Mr. Branin: Not for Ms. O'Neill. I would like to hear from Traffic.  
2013  
2014 Ms. O'Neill: All right, thank you.  
2015  
2016 Mr. Archer: Thank you, ma'am.  
2017  
2018 Mr. Silber: Is there any more opposition?  
2019  
2020 Mr. Branin: Did anybody else want to speak? I'm sorry sir, I didn't know you  
2021 had your hand up before.  
2022  
2023 Mr. Scott: Mr. Chairman, members of the Planning Commission. My name is  
2024 Glen Scott. I live at 2200 Sommie Lane, which is just around the corner from University  
2025 Park. Sooner or later, we realize that these 46 acres will be developed. It's a prime  
2026 piece of property. I've spoken with Mr. Hedrick and I've shared my concern about  
2027 University Park's fine reputation. I feel comfortable that they will be an excellent  
2028 neighbor. That will be a fine facility. I don't have any concern about that. I'm speaking  
2029 on behalf of my neighbor, Louise Guirkin, that lives at 2201 Sommie Lane. We just  
2030 wanted to add concern about the traffic. Three Chopt Road really has all the traffic it can  
2031 stand at this point and Pemberton Road has all the traffic. I believe that's going to be  
2032 addressed by the traffic engineer. We just wanted to express concern about the traffic.  
2033  
2034 Mr. Branin: Thank you, sir.  
2035  
2036 Mr. Scott: Thank you.  
2037  
2038 Mr. Archer: Thank you, Mr. Scott. Any questions for Mr. Scott before he takes  
2039 a seat? None. All right, thank you sir. All right, Mr. Branin, how should we proceed?  
2040  
2041 Mr. Branin: I'd like to hear from one other resident after Traffic, since that's the  
2042 topic on hand.  
2043  
2044 Mr. Jennings: Good evening. I'm Michael Jennings, an assistant traffic engineer  
2045 with the County. Would you like to hear from Traffic, sir.  
2046  
2047 Mr. Branin: You guys have reviewed this?  
2048  
2049 Mr. Jennings: Yes sir.  
2050  
2051 Mr. Branin: With the density that this project has and the type of development  
2052 it's going to be, does the Traffic Department have any concerns?  
2053  
2054 Mr. Jennings: No sir, we don't. We feel that this development will have minimum  
2055 impact on the traffic. Being a retirement community, most of the traffic that's going to be  
2056 generated during peak times is really going to be staffing. Mr. Hedrick informed me at  
2057 the Civic Association meeting we had that they have shifts and the shifts don't even  
2058 coincide with a.m. and p.m. peak hours. Actually, I felt even more comfortable with the  
2059 traffic generation of the site after talking to him. Pemberton Road is a State Road. I am  
2060 aware that there are concerns about the congestion, especially at the intersection of

2061 Three Chopt and Pemberton Road. VDOT is actually looking into the timing of the  
2062 signals to help with that congestion.  
2063  
2064 Mr. Branin: The existing congestion.  
2065  
2066 Mr. Jennings: Yes sir. We feel this development will have minimum impact on  
2067 the current road conditions.  
2068  
2069 Mr. Branin: Because of the type of development it is.  
2070  
2071 Mr. Jennings: They're going to help the road by widening it in front of their  
2072 development, especially putting turn lanes in.  
2073  
2074 Mr. Branin: Okay. I have no further questions for Traffic.  
2075  
2076 Mr. Archer: Anyone else have questions of Mr. Jennings? All right, thank you  
2077 sir.  
2078  
2079 Mr. Branin: There's one other resident I just want to make some comments to  
2080 and get from. Chris, would you come down here?  
2081  
2082 Mr. Levins: My name is Chris Levins. I live on Minna Drive.  
2083  
2084 Mr. Archer: Good evening, Mr. Levins.  
2085  
2086 Mr. Levins: I'm sorry. I'm Chris Levins and I live on Minna Drive.  
2087  
2088 Mr. Archer: Okay.  
2089  
2090 Mr. Branin: Mr. Levins, when I was out in the community and walking through  
2091 the woods, you broadened my horizon and explained to me, and showed me, how close  
2092 and how level 64 was and you came up with—with the help of your community I'm  
2093 sure—the berm idea. I want you to understand why, because I did agree with that when  
2094 I was there with you. I said, "Yeah, it's a great idea." I don't know if we can get the  
2095 same height with the fence. I think we may be able to accomplish the same task as  
2096 opposed to removing trees. As height issues with the five-story building were brought  
2097 up, my main concern was the density of the vegetation out there. Why remove more to  
2098 go wider instead of going up? You agreed with me that we'd rather go up and not wide.  
2099 Do you feel that this would be something that we will be able to accomplish the same  
2100 task?  
2101  
2102 Mr. Levins: What I would suggest is a combination of the two. Instead of  
2103 having an extremely high berm, have one that's between three and four feet tall and then  
2104 have the fence on top of that. The reason I would state that is because you do need to  
2105 have some sound absorption. If you simply put up a wooden fence to deflect the sound.  
2106 Then you have people on the other side of 64 who are now the recipients of the sound  
2107 that would otherwise go on our side.  
2108  
2109 Mr. Branin: You do understand that we've got the ball rolling on this? The  
2110 have proffered the fence.  
2111

2112 Mr. Levins: Yes.  
2113  
2114 Mr. Branin: We still can move for a berm or some other means to get the  
2115 height up. That sort of thing we will tackle at POD.  
2116  
2117 Mr. Levins: Will the residents be involved in that?  
2118  
2119 Mr. Branin: Absolutely you will.  
2120  
2121 Mr. Levins: Okay. That's the one thing I want to make sure of.  
2122  
2123 Mr. Branin: Yes sir. You'll be informed of what's going on with POD. I'm  
2124 going to ask the owner to have a meeting prior to POD as well.  
2125  
2126 Mr. Levins: That's fine. Thank you.  
2127  
2128 Mr. Branin: Okay? Thank you, sir.  
2129  
2130 Mr. Archer: Sir, are you in opposition?  
2131  
2132 Mr. Hunsicker: I have question.  
2133  
2134 Mr. Archer: Certainly. Could you come up to the microphone please?  
2135  
2136 Mr. Hunsicker: Good evening. My name is Jeff Hunsicker. I live at 9202 Minna  
2137 Drive.  
2138  
2139 Mr. Archer: Good evening, sir.  
2140  
2141 Mr. Hunsicker: There is one question I would like to address dealing with the  
2142 traffic situation that everybody's concerned about. It sounds like the hours they're  
2143 planning on having employees coming in will not be a problem with the traffic, according  
2144 to Traffic. Should those hours be proffered as a condition that limits what hours his  
2145 employees can come in? He could have it right now where they're coming in at 3:00 in  
2146 afternoon. Then as soon as they build the building decide, well, we changed the hours,  
2147 you can come in at 5:00. Then we would have a traffic problem with all these additional  
2148 employees coming in. Should that be something that needs to proffered? Is that going  
2149 to be addressed?  
2150  
2151 Mr. Archer: That's a little unusual.  
2152  
2153 Mr. Branin: I don't think it would need to be proffered. I think I can cover that  
2154 in two seconds. Okay. I'd like to hear from the applicant again. What are your shift work  
2155 hours?  
2156  
2157 Mr. Hedrick: The morning shift is 7 to 3, afternoon shift is 3 to 11, and the night  
2158 shift is 11 to 7. That's pretty much a standard in the healthcare industry, whether it be  
2159 hospital, a nursing home, or a retirement community. It may vary a little bit. It may be 7  
2160 or 7:30 to 3 or 3:30, but that's the typical shift that we see. I would not be comfortable  
2161 making that kind of proffering. The reason being is we are having a hard time, just like  
2162 anybody is, trying to find staff. If I have to say you have to come in between 7 and 3 and

2163 can't allow the flexibility for someone to come in at 8:30 and do a short shift, I think it's  
2164 going to put us in a challenge to try to meet that. That's a wonderful suggestion. I can  
2165 just say by the standard of the industry, this is kind of what everybody does. In trying to  
2166 maintain our staff and provide flexibility, we try to do some off-shift stuff as well.  
2167  
2168 Mr. Branin: How many other locations do you have?  
2169  
2170 Mr. Hedrick: We own 30 different properties.  
2171  
2172 Mr. Branin: Thirty different properties? How are all your shifts run?  
2173  
2174 Mr. Hedrick: Exactly that same way.  
2175  
2176 Mr. Branin: How long have you been in operation?  
2177  
2178 Mr. Hedrick: Twenty-five years.  
2179  
2180 Mr. Branin: Thank you, sir.  
2181  
2182 Mr. Archer: Thank you, Mr. Hedrick. Any other questions from the  
2183 Commission?  
2184  
2185 Ms. O'Bannon: How about bus service?  
2186  
2187 Mr. Hedrick: Are there any other questions you'd like me to respond to?  
2188  
2189 Mr. Branin: I don't have any other.  
2190  
2191 Mr. Archer: Anybody else? Okay.  
2192  
2193 Mr. Hedrick: Thank you very much.  
2194  
2195 Mr. Archer: Okay. We've heard from both sides. We've heard from the  
2196 opposition and we've had our rebuttal time.  
2197  
2198 Mr. Branin: Yes we have.  
2199  
2200 Mr. Archer: I suppose at this point in time, we need to make a decision.  
2201  
2202 Mr. Branin: Mr. Chairman, I feel this case has been a good working case, and  
2203 we've had great input from the community. I think that the owner has worked diligently  
2204 to satisfy a lot of the neighborhood's concerns. I know the two meetings have been  
2205 rough meetings and to see very little opposition is a testament to both the community  
2206 working with the developer and the developer working with the community. I thank both.  
2207 It makes the Planning Commission's job a lot easier. Thank you. Mr. Chairman, I'd like  
2208 to move C-42C-06, James Theobald for Smith Packett Med-Com be forwarded to the  
2209 Board of Supervisors with recommendation for approval.  
2210  
2211 Mr. Jernigan: Second.  
2212

2213 Mr. Archer: Motion by Mr. Branin, seconded Mr. Jernigan. All in favor of the  
2214 motion say aye. Anyone opposed say no. The motion's carried.  
2215  
2216 Mr. Branin: I have one more.  
2217  
2218 Mr. Archer: Okay.  
2219  
2220 Mr. Branin: Mr. Chairman, I'd like to move that Case P-15-06, James  
2221 Theobald for Smith Packett Med-Com be forwarded to the Board of Supervisors with the  
2222 suggested conditions dated September 13<sup>th</sup>, 2006, with recommendation of approval.  
2223  
2224 Mr. Vanarsdall: Second.  
2225  
2226 Mr. Archer: Motion by Mr. Branin, seconded by Mr. Vanarsdall. All in favor of  
2227 the motion say aye. Those opposed say no. The ayes have it, the recommendation is  
2228 approved.  
2229  
2230 Mr. Branin: Ladies and gentleman, again, thank you, and I'll see you at POD  
2231 time.  
2232  
2233 Ms. O'Bannon: I know the Commission thought I was joking about bus service,  
2234 but the Board of Supervisors has requested a review of the bus service in this part of the  
2235 County. I know on Broad Street, that's about where the Broad Street bus ends, at  
2236 Pemberton and Broad, approximately. We are looking into extending the bus service  
2237 either time-wise or location-wise, which would be very appropriate to look at.  
2238  
2239 Mr. Silber: We'll reconvene at 9:00.  
2240  
2241 Mr. Archer: The Planning Commission will reconvene.  
2242  
2243 Mr. Silber: Yes sir.  
2244

2245 **Deferred from the August 10, 2006 Meeting**

2246 **C-44C-06 Andrew Condlin for Kalyan Plaza II, Inc.:** Request to amend  
2247 proffered conditions accepted with Rezoning Case C-43C-05, on Parcel 735-763-7898,  
2248 located on the north line of West Broad Street (U. S. Route 250) approximately 1,650  
2249 feet east of North Gayton Road. The applicant proposes to amend Proffer 13 related to  
2250 use restrictions and square footage and Proffer 15 related to exterior elevations and  
2251 conceptual site plan. The existing zoning is B-2C Business District (Conditional). The  
2252 Land Use Plan recommends Mixed Use. The site is in the West Broad Street Overlay  
2253 District.  
2254

2255 Mr. Archer: Thank you, sir. Is there anybody here who is in opposition to this  
2256 case? I see no opposition, so let's proceed. Ms. Croft?  
2257

2258 Ms. Croft: Thank you, Mr. Chairman. As stated, this case was heard at the  
2259 Planning Commission's meeting in August and deferred for one month. A revised  
2260 elevation drawing and conceptual site plan, as well as revised proffers were received on  
2261 September 11<sup>th</sup> and include the following changes. Proffer 13 would be amended.  
2262 Motor lodges and motels would remain prohibited uses, while hotel uses would be  
2263 permitted. Further, any hotel use would have a maximum of 190 rooms. The proposed

2264 Proffer 17 amendment, increasing the permitted site coverage, has been removed and  
2265 the maximum permitted site coverage would remain at 70% per the proffers from the  
2266 original rezoning case. A revised elevation drawing has been proffered. This elevation  
2267 consists of different types of brick and EIFS, and includes increased façade, roofline,  
2268 and pedestrian level articulation. A large arched window flanked by smaller circular  
2269 windows serves as a focal point, and resembles those elevations proffered with the  
2270 adjacent rezoning case. A conceptual site plan has also been proffered and  
2271 demonstrates how the remaining proffers addressing pedestrian plazas and walkways  
2272 would be met. The site coverage shown on the conceptual plan is 69.96%, which does  
2273 conform to the proffered max of 70%. This property is integral in providing an attractive  
2274 and cohesive development for the area just west of the Short Pump Town Center, as  
2275 designated in the Land Use Plan. A hotel use, if property designed and regulated, would  
2276 be consistent with the goals of the Mixed Use designation and the West Broad Street  
2277 Overlay District. The submitted proffered elevation and conceptual plan provide  
2278 assurances the property would be developed in accordance with these goals and in a  
2279 high quality manner. Therefore, staff does support this request. I'd be happy to answer  
2280 any questions you may have.

2281  
2282 Mr. Archer: Thank you, Ms. Croft. Are there questions from the Commission?  
2283

2284 Mr. Branin: Ms. Croft, will you show me that elevation one more time?  
2285

2286 Ms. Croft: Sure.  
2287

2288 Mr. Branin: That's so much better. I have no further questions for Ms. Croft or  
2289 the applicant.  
2290

2291 Mr. Archer: Anyone else have questions? There's no opposition. Do you need  
2292 to hear from the applicant?  
2293

2294 Mr. Branin: I don't think it's necessary, sir.  
2295

2296 Mr. Archer: He's being paid.  
2297

2298 Mr. Branin: I know. That's exactly why I don't want him to stand up.  
2299

2300 Mr. Branin: I'm trying to do somebody a favor.  
2301

2302 Mr. Archer: All right, go right ahead sir.  
2303

2304 Mr. Branin: Mr. Chairman, with that I'd like to move that Case C-44C-06,  
2305 Andrew Condlin for Kalyan Plaza II, Inc. be forwarded to the Board of Supervisors with a  
2306 recommendation for approval.  
2307

2308 Mr. Jernigan: Second.  
2309

2310 Mr. Archer: Motion by Mr. Branin, second by Mr. Jernigan. All in favor of the  
2311 motion say aye. Opposed say no. The ayes have it, the motion is carried.  
2312 Congratulations, Mr. Condlin.  
2313

2314 **C-48C-06** **Ralph L. Axselle, Jr. for Henrico Doctors Hospital:** Forest  
2315 Campus, LLC: Request to conditionally rezone from R-6 General Residence District to  
2316 O-3C Office District (Conditional), part of Parcel 760-744-1845, containing approximately  
2317 8.85 acres, located on the southeast line of Forest Avenue approximately 1,300 feet  
2318 west of its intersection with Skipwith Road. The applicant proposes an expansion of a  
2319 hospital complex including general hospitals, office buildings with retail and service  
2320 facilities, and child care centers. The use will be controlled by zoning ordinance  
2321 regulations and proffered conditions. The Land Use Plan recommends Multi-Family  
2322 Residential, 6.8 to 19.8 units net density per acre.

2323  
2324 Mr. Archer: All right. Is there opposition to C-48C-06, Henrico Doctor's  
2325 Hospital? I see no opposition. All right. Mr. Tyson again.

2326  
2327 Mr. Tyson: Mr. Chairman, members of the Commission, the applicant is  
2328 proposing this rezoning to build additional hospital buildings, medical offices,  
2329 professional offices, and accessories to those principal uses. The 20/10 Land Use Plan  
2330 recommends multi-family residential. This is actually the site of the existing Honey Tree  
2331 Apartments, a portion of which would be demolished and a hospital building built in its  
2332 place. The applicant has submitted a conceptual plan. It has not been proffered, but it  
2333 has been submitted showing approximate locations of hospital buildings and parking.  
2334 The only remaining issue outstanding was a traffic impact study. The Department of  
2335 Public Works has requested a traffic impact study and it has been submitted. It was  
2336 submitted today. Tim Foster's in the process of reviewing that and believes that with the  
2337 traffic improvements called for in the study right now, the level of service would remain  
2338 essentially the same in the area. He does not believe that it warrants holding this  
2339 request back before the traffic impact study is completely reviewed. Staff recommends  
2340 approval of the request, pending the completion of the analysis of the traffic impact study  
2341 by the Department of Public Works.

2342  
2343 Ms. O'Bannon: There's a signal along there. Where exactly is the signal?

2344  
2345 Unidentified Male: Discovery Drive.

2346  
2347 Mr. Tyson: Discovery is—

2348  
2349 Ms. O'Bannon: Right there, isn't it? Okay. So, there's already a signal light at  
2350 Discovery Drive anyway. Okay.

2351  
2352 Mr. Archer: All right. Any further questions for Mr. Tyson?

2353  
2354 Mr. Branin: Mr. Tyson, you're saying staff would like to have a proffered plan  
2355 and a traffic study.

2356  
2357 Mr. Tyson: Well, the proffered plan was a request. We understand right now  
2358 at this stage of the game, the applicant wasn't able to prepare a conceptual plan or  
2359 elevations. They have committed in the proffers to do that as conditions warrant. The  
2360 traffic impact study has already been submitted to the Department of Public Works and  
2361 is under consideration.

2362  
2363 Mr. Branin: Thank you.

2364

2365 Mr. Condlin: Andy Condlin from Williams Mullen. For the record, if Mr. Axselle  
2366 asks, I saved this case this evening by my presentation.  
2367  
2368 Mr. Condlin: With respect to the traffic aspect of it, Mr. Foster has not  
2369 requested a full-blown report. I don't know the best way to call it. It's more of a focus  
2370 study on specific issues and questions of Mr. Foster. Certainly, he feels comfortable that  
2371 we can address those between now and the Board of Supervisors. As you well know,  
2372 they will be addressed if there's any question. The second thing, with respect to the  
2373 plans, the specific plans in which they get down to the design are not there. They haven't  
2374 approached at this point, but they do have in proffers that the site development will be  
2375 coordinated with the existing campus. Elevations will match the specifics of the buildings  
2376 that are already on the existing campus. Of course, the proffers also provide for  
2377 protecting the edges with the buffers that are on the end. With that, we think that  
2378 certainly gives enough protection. With the staff's comfort level, we hope you approve it  
2379 and recommend it to the Board of Supervisors.  
2380  
2381 Mr. Branin: Mr. Condlin, I'd like to request that you go back to Mr. Axselle and  
2382 tell him that, indeed, you did save his case.  
2383  
2384 Mr. Condlin: I will.  
2385  
2386 Mr. Branin: I recommend that he have his traffic studies prepared before he  
2387 comes again.  
2388  
2389 Mr. Condlin: I've been training him for a number of years.  
2390  
2391 Mr. Condlin: I appreciate that.  
2392  
2393 Mr. Archer: I think you just blew it.  
2394  
2395 Mr. Condlin: I'm sure he will be reading the minutes.  
2396  
2397 Mr. Jernigan: Mr. Condlin, I do have a question, if I may, Mr. Branin. The  
2398 apartment uses, do you know what the timing is for removing the residents from those  
2399 units?  
2400  
2401 Mr. Condlin: Just generally, I think we have about a four-month window of time  
2402 that we're trying to give the folks through their lease renewals to not renew them. Of  
2403 course, that's working with the existing apartments in that. It's about four months.  
2404  
2405 Mr. Jernigan: Four months from now?  
2406  
2407 Mr. Branin: I that underway?  
2408  
2409 Mr. Condlin: I believe that is, yes.  
2410  
2411 Mr. Branin: That's what I heard.  
2412  
2413 Mr. Condlin: I think the apartment complex had already started that process.  
2414 Now that the property's been purchased, they're continuing through the Henrico Doctor's  
2415 organization to not renew leases. Certainly, notices have all been given. We had the



2416 neighborhood meeting where notice was given to all the residents of the entire area. As  
2417 you probably heard, you have a meeting and no one shows up, and that's exactly what  
2418 happened. There didn't seem to be any concern by the single-family residents who  
2419 actually don't touch this, and certainly not by any of the other residents within the  
2420 apartment complex.

2421  
2422 Mr. Branin: Honey Tree is working with the hospital—

2423  
2424 Mr. Condlin: Yes.

2425  
2426 Mr. Branin: —in the relocation. I had also heard that they're allowing people,  
2427 as other unit come available—

2428  
2429 Mr. Condlin: It only benefits them. They've got people right there to fill their  
2430 existing spaces. They've been real good about doing that as well.

2431  
2432 Ms. O'Bannon: I have a general question. I know that some of the apartments  
2433 have been rented by the hospital for like families of long-term care patients. Is that  
2434 going to continue that relationship?

2435  
2436 Mr. Condlin: We have Lisa Valentine and Ron Ducannon and Chris  
2437 [unintelligible] that's here. I'll let them answer that specific question.

2438  
2439 Ms. O'Bannon: She's going to be volunteering this weekend at Henricus Park.  
2440 Saturday is Public Day at Henricus Park, which is the origin of Henrico County. I invite  
2441 all the members of the Planning Commission to come out there and visit with Ms.  
2442 Valentine. You can talk to her this weekend. I'm volunteering also. It's a big celebration  
2443 of Henrico's birthday.

2444  
2445 Ms. Valentine: I can see you're recruiting for more volunteers. I'm Lisa Valentine.  
2446 I'm the Chief Operating Office for Henrico Doctor's Hospital and yes we are working with  
2447 the tenants to transition them out. What was the specific question?

2448  
2449 Ms. O'Bannon: I just know that there's a working relationship with the Honey Tree  
2450 Apartments for a place where families who have long-term care needs or their relative is  
2451 there for an extended period for a transplant or something and they're from out of town.  
2452 I was just curious if you're going to continue your relationship with Honey Tree.

2453  
2454 Ms. Valentine: We're evaluating that. Honey Tree, of course, as Mr. Condlin  
2455 mentioned, has apartments available so we're transitioning the tenants from the existing  
2456 units into those remaining units. We also have arrangements with local hotels at  
2457 discounted rates for families who prefer other options.

2458  
2459 Ms. O'Bannon: Okay. It's just that I hear from folks that they very much  
2460 appreciate that and know of a lot of other activities that are there, so.

2461  
2462 Mr. Archer: Thank you, Ms. Valentine.

2463  
2464 Ms. Valentine: Thank you.

2465  
2466 Mr. Archer: All right. Mr. Branin?

2467  
2468 Mr. Branin: With that, Mr. Chairman, I'd like to move that Case C-48C-06,  
2469 Ralph L. Axelle, Jr. for Henrico Doctor's Hospital, Forest Campus, be forwarded to the  
2470 Board of Supervisors with the recommendation for approval.  
2471  
2472 Mr. Vanarsdall: Second.  
2473  
2474 Mr. Archer: Motion by Mr. Branin, seconded by Mr. Vanarsdall. All in favor of  
2475 the motion say aye. Those opposed say no. The ayes have it, the recommendation is  
2476 approved.  
2477  
2478 Mr. Silber: The only remaining thing on the agenda tonight would be  
2479 consideration of the minutes. These are the minutes from the August 10, 2006 Planning  
2480 Commission hearing.  
2481  
2482 Mr. Archer: Ms. Jones, I believe you considered the minutes, did you not?  
2483  
2484 Ms. Jones: I did and I e-mailed my—  
2485  
2486 Mr. Archer: You did a good a job, too. Thorough job.  
2487  
2488 Ms. Jones: I did e-mail my suggestions so that everyone could either agree or  
2489 disagree with what I found. Those have been submitted.  
2490  
2491 Mr. Archer: We thank you, Ms. Jones. There's no one on this Commission  
2492 who will disagree with your recommendations. May we have a motion for approval?  
2493  
2494 Mr. Vanarsdall: I found something in addition to Ms. Jones.  
2495  
2496 Mr. Archer: You did? A miracle.  
2497  
2498 Mr. Vanarsdall: On page 39, 1942. This is the one that she marked. It says, "We  
2499 have go not." It shouldn't be that at all. It should be, "We have no," instead of, "We've  
2500 got no." What did you say, Bonnie? "We go not, it's not go."  
2501  
2502 Ms. Jones: "We've got no problem."  
2503  
2504 Mr. Vanarsdall: Then on 43, line 2146. It should be, "As shown to staff and shown  
2505 to me," and not, "to myself." You can't show something to yourself. I don't know what  
2506 happened to that. Should be, "me."  
2507  
2508 Mr. Archer: I believe that's what Tommy said.  
2509  
2510 Mr. Branin: I might have.  
2511  
2512 Mr. Archer: "I think by next March you'll have all that shown to staff and shown  
2513 to myself, so when it does go to the Board." "Shown to me when it goes to the Board."  
2514  
2515 Ms. Jones: When I go through the minutes, I go through what are obviously  
2516 typos or whatever. I tell you, if I have to read my own verse in black and white in front of  
2517 me, it becomes a little embarrassing.

2518  
2519 Mr. Archer: I can't imagine you reading all of them.  
2520  
2521 Mr. Jernigan: I get disgusted reading my own minutes.  
2522  
2523 Ms. Jones: The only thing that concerned me was that when Pat and I talk, I  
2524 think sometimes it's hard for them to discern who's talking. We did have some attributed  
2525 discussion to one or the other of us that I know was the other because it specially had to  
2526 do with a case that I wasn't participating in. So, those kinds of things, I think, are the  
2527 substantive things that I like to make sure are changed. The other things are just little,  
2528 typing errors, that's all.  
2529  
2530 Mr. Vanarsdall: I think you have some good meat in here. Cedarfield when to  
2531 Cedarville, and a horse instead of a house. I think that's pretty good.  
2532  
2533 Ms. Jones: Well, okay.  
2534  
2535 Mr. Silber: Are there any other comments?  
2536  
2537 Mr. Archer: All right. Can we get a motion? We have your voice mixed up  
2538 with Pat's.  
2539  
2540 Mr. Jernigan: Wait a minute, one second here. You have my page 2 on line 58.  
2541 On page 28, line 1401, I don't know what I said there, but I know I didn't say that.  
2542 "Which is for you could have market-based apartments."  
2543  
2544 Mr. Archer: What line is that?  
2545  
2546 Mr. Jernigan: 1401. I probably said that you could have market-based  
2547 apartments.  
2548  
2549 Mr. Archer: If Bonnie couldn't figure it out, that's why it wasn't on her paper.  
2550  
2551 Mr. Jernigan: I know I didn't say is was zoned R-5, "which is for you could have  
2552 market-based apartments." I might be bad sometimes, but I'm not that bad.  
2553  
2554 Mr. Archer: This is the one that got me. You said, "You ain't got no more time.  
2555 We're out of time."  
2556  
2557 Unidentified Male: Who said that, [unintelligible]?  
2558  
2559 Mr. Jernigan: I have to see that one.  
2560  
2561 Mr. Silber: Okay. Is there a motion?  
2562  
2563 Mr. Branin: I'd like to make a motion for approval of the minutes from August  
2564 10<sup>th</sup> with the corrections presented this evening.  
2565  
2566 Ms. Jones: Second.  
2567

2568 Mr. Archer: Motion by Mr. Branin, seconded by Ms. Jones and the minutes will  
2569 stand true, unless there's opposition. Is there anything further to bring before the  
2570 Commission, Mr. Secretary?

2571  
2572 Mr. Silber: No sir, there's nothing.  
2573

2574 Mr. Archer: Meeting adjourned at 9:19 p.m.  
2575

2576

2577

~~2578~~

2580

\_\_\_\_\_  
Randall R. Silber, Secretary

2581

2582

2583

~~2584~~

2586

\_\_\_\_\_  
C. W. Archer, CPC, Chairman