

1 Minutes of the work session held at 5:30 p.m. November 10, 2011, in the
2 Planning Department Large Conference Room to review and discuss a revision
3 to the County's Zoning Ordinance to permit Places of Worship in additional
4 Zoning Districts, and the regular monthly meeting of the Planning Commission of
5 the County of Henrico held in the County Administration Building in the
6 Government Center at Parham and Hungary Spring Roads, beginning at 7:00
7 p.m. Thursday, November 10, 2011. Display Notice having been published in the
8 Richmond Times-Dispatch on October 24, 2011 and October 31, 2011.

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

Members Absent. Ms. Jean Moore, Assistant Director of Planning

Also Present Mr. David O'Kelly, Assistant Director of Planning
Mr. James P. Strauss, CLA, Principal Planner
Mr. Benjamin Blankinship, AICP, Principal Planner
Ms. Leslie News, CLA, Principal Planner
Ms. Rosemary Deemer, AICP, County Planner
Mr. Seth Humphreys, County Planner
Mr. Livingston Lewis, County Planner
Mr. Roy Props, County Planner
Ms. Lisa Taylor, County Planner
Mr. Michael Kennedy, County Planner
Ms. Aimee Berndt, AICP, County Planner
Mr. Michael Jennings, Traffic Engineer, Public Works
Ms. Kim Vann, Henrico Police
Ms. Sylvia Ray, Recording Secretary

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

13
14 Mr. Emerson - Thank you Mr. Chairman. As you know, this is a
15 continuation of a work session on the amendments to allow places of worship in
16 additional zoning districts, and also some ancillary issues that arose out of that.
17 And we have done some work on parking. We have quite a bit of information for
18 you tonight. With that I'll turn it over to Ben Blankinship and Aimee Berndt.
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20 Mr. Blankinship - The first part of my presentation is going to look very
21 familiar because you saw it last month. The whole purpose of this amendment is
22 to bring us into compliance with the Religious Land Use and Institutionalized
23 Persons Act. The proposed changes are everywhere we used the term *church*
24 we're changing to *place of worship*. And we're going to allow places of worship
25 as a matter of right in all the zoning districts. There are a couple other places
26 where small changes in the language were necessary to make sure that it's
27 inclusive. The lot area and width in the R District is going to one acre, 150 feet in
28 the A District, two acres and 200 feet.

29
30 I'm going to pass it over to Aimee to add what we have found since last time
31 concerning the parking requirements.
32

33 Ms. Berndt - I'm going to recap quickly what we went over last time
34 and that was that we currently park religious uses at two rates depending on
35 existence of fixed seats. For fixed seats we do one space per four fixed seats
36 applied to primary worship area seats only. And then if there are no fixed seats
37 we apply the assembly rate of one space per 100 square feet.

38
39 This was an example we showed you last time showing that there are a variety of
40 uses within the typical religious building that are not fixed seats or counted
41 towards the parking requirement. We compared the two, the one-per-four fixed
42 seats and the one-per-100 for the non-fixed seats that we currently apply and
43 found that the fixed seat requirement gave a much higher requirement than the
44 one-per-100 we were imposing on other religious uses without fixed seats. This
45 was a chart comparing the two. There's a pretty substantial difference there
46 between the two.

47
48 We attempted to determine a floor area ratio that would apply to the religious
49 uses without fixed seats using a floor-area-based rate. We found that the rate of
50 one space per fifty square feet applied only to the floor area of the primary
51 assembly area yielded the closest requirement to the current requirement that
52 we're imposing, the one-to-four. We did another analysis with twenty-four
53 locations and came up with this comparison much closer than the one-per-100.

54
55 We then looked at occupancy rates based on the request of the Commission. We
56 started looking at the possibility of applying an occupancy-based rate to the
57 parking calculation. We asked Building Inspections to weigh in. They gave us
58 some numbers from the International Building Code that are based on two
59 different situations, one with fixed seats, one without. They also do look at the
60 two differently. In an area with fixed seats they assign seven square feet per
61 occupant. And in an area without fixed seats that same occupant just gets the
62 five square feet of space. That's how they determine the occupancy rate in a
63 building.
64

65 This translates to the parking rate. If you do the math all the way down if you
66 have fixed or none, you could fit fourteen to twenty occupants in this hundred-
67 square-foot area based on occupancy rates done by Building Inspections. We're
68 still getting a range of a much higher amount of people than needing one space.
69 So that same 100-square-foot area based on occupancy would require many
70 more spaces. You would need three and a half or five parking spaces if you were
71 going to assign a parking space for one-per-four occupants. So therefore a two-
72 part occupancy rate would be required to address the presence or absence of
73 fixed seats. It would yield you an even higher requirement per 100 square feet.
74 That would be one per fifty. One per fifty is the same as two per hundred. So
75 both of these occupancy rates require greater than two per hundred at three and
76 half or five, depending on seats.

77
78 I did a very simple example I think that will lay it out

79
80 After looking at this, the occupancy-based parking requirements would
81 significantly increase the amount of parking required for religious uses in
82 comparison to a fixed seat that we use now, one per four. And that's in the
83 majority of cases that it would be substantial

84
85 Also what we found out in speaking with Building Inspections, as we already had
86 previously discussed, is that there are other factors that are involved in
87 determining that occupancy rate other than the square footage. Those are things
88 such as exits, air-handling units, stairways—there are a lot of factors that go into
89 actually determining occupancy rate. And these factors are subject to change
90 after initial plan review; therefore, it would require a much higher level of plans
91 from the applicant at time of plan of development that sometimes they usually
92 don't have available when they're going through the planning process. So this
93 would be a lot of unknowns if you're looking at it through occupancy rates

94
95 This is the one-per-four that we currently apply, compared to the parking by
96 those occupancy rates. It increases it for most of the cases, including the
97 Buddhist temple. That is one non-fixed-seat religious use we have of the twenty-
98 four that we studied. That means that unless our intent was to substantially
99 increase the parking that wouldn't be a good option

100
101 I did a really simple example, a 10,000-square-foot assembly area with 800 fixed
102 seats. Based on that, the one-per-four current requirement required 200 spaces.
103 At the current assembly, one-per-100 applied to the worship area, you only get
104 half as many parking spaces. Applying one-per-fifty, you get the same amount as
105 if you did the one-per-four. And then by occupancy you get a much greater
106 number. This falls in line with some of the twenty-four examples. There was no
107 10,000-square-foot assembly area, but there were several in that range and the
108 seats fell in with that as well

110 Mr. Vanarsdall - Why are we going by worship area only? I think I
111 missed that.

112
113 Ms Berndt - Because traditionally we have only parked the
114 worship area, the primary worship area. We have looked at parking the entire
115 building. You get less defined results based on the variety of the size of the
116 church and the amount of accessory uses that some have over others. Being
117 consistent with the way we've applied it in the past, some religious uses will have
118 more than one assembly area, but we count the primary assembly area
119 assuming they're not having concurrent services.

120
121 Mr. Vanarsdall - A worship area, then they have a Sunday school
122 area, then they have what they call a [audio too low, inaudible] [0:00.00]* all at
123 the same time. You can hardly get a parking space.

124
125 Mr. Archer - Churches now have such huge choir lofts because
126 they have huge choirs.

127
128 Mr. Vanarsdall - Exactly right.

129
130 Mr. Archer - Those people also have to park.

131
132 Mr. Vanarsdall - Yes.

133
134 Mr. Archer - My wife's in the choir, she leaves before I do.

135
136 Ms. Berndt - When we reexamined this after the last work session,
137 we did go back and make sure we included choir lofts and pulpits. Sometimes
138 the choir loft is—they're standing up there. So that was included in the square
139 footage.

140
141 Mrs. Jones - I'm trying to take what we heard about at our religious
142 training and apply it to a reconsideration. If we continue to differentiate any kind
143 of fixed- versus non-fixed seating we are in violation of RLUIPA as I understood
144 it. So we can't differentiate. Because we know we're dealing with non-fixed
145 seating areas then I would think that reverting to an assembly definition is our
146 only option under RLUIPA.

147
148 Ms. Berndt - I believe that's where the attorneys would go with it.
149 We're still getting information from them. We had actually wanted to be a little
150 more flexible than that and we're being told we can't give an option.

151
152 Mrs. Jones - We can't simply put a minimum standard in for
153 assembly uses, take out the definitions of religious institutions, places of worship.
154 Just simply assembly uses, be done with it, and we have no differentiation.
155

156 Mr. Emerson - We wouldn't want to do that because we need to
157 measure other assembly uses differently, such as movie theaters. So what we're
158 doing and what we have done with worship uses is we have always measured
159 just the worship area for parking. The difference being we were doing one space
160 per four seats for fixed seating or one-per-100 for non-fixed seating. What we're
161 trying to do is even up those two and make that equal. But we're supposed to
162 remain at least even or, at best, less restrictive than we are with other assembly
163 uses. This would be less restrictive than other assembly uses. If we measured it
164 at one-to-fifty as we measure other assembly uses, we would be measuring the
165 entire area

166
167 Mrs. Jones - The idea of only including the assembly area and
168 making it one-per-fifty is already giving them a discount.

169
170 Mr. Emerson - I don't disagree with you, Mrs. Jones. My mind went
171 to the same place initially when I was thinking about this, and Ben and I talked
172 about it. It was let's just take churches and places of worship out altogether, it's
173 all assembly. That creates other issues for us, so that's why we're doing it as
174 places of worship and having a different measurement for them.

175
176 Mrs. Jones - When it gets right down to it, you know what, we're
177 going to take a guess. Honestly, we're going to take an educated guess.

178
179 Mr. Blankinship - There is no perfect answer.

180
181 Mrs. Jones - The one thing I picked up from that training is
182 whatever decisions we make we better be able to defend. And that's all we need
183 to worry about at this point.

184
185 Mr. Emerson - You have to have what I call the escape clause which
186 we'll get to in just a minute.

187
188 Ms. Berndt - We're about to get to the recommendations.

189
190 Mr. Vanarsdall - We already know we're going to have to look at each
191 one individually anyway and be careful.

192
193 Mr. Emerson - That's why we need what I'm terming the escape
194 clause. Arnee will go over that with you or Ben will.

195
196 Mr. Blankinship - Options and recommendations. So there are three
197 options that we've really been talking about. Parking based on fixed seats. The
198 problem there is obvious; not every congregation uses fixed seats. Parking
199 based on floor area, the question is do we want to measure just the worship area
200 or do we want to measure the whole building. Based on occupancy limits, we
201 took a good hard look at this. We had a meeting with the building official and the

202 fire marshal. There are too many different factors that don't make sense in the
203 zoning and parking context that we don't think that's really a workable solution.
204 It's an idea that should have been investigated, but having investigated it we just
205 don't think that's going to be the way to go.

206
207 So our recommendation is going to be a requirement of one space per fifty
208 square feet of the primary assembly area only. Then as Joe was just mentioning,
209 we're working with the attorneys right now to come up with language such that if
210 this requirement causes an undue burden on somebody's religious exercise, they
211 can come to us and say this is our problem and we need some kind of
212 accommodation. The Planning Director or possibly you at plan of development
213 time would have the authority to adjust the parking to meet a specific situation
214 just in order to avoid violating RLUIPA.

215
216 Mrs. Jones - When there are two areas used for assembly, as
217 many of these folks have mentioned, are both counted?

218
219 Mr. Blankinship - At this point, no. At this point what we're talking about
220 is just taking the primary area and going with that. We're using the one-per-fifty
221 rather than one-per-100.

222
223 Mr. Einerson - One of the problems we have with changing our
224 parking regulations too much right now is there is a domino effect. We do need to
225 examine it as a whole. You've heard me talk and talk and talk about the overall
226 assessment of the Zoning Ordinance which, of course, is where we'll examine all
227 the pros and cons, issues of the ordinance. Hopefully after that we'll do some
228 amendments through ordinance or craft a new one. We will begin that hopefully
229 around the first of the year. Ben has been working on a schedule for that and I
230 think we're very close to the point where I can sign it. So hopefully we'll be
231 kicking that off around January 1st or shortly thereafter. So this is one of the
232 things, among others, that we need to look at in our ordinance to determine what
233 we need to do, where it's falling short, or where it's too much. Those are the
234 things we have to look at. And it has to be a holistic look, it can't be just a
235 singular microscopic look into one area. What we're trying to do right now is just
236 kind of do a patch-the-tire, fix that right now, and then come back and buy a new
237 tire later.

238
239 Mr. Vanarsdall - When do you think the attorney's office will get back
240 with you?

241
242 Mr. Emerson - I hope we'll have it within the next few weeks because
243 we're recommending that you hold another public hearing December 8th.

244
245 Mr. Vanarsdall - Yes, I was going to say we should have another one.

246

247 Mr. Emerson - I think we're ready. I think with the number of changes
248 that we're talking about, even though you didn't have anyone interested in the
249 original ordinance, it would be wise to go ahead and hold another public hearing.
250 At least that way you've gone through the process. You may not get any
251 comments, but we're out there. And we would hope that within the next two
252 weeks that we'd have the criteria settled with the attorney's office. And it may not
253 even be something that we codify; it may just be an internal memorandum from
254 the attorney's office to me. And we'll just have language in the code allowing for
255 consideration of a specialized hardship such as the orthodox Jewish community
256 that you hear about that they don't drive on the Sabbath and do they need a lot of
257 parking. So that will allow you to consider those types of issues and grant relief in
258 those cases. That's what we're looking for. Ben and I have met with Mr. Hart. I
259 don't know if you know Jason Hart, he's one of our new attorneys upstairs. And
260 Tom Tokarz. I guess around lunchtime, didn't we, Ben?

261
262 Mr. Blankinship - Yes.

263
264 Mr. Emerson - And we got into this discussion a little bit. So hopefully
265 within the next week or two we'll have that.

266
267 Mrs. Jones - Can I make a comment? One of the things that I
268 thought was really important on that previous slide was to take a hard look at
269 opportunities for places of worship to have shared parking. We don't want to
270 cover more land than we need to with asphalt. You know all of us are in favor of
271 trying to be judicious with that kind of thing. So I would like to underscore the fact
272 that I think we have some solutions in that aspect that we haven't necessarily
273 worked over as well as we should in the past.

274
275 Secondly, since we had special training I have a couple of questions real quickly
276 to just ask so that I understand. What is the definition of a religious institution
277 according to RLUIPA? Can I be the Church of God Bonnie Leigh? How do you
278 determine that? Are they registered somewhere? Do you have to have some
279 qualifications to be a religious institution?

280
281 Mr. Emerson - I'm not so sure I can even answer that question
282 because I think it is kind of broad. Within staff we've kind of had that question
283 too. Ben, do you have any comment?

284
285 Mr. Blankinship - They did give the example in the training of Psychic
286 Sophie who claimed to be a religious use and they found that she was not.

287
288 Mrs. Jones - But that was for a different problem.

289
290 Mr. Blankinship - If there is any real question in your mind, I think we're
291 going to come down on the side that this is a religious use.

292

293 Mrs. Jones - Okay.

294

295 Mr. Archer - Excuse me. Before we go on, there is no
 296 established—

297

298 Mrs. Jones - But that's just five people or twenty people

299

300 Mr. Blankinship - The other thing I kept hearing in training was the
 301 answer to every question began, "Well some judges would say " Really we're
 302 just predicting what a judge would rule on a specific issue

303

304 Mr. Emerson - There is not a lot of case law out there, which is what
 305 I think we ran into with the decision that the County made that has us
 306 reexamining this I don't know that the County—I still think the County's decision
 307 was correct in terms of its documents and things that it had in place. And I think
 308 you can argue that both ways. Unfortunately as we got into it there wasn't any
 309 case law and we didn't particularly want to be the ones that made it. And when
 310 we looked at parking and talked to people about how they were doing parking
 311 whether fixed or non-fixed—I think I shared this with you last time. We're very
 312 consistent with everyone on the fixed seating. Everybody was either one-to-four
 313 or one-to-five on fixed seating. When we asked them about how they calculated
 314 non-fixed they were all over the place, which just tells me they're just waiting for
 315 someone to come—

316

317 Mrs. Jones - They're waiting

318

319 Mr. Emerson - At some point someone's going to venture into court
 320 and a lot of this will get defined for us

321

322 Mrs. Jones - Very quickly. The big point that kept coming up was if
 323 you could have given two or three other alternatives. Well, not only was that the
 324 case, but the burden of proof, if you will, of the incentivizing I think is all
 325 backwards. But my understanding—and I just want you to tell me if I understand
 326 this right—is that even with two or three alternatives that are suitable in many
 327 comparable ways, if they are awkward to an applicant such as the case we had,
 328 their refusal to accept them does not take away our burden to supply them or our
 329 burden to keep looking?

330

331 Mr. Emerson - I wasn't totally clear on that. I attended your session.
 332 It seemed like they sort of danced around that a little bit. It's another one of those
 333 things where they're not really sure. What I heard was if there are ample
 334 available locations then it almost seemed like value or cost really wasn't
 335 necessarily a determining factor, at least as I understood it from the UVA
 336 professor. But they kept going back and forth so much I'm a little confused on
 337 that as well. We can get the attorney back down here to talk to us about some of
 338 these questions if you'd like.

339
340 Mrs. Jones - Oh, I don't think I need that
341
342 Mr. Emerson - I think it's a very good question, but I don't know that
343 you're going to get an answer
344
345 Mrs. Jones - I just wanted to make sure that I had heard what I'd
346 heard, and understood it to the level I did.
347
348 Mr. Vanarsdall - Give us an example of what you're talking about
349
350 Mrs. Jones - If we have a church coming that wants to establish—
351 excuse me—a place of worship that wants to establish a mosque in an area that
352 conflicts with the Comprehensive Plan, and several other locations are presented
353 to them as alternatives that might be better fits for the Comprehensive Plan. They
354 have no duty to accept those, obviously. And we're the ones carrying the burden
355 to make them happy, in essence. As I understand it
356
357 Mr. Emerson - What I kept hearing them say was work with them as
358 much as you can.
359
360 Mr. Branin - I kept asking about burden. And then I said so we will
361 still have to go to court and defend ourselves in regards to not meeting their
362 needs and necessities. After the meeting when I spoke to the attorney he said
363 yes. And I said so no matter where we take this, we'll end up in court using
364 taxpayer dollars to defend ourselves. So we're guilty until proven innocent.
365
366 Mr. Emerson - Basically
367
368 Mr. Vanarsdall - Yes
369
370 Mr. Branin - So the answer is always yes.
371
372 Mr. Emerson - That's what I came away with
373
374 Mrs. Jones - And that was my third point here. Anything I couldn't
375 think of anything that we have in our restrictions, our ordinances—whether it's
376 even in the Visions. Objectives whatever it is that couldn't be interpreted as a
377 burden.
378
379 Mr. Branin - From lighting to landscaping to everything
380
381 Mrs. Jones - So unless I've misunderstood that—
382
383 Mr. Branin - Just say yes
384

384 Mr. Jernigan - As they said we talked about parking, if they can't put
386 that in you have to negotiate a number

387

388 Mr. Emerson - Right. I like the way they kept saying you had to
389 negotiate something, but yet your code doesn't—you can't negotiate the level of
390 the Code; you don't have that authority. Yet he was telling us we had to do that,
391 but you can't. That's what is really confusing

392

393 Mr. Vanarsdall - If we had a PA system that was annoying to people
394 who lived around the mosque or other place of worship then they'd jump up and
395 down over that if they said they didn't want it, and they said we do

396

397 Mr. Branin - Noise ordinance doesn't pertain to any place of
398 worship.

399

400 Mr. Archer - At one time we had a proffer, I believe that indicated
401 the noise level would be thus-and-such at the property line.

402

403 Mr. Branin - That's a burden.

404

405 Mr. Vanarsdall - That would never work. Who's going to stand at the
406 property line and listen to it

407

408 Mr. Archer - But at least we had something in place so that I guess
409 if a complaint came up we'd have something to fall back on.

410

411 Mr. Blankinship - Staff does go out to Snag-a-job Pavilion with noise
412 meters and check to make sure that it was below sixty-five.

413

414 Mr. Emerson - We could check it, but I honestly don't believe a
415 proffer like that would be—

416

417 Mr. Blankinship - Whether it would be enforceable—

418

419 Mrs. Jones - Makes everybody feel good, though

420

421 Mr. Vanarsdall - Do churches still ring bells?

422

423 Mr. Blankinship - Some do.

424

425 Mr. Emerson - Some are electronic

426

427 Mrs. Jones - Well thank you for the answers.

428

429 Mr. Jernigan - You're building two churches, both of them 10,000
430 square feet. You make one put in a hundred parking places, the other put in

431 seventy-five, you're leaving yourself open there for litigation because you're not
432 being fair between the two churches

433

434 Mr. Emerson - Absolutely.

435

436 Mr Blankinship - That's the main thing we're trying to get away from
437 here. Make sure all different places of worship are measured the same.

438

439 Mr. Jernigan - I'm going to argue for one per fifty square feet

440

441 Mrs Jones - I think it's the best of our options

442

443 Mr Jernigan - What I'm saying is even if you come up with a hard
444 number if they say they can't do it, you still have to work off of that

445

446 Mr Emerson - Right And we're going to try to come up with some
447 guidance of some sort with the attorneys to assist in that. But I agree with you
448 Ray. It's difficult if you have one group you just approved. They needed a
449 hundred spaces and they gave it And then the same size right down the street
450 for some reason determines and comes in with an argument that they need to go
451 in with twenty or thirty less, and you let them go in with twenty or thirty less, was
452 that necessarily fair to the group that came in front of them It's very difficult It's
453 very slippery ground I think And I don't have an answer for you on this because
454 it seems to be something that we have to address as we move along

455

456 Mr Vanarsdall - I think this is a good start

457

458 Mr Emerson - We'll just have to deal with it as we move along
459 That's all I can tell you.

460

461 Mr. Jernigan - Staff has done a great job on this, but we shouldn't
462 have to even argue about this, that's the main thing right there I mean it is what
463 it is. All the places of worship we've had before went by the code and that was it.
464 We didn't have a problem before.

465

466 Mr. Emerson - Since we don't have too many places of worship
467 anyway, my guess is it's not going to be that large of an issue for us, except
468 when you get like a Third Presbyterian that is expanding in a neighborhood
469 where the neighborhoods wrap around that. You're always going to have that.
470 That could be a church or any other type of establishment that's going to
471 generate that kind of discussion Most people find with your mainline
472 denominational church, they're out in green fields and generally buy enough land
473 to accommodate themselves for the purpose of what they're going out there for.

474

475 Mr Jernigan - They may have enough property but do they want to
476 put the spaces in

477
478 Mr. Emerson - Well that's another thing.
479
480 Mr. Archer - I know this sounds a little stupid, but is there any rule
481 that says parking spaces have to be paved or gravel?
482
483 Mr. Emerson - Yes
484
485 Mr. Archer - And the reason I'm asking this is because if the
486 church has property off to the side I'm sure that on Sunday they are parked there
487 anyway. But there is no provision so they can claim that as parking?
488
489 Mr. Emerson - That might be something you might consider under a
490 specialized allowance. What are our requirements on paving, Dave?
491
492 Mr. O'Kelly - Six or more spaces or within 200 feet of an R District
493
494 Mrs. Jones - Tell me that again?
495
496 Mr. O'Kelly - Public parking is required to be paved with six or
497 more spaces or if it is within 200 feet of an R District.
498
499 Mrs. Jones - Okay.
500
501 Mr. Jernigan - Blessings Church that I have in the East End in
502 Varina. They expanded, we approved it. They've got an ample amount of parking
503 spaces. And they've had so many people join that they're parking in the street,
504 they're parking in the neighborhood. The police have come and told them they
505 have to move the cars. They bought property behind them to put more parking.
506 Unfortunately there is a ditch running through there which is deeded as an RPA.
507 It doesn't run along the side, it runs right through the middle. So you have a
508 hundred feet on this side and a hundred feet on this side that you can't use. And
509 it literally has taken away the parking ability. Plus it's within 200 feet of a
510 residence. The area that you could park is minimal. They're willing to pave it, but
511 the RPA got turned down.
512
513 Mr. Vanarsdall - Put a footbridge across it.
514
515 Mr. Archer - I guess ultimately, as Joe said, we're not going to
516 have this many. And in listening to the RLUIPA training, it seems like the ultimate
517 decision all depends on how a particular judge feels on a particular day. So
518 they're kind of ambiguous to what they gave us too. I don't think we could ever
519 come up with a total solution for this.
520
521 Mr. Emerson - No, we can't.
522

525 Mrs. Jones - My guess is we will have parking that in some cases
524 is woefully inadequate and in some cases is more than they need and I don't
525 know how to get around it.

526
527 Mr. Emerson - One interesting thing we found in the analysis was—
528 and this was looking at the occupancy—some of the larger churches that have
529 tried to accommodate were very close to the calculations we're coming up with
530 based on their occupancy. Their parking spaces were very close to that number,
531 within just a few. And those were for like Mount Vernon and St. Paul's. What
532 were the other ones, Aimee? There were a couple that were really close on the
533 numbers. They were providing beyond what we currently require. They did that
534 because obviously they have large congregations. But when using the
535 occupancy numbers they were coming out very close.

536
537 Ms. Berndt - Faith Landmark, St. Paul's, Mount Vernon on
538 Nuckols Grove Avenue

539
540 Mr. Emerson - So I think it depends on a particular church and how
541 they approach

542
543 Mr. Archer - I think we also have to consider we can use extreme
544 examples all the time. When St. Paul's first opened, for about three or four
545 months there were complaints that everyone was parking in driveways. At that
546 time they were shuttling from the shopping center. But eventually as the newness
547 wore off, I think the parking now fits. But it was a mess for a while.

548
549 Mr. O'Kelly - Parking requirements in our ordinance are minimum
550 standards. When you say on the POD we have a condition that addresses that,
551 indicating that sufficient parking shall be provided and if the parking proves
552 insufficient, additional parking may be required.

553
554 Mrs. Jones - You give it a good faith effort

555
556 Mr. Archer - Any other questions we need to bring up?

557
558 Mr. Jemigan - Only one thing. We probably won't have that many of
559 the cases. You're putting a lot of work into it but I don't think it's going to be
560 something that's going to be popping up every year.

561
562 Mr. Blankinship - If we do go to court, we have good documentation of
563 where we came up with it

564
565 Mrs. Jones - Defensible

566
567 Mr. Jemigan - Take your best shot at it.

568

569 Mr Archer - I'd like to compliment staff and especially Ms Berndt
570 and Mr Blankinship. We had you all go back to the drawing board several times
571 and each time you came back with something new. You did your job well, I think.
572

573 Mrs. Jones - Thank you.

574

575 Mr. Archer - Okay. Is there anything else?

576

577 Mr. Emerson - No, Mr. Chairman. I don't have anything unless the
578 Commission has anything they'd like to discuss. This parking issue. I gave you
579 information on it. That's going to come up tonight on a Provisional Use Permit.
580 And we'll be prepared to respond. The attorneys for both parties are going to
581 jump right in the middle of it, so we're probably going to hear a lot from both. It's
582 clean from our ordinance standpoint, it's ready to move forward. I think if you
583 were to defer it you only—

584

585 Mr. Vanarsdall - We'd be right back where we are tonight.

586

587 Mr. Emerson - We probably need a motion on the public hearing
588 either that or we can do it downstairs.

589

590 Mr. Archer - Anyone want to make a motion on the public hearing
591 for December 8th?

592

593 Mr. Jernigan - I so move.

594

595 Mrs. Jones - Second.

596

597 Mr. Vanarsdall - I make a motion that we set it on December the 8th at
598 the head of the regular meeting.

599

600 Mrs. Jones - First on the agenda?

601

602 Mr. Emerson - You want to do it at 8:30 on December the 8th? We
603 could do that.

604

605 Mrs. Jones - We had a problem one time scheduling a public
606 hearing for 6:30 and everyone got confused about 7.

607

608 Mr. Vanarsdall - Why don't you do it at seven?

609

610 Mrs. Jones - This is not going to be people knocking down the
611 walls to get in.

612

613 Mr. Emerson - We'll put it on the regular agenda. Seven o'clock it is.

614

615 Mr. Archer - We'll reconvene downstairs.

616

617 **WORK SESSION ADJOURNS IN ORDER TO RECONVENE FOR THE**
618 **REGULAR PUBLIC HEARING.**

619

620 **THE PLANNING COMMISSION RECONVENED AT 7:02 P.M.**

621

622 Mr Archer - The Planning Commission will come to order Good
623 evening everyone Welcome to the November 10, 2011 Rezoning meeting To
624 begin, let us stand and pledge allegiance to the flag

625

626 Thank you. I'd like to remind everyone to turn off or mute your cell phones so that
627 the meeting won't be disturbed. I'd like to welcome Mrs Patricia O'Bannon who
628 is the representative from the Board of Supervisors Any news media present?
629 Okay With that I will turn things over to our secretary, Mr Emerson

630

631 Mr. Emerson - Thank you, Mr Chairman I will note before we get
632 into the agenda that the Commission did hold a work session at 5:30 p.m. this
633 evening in the large conference room in the Planning Department and discussed
634 revisions to the County's Zoning Ordinance regarding places of worship and
635 related regulations such as lot size and parking regulations You have reviewed
636 and plan on holding a public hearing on that proposed ordinance on December
637 8th at 7 p.m.

638

639 With that, Mr Chairman the first item on our agenda is Requests for Withdrawals
640 and Deferrals Unless the Commission has any deferrals there are no
641 withdrawals or deferrals this evening.

642

643 That takes us to Requests for Expedited Items There is one and that will be
644 presented by Mr Jim Strauss.

645

646 Mr. Archer - Good evening Mr Strauss How are you sir?

647

648 Mr. Strauss - Good evening members of the Commission. We have
649 one expedited case this evening in the Three Chopt District It's on page one of
650 the agenda. This is C-17C-11, University Park Investment, LLC and University
651 Park HLH, LLC It's a request to amend proffered conditions accepted with
652 rezoning case C-42C-06. The applicant proposes to amend Proffer 21 regarding
653 transportation improvements Specifically, the applicant would like to defer
654 construction of improvements to Pemberton Road until the second phase of the
655 project and staff is recommending approval

656

657 **C-17C-11 Hunter D. Smith for University Park RE INV,**
658 **LLC and University Park HLH INV, LLC: Request to amend proffered**
659 **conditions accepted with Rezoning Case C-42C-06 on Parcels 753-754-0908**
660 **752-753-0071 and 752-753-4706 located on the east line of Pemberton Road**

661 (State Route 157) immediately south of Interstate 84. The applicant proposes to
662 amend Proffer 21 regarding transportation improvements. The existing zoning is
663 R-6C General Residence District (Conditional). The 2026 Comprehensive Plan
664 recommends Semi-Public and Environmental Protection Area

665
666 Mr. Archer - Thank you, Mr. Strauss. Is there anyone here who is
667 opposed to C-17C-11, Hunter D. Smith for University Park RE INV, LLC and
668 University Park HLH INV, LLC? No opposition Mr. Branin?

669
670 Mr. Branin - Mr. Chairman, before I go forward any further, is the
671 applicant in the room? Can I see you for one minute, please?

672
673 Mr. Archer - Please identify yourself for the record if you would, sir.

674
675 Mr. Loffis - Rob Loffis representing Smith/Parcel.

676
677 Mr. Branin - Mr. Loffis, in our community meeting we found out
678 that there were some issues with some downed trees from the hurricane. Have
679 you addressed that?

680
681 Mr. Loffis - Yes we have. We have a contractor who will be on
682 site tomorrow to take care of that.

683
684 Mr. Branin - We will proceed forward. Thank you so much, Mr.
685 Loffis.

686
687 Mr. Loffis - Thank you.

688
689 Mr. Branin - Okay, Mr. Chairman, I'd like to move that C-17C-11,
690 Hunter D. Smith for University Park RE INV, LLC and University Park HLH INV,
691 LLC, proceed forward on the expedited agenda.

692
693 Mr. Jernigan - Second.

694
695 Mr. Archer - Motion by Mr. Branin, seconded by Mr. Jernigan. All
696 in favor of the motion say aye. All opposed say no. The ayes have it, the motion
697 passes.

698
699 **REASON:** Acting on a motion by Mr. Branin, seconded by Mr.
700 Jernigan, the Planning Commission voted 5-0 (one abstention) to recommend
701 the Board of Supervisors grant the request because the changes do not greatly
702 reduce the original intended purpose of the proffers and the proffers would
703 continue to assure a quality form of development with a maximum protection
704 afforded to adjacent properties.
705

706 Mr. Emerson - Mr. Chairman, that now takes us to page one of your
707 regular agenda

708
709 **P-12-11 James W. Theobald and J. Thomas O'Brien, Jr.**
710 **for RMA/Hunton, L.C.:** Request for a Provisional Use Permit under Sections
711 24-58.2(d), 24-120, and 24-122.1 of the County Code in order to allow outside
712 dining for a restaurant (Hondos) on part of Parcel 748-761-5133, located at the
713 northwest intersection of Cox Road and Innslake Drive. The existing zoning is B-
714 2C Business District (Conditional). The 2026 Comprehensive Plan recommends
715 Urban Mixed-Use. The staff report will be presented by Ms. Lisa Taylor

716
717 Mr Archer - Thank you, Mr. Secretary. Is there anyone present
718 who is opposed to this case, P-12-11, James W Theobald and J Thomas
719 O'Brien, Jr , for RMA/Hunton, LC? We do have opposition. Okay. thank you. Go
720 ahead, Ms Taylor

721
722 Ms. Taylor - Thank you, Mr. Chairman

723
724 This request would allow Hondos, an existing restaurant within Innsbrook
725 Shoppes—formerly Lakepointe Shopping Center—to operate an outdoor dining
726 area at its proposed new location also located within the same shopping center.
727 The site is zoned B-2C and governed by proffers accepted with rezoning case C-
728 76C-87. The 2026 Comprehensive Plan recommends Urban Mixed Use for the
729 property. The proposed outdoor dining area would be consistent with this
730 designation.

731
732 The proposed outdoor dining area totals 770 square feet with fifty seats and
733 would be located along the southern exterior wall of the proposed restaurant. The
734 applicant has submitted exhibits of two possible outdoor dining enclosures as
735 seen here. Both options illustrate the same size and location. Option A shows a
736 tiled planter bed enclosure, while Option B illustrates a metal railing enclosure.
737 Staff recommends that either enclosure be limited to a height of forty-two inches.
738 Condition #4 recommended in the staff report addresses this concern.

739
740 The construction of the outdoor dining facility would result in the removal of eight
741 parking spaces. However, the subject property would be able to accommodate
742 this parking reduction.

743
744 Staff believes operating the outdoor dining area until 10 p.m. would be consistent
745 with previously approved outdoor dining PUPs and recommends Condition #1,
746 which limits the hours of operation for outdoor dining to no later than 10 p.m.
747 However, the applicant has requested the outdoor dining area remain in
748 operation until 11 p.m., but would not seat customers after 9:30 p.m.

749
750 The proposed conditions in the staff report are similar to previously approved
751 Provisional Use Permits for outdoor dining in the area. Staff recommends

752 approval of this request subject to the conditions stated in the staff report. This
753 concludes my presentation. I will be happy to answer any questions

754
755 Mr. Archer - Thank you, ma'am. Are there questions for Ms. Taylor
756 from the Commission?

757
758 Mr. Branin - The only question I had, Ms. Taylor, was the outdoor
759 dining. They did put a condition to limit seating to 8:30?

760
761 Ms. Taylor - That's what they would like to do if they were allowed
762 to stay open until 11 p.m.

763
764 Mr. Emerson - Mr. Branin, that would be a condition you would apply

765
766 Mr. Vanarsdall - They would stop serving customers at 10:30.

767
768 Ms. Taylor - At 9:30, sir

769
770 Mr. Jernigan - Seating

771
772 Ms. Taylor - Seating at 9:30 if allowed to close at 11.

773
774 Mr. Archer - Any other questions? Mr. Branin, you need to hear
775 from the applicant, I assume?

776
777 Mr. Branin - I'd rather hear the opposition before we get to the
778 applicant

779
780 Mr. Archer - All right. Thank you, sir. Will the opposition please
781 come forward. Mr. Secretary would you give the rules?

782
783 Mr. Emerson - Yes, sir. I will. On public hearings the Planning
784 Commission does have rules and regulations and they are as follows. The
785 applicant is allowed ten minutes to present the request and time may be reserved
786 for responses to testimony. Opposition is allowed ten minutes to present its
787 concerns. Commission questions do not count into the time limits and the
788 Commission may waive time limits for either party at its own discretion.

789
790 Mr. Archer - Thank you, sir. Good evening, Mr. Condlin

791
792 Mr. Condlin - Good evening, Mr. Archer.

793
794 Members of the Commission: Mr. Chairman, Mr. Emerson, my name is Andy
795 Condlin from Williams Mullen. I'm here representing Aleck Lake Poinle Partners,
796 LLC, which is not Mr. Aleck and that really gets confusing after this. This is the
797 easiest it'll be I think after this point.

798

799 I was engaged by Mr. Gunst to do an independent analysis. He said, I would like
800 you to take a look at this property. He asked me to dig as deep as I could and
801 give him my opinion.

802

803 Mr. Branin - Mr. Condlin, are you representing Mr. Gunst or are
804 you just a consultant on your opinion?

805

806 Mr. Condlin - I am representing Atack Lake Pointe Partners, LLC,
807 which is the owner of the Shoppes at Innsbrook

808

809 What we have done in the last few days, we have put together as much
810 information—we're still missing many of the POD's that we have not been able to
811 get together. The County has been great to work with in trying to put all this
812 together, and we're still looking at everything. I sent to you a seven-page letter.
813 Based on the facts that have been presented to me—and I know some of it has
814 been a little confusing. The hotels that are in the back of the shops, the subject
815 property here, I'm still a little confused as to whether one hotel is part of the
816 shopping center. Mr. Emerson's response letter said that there is one hotel that is
817 part of the shopping center, I believe the other is not, yet the staff report says
818 something different. The end result is the facts that I set forth in my letter. I still
819 stand behind.

820

821 I did want to clarify that I'm not here against Mr. Atack. I'm not going to take on
822 Mr. O'Brien and the County lightly; I don't do that. We're not against this
823 restaurant; we're not against the outdoor dining. We're not against the hours. We
824 think it'll be a great use, a great benefit to the shopping center. What we are
825 against is the parking, the lack of parking and the way that the parking has been
826 calculated by the County.

827

828 I'll sit down right now if they can provide a parking easement for cross parking
829 across the shopping center. I can dispense with my entire letter if there's a
830 condition that's imposed upon this PUP that says that before you take out eight
831 additional spaces you need to provide evidence to the County that you have
832 legitimate legal parking rights over and across the shopping center for which
833 you're taking credit for. If that can happen, we're happy, we're happy with that.
834 But I have got four points. I'm going to condense my seven-page letter into four
835 points.

836

837 Lake Pointe Partners versus Innsbrook Corporation. I have Mr. Emerson's letter;
838 he and I are going to agree to disagree. The fact that Mr. Gunst had signatory
839 authority for both Lake Pointe Partners and Innsbrook Corporation and only signs
840 for one does not bind the other. The POD that approved what they call the
841 Whitlock Building, what I've been calling the Hondos Building, the POD that
842 approved this was never signed and never consented to by the owner of this
843 shopping center. These two entities did business together. One was a partner—

844 one of the partners of the other, but they didn't sign and didn't compel parking to
845 be placed on the shopping center on the Shoppes at Innsbrook from this. Now
846 the POD reads that way. The minutes read that way, but Lake Pointe Partners,
847 who is the owner of the Shoppes, never consented to the use of its parking. It
848 never consented to allow for the Whitlock Building, the subject property, to be
849 made part of the shopping center.

850
851 An application itself by the owner of the Whitlock Building cannot be a claim for a
852 shopping center. I cannot build a property next to Short Pump Town Center and
853 say they've got excess property. I want to be made part of the shopping center.
854 Short Pump Town Center has to consent. The Shoppes at Innsbrook had to have
855 consented and the owner, in my opinion, never consented to that.

856
857 Mr. Emerson's letter specifically references the fact that the POD was only
858 signed for by the Innsbrook Corporation, the owner of that lot. The owner of the
859 Shoppes at Innsbrook never consented to the use of their property for the
860 shopping center to include the Whitlock Property. And I could be wrong. I've seen
861 nothing on the signature block. And if I am wrong—which I could be, don't think I
862 am—they don't have any legal rights to use the parking on the Shoppes, the
863 Wells Fargo building right next door, and the two hotels.

864
865 We did a little search, Mr. O'Brien. I will be happy to give you one if you want one
866 and we have a title letter that says there is absolutely no cross parking. And I
867 guess that's my real concern here from the standpoint if they don't have any
868 cross-parking rights—if the only parking rights they have are on their parcel
869 alone. How can the County say we calculate your parking based on the shopping
870 center using these parking spots over here that you have no legal right to use.
871 We know they have no legal right to use them. And if you can't use them, how do
872 you get credit for them? The grant of the POD does not grant a legal right for
873 cross parking. The POD can't usurp private property rights. The County can't
874 grant those private property rights. If you can't grant the legal right to park, yet
875 the County says it does by pursuant to the approval of the POD, isn't that a
876 taking? Isn't that taking property rights from one property owner and giving it to
877 the other? And if you say you can't create those private property rights and
878 create the legal right to parking, then how do they get credit for it? How do you
879 get credit for parking that you can't use?

880
881 By my calculations using this 15,000-square-foot restaurant, they're going to
882 need 150-some parking spaces, yet they only have 50-some. And if you take the
883 County's argument to its logical conclusion, they don't need any parking on their
884 property at all, they can use all of our property because Attack Lake Pointe
885 Partners has gone through and paid for its own parking, has paid to improve its
886 own parking, has paid to maintain its parking. And yet they're seemingly having
887 to give benefit to this property. That doesn't seem right, it was never consented
888 to. It doesn't seem right when there's no specific easement granting the rights
889 over this.

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And this has been said to be a civil matter between the private property owners. But the reality is the County was included as a party when they went ahead and granted the POD and designated it as a shopping center. The County is a party and is involved, and when they take away eight spaces and are about a hundred spots in deficit as far as the parking goes, then that's a problem that the County's involved with.

The third point I'd like to point out is that this is just a practical problem. Forget all the legal nuances. The fact that they are a hundred spaces short, 1 space per 100 square feet versus the 1 for 250 square feet, forget all of that. Forget the corporate law; forget the real estate law, forget the land use law. This is going to cause a ripple effect. If they, in essence, by the County's own code say for a restaurant you need 1 for 100, people are going to park on Wells Fargo; they're going to park on the hotel. The Shoppes are not even contiguous to it, but it's going to have a ripple effect.

The POD for the Shoppes itself specifically said under Condition 31 that you have to provide for evidence of a joint ingress/egress and parking agreement. That applies to the Shoppes in this corner piece. If they're going to take credit for and count these particular spaces, I think they have to abide by that condition that's on those spaces, and that condition says you have to give a joint access agreement and a joint parking agreement before you get a CO. If they don't, they're in violation of that specific condition that applies to those parking lots.

The definition of a shopping center, in fact, under the B-2 for the Community Shopping Center, specifically says a shopping center shall consist of not more than forty acres and include common parking. If they don't have common parking rights, aren't they, in fact, not a shopping center? Everybody else has common parking rights, but they don't. That means they're not a shopping center. Every POD that I've ever had approved with the County of Henrico has a common provision that says sufficient and effective usable parking shall be provided. I don't think they're going to have effective and sufficient usable parking. They don't have usable parking. The Code specifically provides for neighborhood and community shopping centers, but all parking spaces must be effectively usable as to location and layout.

I can go on, on a number of occasions, including the PUP requirements under the B-2 provisions specifically require for outside dining for restaurants provided the location and arrangement will not adversely affect adjacent property or uses. And then it's specifically enumerated under the PUP provisions that you must find that the public health, safety, morals, and general welfare will not be adversely affected and that adequate utilities and adequate off-street parking facilities will be provided. That's in your code. In order to pass a PUP, you have to provide for off-street parking. This is specifically enumerated in the code, but it's not specifically enumerated and provided for by this property. And this is not a

936 sour grapes issue where we're losing a tenant, this is going to be good for the
937 center. I think staff has two letters from Wells Fargo and Hilton Gardens that
938 object to this and are concerned about the parking.

939
940 I put all that basis and I'll get to my last point. Forget all of that. I'm just asking for
941 a deferral. I'm just asking for a thirty-day deferral. I'm not sure what the hurry-up
942 is; I'm not sure what the necessary items are. I've appeared before you in the last
943 four months on a few cases, and there have been issues and we've deferred
944 those. I have issues on this case. I have questions. I have issues generally, but I
945 have questions on this case. Why are these questions still outstanding? I think if
946 we could just sit down with Mr. O'Brien and Mr. Alack with the County to get
947 some of the history out of here to make sure we all understand. I'm just asking
948 for thirty days to sit around the table. I would love to see a signature block that
949 shows the owner of the shopping center consented to the POD. I have not seen
950 that. I'd love to see it. I'd love to understand how signing for one entity binds
951 another. I'd love to understand how I can get credit for parking spaces for which I
952 have no legal right to use. I'd love to understand how a deficit of a hundred
953 spaces will work and will be sufficient and usable. All I'm asking for is just thirty
954 days. If I can't get the thirty days, I would ask this commission to please impose a
955 condition on this approval that says that if they can't show they have cross
956 parking rights to the shopping center they claim to be a part of, they must park it
957 according to the parking requirement in the code for individual uses. In this case
958 it would be 1 per 100.

959
960 With that, I would ask that I get a thirty-day deferral so we can sit around the
961 table, because these are confusing issues. If we can't get the thirty-day deferral, I
962 would ask the commission to please impose that condition to prove, as is
963 required by the prior POD's for the shopping center, that they show they have the
964 cross access and the cross parking. Thank you.

965
966 Mr. Archer - Thank you, sir. Are there questions for Mr. Condlin?

967
968 Mr. Branin - Absolutely. Mr. Condlin, did I hear you start off with
969 saying that you don't have an issue with the time of the PUP?

970
971 Mr. Condlin - No sir.

972
973 Mr. Branin - And you don't have an issue with the outdoor dining
974 itself?

975
976 Mr. Condlin - No sir. As long as it can be parked correctly.

977
978 Mr. Branin - That's what we're looking at here.

979
980 Mr. Condlin - That's true.

981

982 Mr Branin - Right? Let me explain to you the way the County
983 works because I don't know if you're aware of this. I know this is your first time
984 Here at Henrico County our recommendation is just that, a recommendation,
985 whether it's denied or approved

986
987 Mr Condlin - Absolutely.

988
989 Mr Branin - And that recommendation goes up to the Board,
990 which just happens to be about thirty days from now

991
992 Mr. Condlin - It does

993
994 Mr Branin - And a lot of times if there are loose ends or
995 confusions or some disagreements, or even things that need to be changed, the
996 Commissioner will say between now and the Board, please get with the
997 Supervisor and work those details out. Because we look more on the picture and
998 if there are details, they can be worked out. I think you probably have
999 experienced that at some time in your career

1000
1001 Mr. Condlin - I've experienced both sides of that coin, yes sir. Or I
1002 have been held into the Planning Commission until just about every issue is
1003 taken care of. This is not a minor issue. This is a substantive issue where they're
1004 losing eight spaces to put the outdoor parking.

1005
1006 Mr. Branin - So again on our Commission we make a
1007 recommendation and the final approval would be at the Board

1008
1009 Mr Condlin - But that recommendation carries a lot of weight, as
1010 does the staff report.

1011
1012 Mr Branin - Not as much as you would think all the time

1013
1014 Mr Condlin - Sometimes I wish it carried more, sometimes I—

1015
1016 Mr Branin - The Supervisor at the end—

1017
1018 Mr. Condlin - But at the end of the day your consideration of this—
1019 these are outstanding questions. If they can't park it and it's a condition of a
1020 previously approved POD, how can it get approved as a use? That's a
1021 requirement that they have to fit in the PUP in the code itself. They have to show
1022 that they have adequate off-street parking. They can't show that for this use
1023 because of these questions. I might be wrong. These questions have still
1024 remained unanswered to me. And I think that's a substantive issue for this
1025 Commission. I don't see how you can legally approve this if they can't prove that
1026 they have adequate parking. And they can't have adequate parking based on a
1027 restaurant use

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Mr Branin -

Okay, thank you

Mr Archer -
forward, please?

Thank you, Mr Condlin. Will the applicant come

Mr. Archer -

Good evening, sir.

Mr O'Brien -

I'm Tom O'Brien. I am with Spotts Fain I am representing RMA/Hunton, LC and Atack Properties. Bob Atack, who is a principle in those entities is with me this evening.

This should be a simple request. We're talking about a Provisional Use Permit for 770 square feet of outdoor dining, a very nice upscale restaurant. The staff report fully supports the PUP. As we've indicated, we do want an extension of the hours to 11.00 with no seatings after 9 30 p.m. in the outdoor area.

Mr. Condlin has overstated and misstated several of the facts. I know that Mr Emerson has provided letters to both Mr. Gunst, as well as a letter that went to Mr. Condlin today and I think some of the facts in that are important. There is no issue with the parking. In fact, this property will meet the County requirements for parking on site.

Case C-76C-87, the Board of Supervisors granted a request for the courtyard area at Innsbrook, as well as a 6.8-acre parcel on which the Valcom Building is a part, to be rezoned to B-2C. Mr. Gunst was an applicant on that zoning request on behalf of both Lake Pointe Partners and the Innsbrook Corp. Jay Weinberg represented both applicants before the Board of Supervisors. The minutes from the November 12, 1987 Board of Supervisors meeting reflects, and I quote, the purpose was to, "permit the expansion in an orderly manner of the Lakapointe Shopping Center." The applicant at that time rezoned the property. The purpose was for an expansion of the shopping center whether or not the POD had parties that he thinks should be on there. When the rezoning was done it made it part of the shopping center. When the POD was approved it was part of the shopping center. And therefore as Mr. Emerson in one of his letters pointed out, we don't look within a shopping center. If you take a space that's a retail space and it becomes a restaurant space, or an office space becomes retail or any of those combinations, we don't redo the parking.

As it turns out, my client has approximately 15,000 square feet. Hondos is only going to occupy 6,000 square feet of that. For the rest of it there are no commitments. There have been no leases signed for the remainder of the building. If you look at the 15,000 square feet and you take 770 square feet of outdoor dining, at most under the County requirements it would require on a stand alone basis within a shopping center, sixty-four spaces. We're losing eight spaces for the outdoor dining but there was a second loading bay added on the

1074 west side of the property. If you look at the original POD there were seven
1075 parking spaces. And we have the ability to go back to the original POD and pick
1076 up those seven, so we'll lose one space. There are currently sixty-seven spaces;
1077 we're going to end up with sixty-six. So parking should not be a consideration
1078 tonight. My client would have the ability to go in there, put Hondas in there, and
1079 the County would have to approve that, would have to approve any change in the
1080 tenant mix, and can't require any change to parking. Mr. Emerson has confirmed
1081 this by letter today. So there is no need for an extension, there is no need for a
1082 deferral; there is no need for further discussion. The fact that Mr. Condlin and his
1083 client are not happy with the answer from the Director of Planning and what the
1084 County's policies are, are irrelevant for a Provisional Use Permit. We're here on
1085 one thing and one thing only, and that is to permit 770 square feet to be used for
1086 outdoor dining.

1087
1088 I would be happy to answer any questions, if there are any. We think that this is,
1089 frankly, much to do about nothing. My client has the right to relocate Hondas to
1090 that outparcel, it's still part of the shopping center. And we think the simple
1091 request for 770 square feet of outdoor dining at what I think is one of the nicest
1092 restaurants in the County should be recommended for approval. And we would
1093 hope that it's approved by the Board at its next meeting.

1094
1095 Mr. Archer - Thank you, Mr. O'Brien. Are there questions from the
1096 Commission?

1097
1098 Mr. Branin - I have none.

1099
1100 Mr. Archer - Questions from the audience? Thank you, Mr.
1101 O'Brien. All right, Mr. Branin.

1102
1103 Mr. Branin - In regards to the outdoor dining and with the Board of
1104 Supervisors' meeting being—what would the date of that be, Mr. Secretary?

1105
1106 Mr. Emerson - The date of the Board meeting would be December
1107 13th.

1108
1109 Mr. Branin - December 13th. So it's actually a little more than a
1110 month. In regards to deferring it, I don't see it being necessary to defer it. Any
1111 questions that Mr. Condlin and his client have I'm sure can be addressed by
1112 them. So, with that I would like to move that P-12-11, James W. Theobald and J.
1113 Thomas O'Brien, Jr., for RMA/Huntlon, LC, move forward with a recommendation
1114 of approval with conditions that are within the application and the staff report.

1115
1116 Mr. Emerson - Did you want to change the first condition to reflect
1117 eleven versus ten?

1118
1119 Mr. Branin - Yes I do.

1120
1121 Mr. Emerson - Then you need to restate that
1122
1123 Mr. Branin - I would like to move that P-12-11, James W.
1124 Theobald and J. Thomas O'Brien, Jr., for RMA/Hunton, LC, go to the Board with
1125 a recommendation of approval with the conditions stated, including Condition 1
1126 changed to 11:00 with no later than 9:30 seating.

1127
1128 Mr. Jernigan - Second.

1129
1130 Mr. Archer - Motion by Mr. Branin, and seconded by Mr. Jernigan.
1131 All in favor say aye All opposed say no The ayes have it, the motion passes

1132
1133 **REASON:** Acting on a motion by Mr. Branin seconded by Mr.
1134 Jernigan the Planning Commission voted 5-0 (one abstention) to recommend
1135 the Board of Supervisors grant the request because the conditions should
1136 minimize the potential impacts on surrounding land uses and it is reasonable in
1137 light of the surrounding uses and existing zoning on the property.

1138
1139 **P-13-11 William C. Frazier for Walmart:** Request for a
1140 Provisional Use Permit under Section 24-58.2(a), 24-120 and 24-122.1 of
1141 Chapter 24 of the County Code in order to allow seasonal twenty-four (24) hour
1142 operation of a retail store (Walmart) on Parcel 753-744-5576, located at the
1143 northwest intersection of N Parham Road and Quioccasin Road The existing
1144 zoning is B-2 Business District. The 2026 Comprehensive Plan recommends
1145 Commercial Arterial. The site is in the Enterprise Zone The staff report will be
1146 presented by Mr. Roy Props.

1147
1148 Mr. Archer - Thank you, Mr. Secretary. Is anyone present who is
1149 opposed to this case, in the Tuckahoe District, P-13-11, William C. Frazier for
1150 Walmart? Thank you so much: we'll get to you Thank you. All right, Mr. Props.
1151 Good evening, sir.

1152
1153 Mr. Props - Good evening Mr. Chairman, member of the
1154 Commission, this Provisional Use Permit request is to allow the seasonal 24-hour
1155 operation of an existing Walmart retail store The site is located at the northwest
1156 intersection of North Parham and Quioccasin Roads in a portion of the Parham
1157 Plaza Shopping Center The area is designated for Commercial Arterial on the
1158 2026 Comprehensive Plan, and is within the County's Enterprise Zone.

1159
1160 The site was zoned B-2 Business via case C-51-75, and approved for extended
1161 operating hours until 1:00 a.m., via P-3-05 The surrounding zoning is
1162 predominately business with the exception of an adjoining medical office to the
1163 southeast and a cemetery to the northwest This seasonal request would only be
1164 in effect during the holiday period beginning the day after Thanksgiving until

1165 December 25th The applicant has notified adjoining property owners by letter of
1166 their request.

1167
1168 The Parham Plaza Shopping Center and surrounding commercial developments
1169 are experiencing a transition from a regional shopping destination to a more
1170 community-based commercial area. The Regency Square area is identified in the
1171 2026 Comprehensive Plan as a Revitalization/Reinvestment Opportunity Area.
1172 These additional operating hours could provide economic benefit to the area and
1173 due to the surrounding commercial environment, potential short-term impacts
1174 would be minimized. While this 24-hour operation would temporarily intensify the
1175 retail use, it will be limited to a seasonal event and would not establish a pattern
1176 for future extended hour activity.

1177
1178 A review of Police calls-for-service indicates this Walmart location has the lowest
1179 crime statistics of surveyed retailers operating in the area. They also have the
1180 fewest calls-for-service of all Walmart stores located in the County. Based upon
1181 the above information, staff believes the proposed seasonal 24-hour request
1182 could be an appropriate use and therefore, supports this request with the revised
1183 recommended conditions handed out this evening.

1184
1185 This concludes my presentation and I would be happy to answer any questions.

1186
1187 Mr Archer - Thank you, Mr Props. Are there questions from the
1188 Commission?

1189
1190 Mrs. Jones I just wanted to tell Mr Props that he has been
1191 certainly tireless in answering all my questions during the course of this. I thought
1192 the statistics were interesting, the calls-for-service and the other statistics you've
1193 gathered. I just wanted the Commission to direct their attention to your
1194 assessment of this after looking at these statistics that the Police calls-for-service
1195 indicates this Walmart location has the lowest crime statistics of surveyed
1196 retailers operating in the area. The statistics surprised me, they were remarkably
1197 favorable to this Walmart. I just wanted to underscore that because I think
1198 security has been our biggest concern coming along here.

1199
1200 I have no more questions for Mr Props at this time.

1201
1202 Mr Branin - I have some Mr Props, you said adjoining this
1203 property is what? Would you restate what is next to the property?

1204
1205 Mr Props - There's a medical office building down on the corner
1206 and a cemetery to the back side of the property.

1207
1208 Mr Branin - And in the shopping center, which during the holidays
1209 they utilize a good portion of the shopping center for parking, correct?

1210

1211 Mr Props - They utilize what is allocated to them. There may be
1212 some spillover, I can't address that

1213

1214 Mr Branin - Directly on the north side of the shopping center

1215

1216 Mr Props - There are other shops that are part of Parham Plaza
1217 Shopping Center.

1218

1219 Mr. Branin - And during the holidays a lot of times the overflow
1220 parking goes all the way down to the Staples

1221

1222 Mr Props - That could happen

1223

1224 Mrs. Jones - There is quite a bit of vacant space in that shopping
1225 center.

1226

1227 Mr. Branin - Right. But what is on the other side of the shopping
1228 center?

1229

1230 Mr. Props - You mean the apartments further north? Yes sir

1231

1232 Mr. Branin - You said it was all business and—

1233

1234 Mr Props - I was speaking right around the shopping center itself

1235

1236 Mr. Branin - When they're asking for additional hours during the
1237 holidays, and the holidays are their busiest time where the overflow starts moving
1238 down towards Staples and down towards the residential, wouldn't you have to
1239 include that residential at that time?

1240

1241 Mr Props - I'm sorry, I'm not following you

1242

1243 Mr Branin - You've only stated a cemetery and an office building,
1244 but there is indeed residential there. And during the holidays the parking pushes
1245 further down towards those apartments

1246

1247 Mr. Props - Yes, but we were just addressing their site that they
1248 lease themselves. There is commercial to the north of them that is under
1249 somebody else's lease agreement

1250

1251 Mrs. Jones - Mr. Branin, were you wondering whether there would
1252 be encroachment into the residential area of parking?

1253

1254 Mr. Branin - No. But when you state that there is only a cemetery
1255 and an office building, it doesn't take into an account that a 24-hour may become

1256 a nuisance to the apartments that adjoin the shopping center and also come
1257 around towards the back of the shopping center

1258
1259 Mrs. Jones - They're not adjacent to the Walmart. I may not
1260 understand your question, I'm sorry.

1261
1262 Mr Branin - Go on.

1263
1264 Mrs Jones - Okay. Thank you, Mr. Props Unless someone has
1265 any more questions, I'd like to have the opposition come down Is Mr Frazier
1266 here? Okay, you'll be next If you wouldn't mind just stating your name and
1267 address for the record? We're taping these proceedings. Thank you.

1268
1269 Miss Beaty - My name is Vickie Beaty. I am in the residential part
1270 across from Parham Plaza My property is now adjoining Ridge Shopping Center
1271 Since the development of all of the commercial properties, I have lost a lot of
1272 what I expected of my privacy With this Walmart twenty-four hours a day, I don't
1273 think you all can say it's a low statistic, but I'm sorry, from my bedroom window I
1274 can tell you how many times the police are over at Walmart There used to be
1275 trees, they're are not anymore. So I can tell you the shopping carts that we have
1276 found in our subdivision from Walmart now, the people we have invading our
1277 neighborhood now.

1278
1279 We have a lot of activity that we used to not have. I've been in that residence for
1280 fifteen years as a homeowner I have had my father's property from my shed
1281 stolen. First time ever I've had anything stolen

1282
1283 In the neighborhood we are watching as our property value and what we
1284 respected as residents and what we purchased—we're losing that for the
1285 commercial benefits If you're in my house, you can watch all the lights going
1286 down. I can now see the lights at Parham Plaza changing. I can see all the
1287 people that are going from Parham Plaza walking across the median now going
1288 into what is like twenty-house subdivision.

1289
1290 So I do hope that the Commission takes that into respect because I've lost a lot,
1291 I've been here before because of what's happened to my property because of the
1292 development around me I'll be flat honest, I don't want to be there anymore. It's
1293 not safe, it's not a good environment because of the commercialization around
1294 there and what it's attracting to our neighborhood. It's not a good place. Nothing
1295 else I can do I do plan on selling my house hopefully in April so that I can move
1296 away from it I bought a house for privacy and trees I took a lot of pride in my
1297 home That's been taken away Like the neighborhood has said, if you continue
1298 to allow this twenty-four hours a day, please consider the residents I don't hear
1299 anything about the residents; I always here about the commercial properties
1300 Please think about the residents.

1301

1302 I've been here before. I can show you a picture of what I had of a bulldozer out
1303 my bedroom window for three months. Hardee's was taken down. There were
1304 trees back there. I used to never hear Parham Road, never heard Parham Plaza
1305 never saw anything at Ridge. Now every day, I don't even go in my backyard. My
1306 shades are closed. I can show you right here, there's a picture of Chick-fil-A's
1307 lights in my back window every night in my bedroom, except for Saturday night.
1308 Parham Road, the cars coming out now I have in my bedroom window. So
1309 please consider that.

1310
1311 Mr. Vanarsdall - Are you aware that when they went there they asked
1312 for twenty-four hours when they were building?

1313
1314 Miss Bealy - Yes sir.

1315
1316 Mr. Vanarsdall - And we recommended denial and the Board did deny
1317 it.

1318
1319 Miss Bealy - Yes sir, and I appreciate that.

1320
1321 Mr. Vanarsdall - One of the very few Walmart's that didn't have 24-
1322 hour service. Were you one of the people who objected?

1323
1324 Miss Bealy - I did not object at the time. I did not know it, I'll be
1325 honest with you. Since what happened to me with Chick-fil-A, I am paying very
1326 close attention now to what happens in my county, in my neighborhood.
1327 Sometimes you don't get notified until you lose something very valuable to you.

1328
1329 Mr. Archer - Is it Miss Bealy?

1330
1331 Miss Bealy - Miss Bealy, yes sir.

1332
1333 Mr. Archer - Could you point out to us on the map—Mr. Props will
1334 help you if you need assistance—where your house is located?

1335
1336 Miss Bealy - Right in that little cul-de-sac.

1337
1338 Mr. Archer - He'll deal with the mouse if you could—

1339
1340 Miss Bealy - [Off microphone] Right near Neurological Associates
1341 That would be a great improvement for the neighborhood if you put a fence back
1342 up between Neurological Associates and our neighborhood where we have the
1343 people coming through at night.

1344
1345 Mrs. O'Bannon - It's Neurosurgical Associates.

1346

1347 Miss Bealy - I'm sorry Neurosurgical But that little walkway, we're
1348 getting all the traffic But I'm right here To the left.
1349

1350 Mrs. Jones - Miss Bealy, I just wanted to make sure that you
1351 understood this is not a request for twenty-four hours all the time.
1352

1353 Miss Bealy - No ma'am, I did understand that.
1354

1355 Mrs. Jones - I wanted you to know that the request is specifically
1356 for a seasonal permit to be able to have the store open for holiday shopping only.
1357

1358 Miss Bealy - Yes I do.
1359

1360 Mrs. Jones - I just wanted to make sure, There will be no change to
1361 the site, I wanted to make sure you understood that, too There won't be any
1362 change to lighting; there won't be any change to the way in which the building is
1363 configured or the traffic flow or the parking. There is no change at all. All they're
1364 asking for is an extension of hours to accomodate holiday shoppers between
1365 Thanksgiving and Christmas. So I just wanted to make sure that you did
1366 understand the limits of this request, which are very narrow
1367

1368 Miss Bealy - Yes And understand if you're in my house,
1369 honestly—which I keep my shades closed now—from my bedroom you can
1370 count every car now that goes down Parham Road because the trees were
1371 removed off of Parham Road and behind at Ridge Shopping Center. I don't know
1372 how many trees Dozens of trees that were fifty, a hundred years old that
1373 protected my neighborhood and me and gave me a soundproof barrier and
1374 privacy is now gone. So unfortunately I don't even turn on my porch light
1375 anymore because it attracts people You can see my house very visually now
1376 from Parham Road. The people over shopping can see my house I see them
1377 too, I can tell you every radio that is blaring in the middle of the night, and every
1378 siren. And I can see the police lights I'm glad you said there is not that much
1379 stuff, but I'm sorry, I've gotten stolen from and robbed now, and I'm looking at the
1380 police
1381

1382 Mrs. Jones - You reported those incidents to the police?
1383

1384 Miss Bealy - Yes ma'am
1385

1386 Mrs. Jones - Were they tied to Walmart?
1387

1388 Miss Bealy - No, they were actually tied to Chick-fil-A.
1389

1390 Mrs. Jones - I see.
1391

1392 Miss Bealy - They come down the barrier that's secluding me

1393
1394 Mr Vanarsdall - Have you ever spoken with anyone at the local
1395 Walmart?
1396
1397 Miss Bealy - With Walmart, no sir. I just take their shopping carts
1398 back when I see them over in my subdivision.
1399
1400 Mr Jernigan - Miss Bealy, you touched on something a minute ago
1401 You said something about putting a fence back up? Did you have a fence that
1402 came down?
1403
1404 Miss Bealy - No sir. There was a fence at Chick-fil-A—well it used
1405 to be Hardee's. It was further back. When Chick-fil-A was built, they extended the
1406 easement and they built it up. The fence isn't quite as high the old one. Used to
1407 be I would see probably two feet of the roof of Hardee's. Now, unfortunately, I
1408 see everything. Chick-fil-A's lights, if you ever notice, they actually have their
1409 lights overtop of their parking lot aimed towards my house.
1410
1411 Mr Jernigan - You're getting light on your house from them?
1412
1413 Miss Bealy - Oh yes sir, yes sir. But they said it was a "moon glow"
1414 when I asked the County to come and check it out. They said it was a moon glow
1415 and it was legal.
1416
1417 Mr. Jernigan - An inspector came there and checked it?
1418
1419 Miss Bealy - I believe the police came they had some kind of thing
1420 to monitor and check it. My backyard is lit up. I never wanted it lit up for people
1421 on Parham Road to see my house and my sheds. But unfortunately I lost my
1422 rights.
1423
1424 Mr Archer - Any other questions? Thank you, ma'am.
1425
1426 Miss Bealy - Thank you, sir.
1427
1428 Mr. Branin - Ms. Deerner, I know this isn't your case, but can you
1429 do me a favor? Can you pull the Neurological Associates—is that what it's
1430 called?—Neurosurgical Associates POD and see where the fence is and then
1431 have someone check to see if the fence is down, and if it is on their property and
1432 there is a problem with people going through. Okay?
1433
1434 Miss Bealy - I will tell you, there is a gate, a walkthrough, it used to
1435 be, from my neighborhood since I've been there fifteen years ago. It used to not
1436 be a problem because nobody was there. Unfortunately, since everything is
1437 taken down it has become a problem. And it's unfortunately right in front of my
1438 house and I'm at the end of a cul-de-sac.

1439
1440 Mr. Branin - And we're going to check on it and get it addressed
1441
1442 Mrs. Jones - Thank you Mr. Frazier?
1443
1444 Mr. Branin - Can I ask Mr. Props some more questions?
1445
1446 Mrs. Jones - Absolutely.
1447
1448 Mr. Branin - Thank you. Mr. Props, what other retail around this
1449 building has twenty-four hours during the holidays?
1450
1451 Mr. Props - The Exxon at Quioccasin and Starling has a PUP for
1452 24-hour operation. Regency Square itself is zoned B-3 and they can operate
1453 twenty-four hours if some of the tenants desired it and the mall stayed open. And
1454 the Westbury Pharmacy also has a PUP approved. There was a Giant Food in
1455 the Parham Plaza Shopping Center years ago that had a 24-hour PUP approved,
1456 but that use has since moved. They were the only things
1457
1458 Mr. Branin - I believe Westbury is until two.
1459
1460 Mr. Props - Yes. They do have approval. Now their operating
1461 hours are lower than they're permitted, but they do have a PUP still outstanding
1462 for the twenty-four. There was Kinko's at one time that was proposing to go into
1463 the Ridge
1464
1465 Mr. Branin - Toys-R-Us?
1466
1467 Mr. Props - Toys-R-Us does not have a PUP for twenty-four
1468 hours.
1469
1470 Mr. Branin - BJ's?
1471
1472 Mr. Props - No sir
1473
1474 Mr. Branin - Does Regency stay open until twelve?
1475
1476 Mr. Props - Some of the stores—
1477
1478 Mr. Branin - Or I mean for twenty-four hours?
1479
1480 Mr. Props - Not to my knowledge, sir
1481
1482 Mr. Branin - Okay. That's all I needed. Thank you
1483

1484 Mr Emerson - Regency does have the right to They're unrestricted
1485 B-3 They could go twenty-four hours if they chose to.

1486
1487 Mrs Jones - I think I have something to add to the question of
1488 hours. Since this is a seasonal request, I asked Mr. Props to check into some
1489 adjacent stores and their seasonal plans for this particular coming holiday
1490 season. Black Friday was the date that he specifically asked about. Macy's we
1491 know will be open from midnight on on Black Friday. J C Penny is opening at
1492 four, Sears at six, and Toys-R-Us is deciding. Those kinds of things always come
1493 up during the holiday period. Again, I just want to make sure everybody realizes
1494 we're talking about holiday only, an approximately thirty-day period. Any other
1495 questions for Mr. Props?

1496
1497 All right. Mr. Frazier?

1498
1499 Mr Frazier - Good evening, members of the Commission. First off
1500 I'd like to say I truly understand where Mrs. Beatty is—

1501
1502 Mr. Archer - Excuse me, sir. I need you to state your name for the
1503 record.

1504
1505 Mr. Frazier - Oh, William Frazier. I apologize.

1506
1507 Mrs. Jones - You are the manager of the store.

1508
1509 Mr. Frazier - Yes ma'am, I'm the store manager representing
1510 Walmart Stores, Incorporated. I wanted to let you know that I understand and
1511 respect where Miss Beatty is coming from, I know that when I purchased my
1512 home, the location of my home relevant to the businesses was definitely a factor
1513 of consideration for my own. I understand expansion and growth you don't
1514 necessarily— are you able to foresee what's coming, so you have to plan for that
1515 when you're purchasing a home.

1516
1517 Some of the things I'd like to address that was brought up is that it is absolutely a
1518 seasonal request. We understand that the people in our community appreciate
1519 the peace after midnight, between midnight and six o'clock. We appreciate the
1520 fact that the area is not about the business of it, but also want to appreciate that.
1521 We're just trying to provide the service to the customers. Our associates as well
1522 as the customers that come to the store have notified us on many occasions that
1523 they're having to drive outside of the area in order to try to make their purchases.
1524 At the seasonal time, unfortunately, there are lots of families that have kids at
1525 home. They want to buy their kids Christmas presents. They need to be able to
1526 do that after the kids are asleep someone runs out and does the shopping.
1527 These are the experiences that I've personally had at other locations.

1528

1529 Some of the concerns that come up are security. We have already been in touch
1530 with our landlord. We have security at this point and time that monitors the
1531 parking lot in the evening hours of the day. We've already established through
1532 them that if this was approved that we would immediately be able to move to
1533 security in the parking lot—or anywhere in or around the building—during the
1534 p.m. hours, as well as overnight until six a.m.

1535

1536 Mr. Branin - Mr. Frazier, what kind of security are you providing?

1537

1538 Mr. Frazier - It's a security guard in uniform that patrols the parking
1539 lot.

1540

1541 Mr. Branin - Not a Henrico County officer?

1542

1543 Mr. Frazier - No sir.

1544

1545 Mr. Branin - Why do you choose to not use a Henrico County
1546 officer?

1547

1548 Mr. Frazier - Unfortunately, we would choose to use Henrico
1549 County. Our home office and the County couldn't come to terms with the
1550 understanding of where you draw the line between police officer and associate.
1551 When someone is acting as an associate, there are certain policies that they have
1552 to abide by, and there are certain policies that as a police officer you can do. And
1553 we couldn't come to an agreement with that, so we had to part ways.

1554

1555 One of the other things is we do have numerous cameras at the front of the
1556 building, outside of the building, to also assist with any security if something
1557 happened that we did need a police presence on the property. One of the
1558 statistics that was brought up was our low level of need for the police force to
1559 come out to the store. It's not a surprising statistic to me. We have a policy called
1560 aggressive hospitality that we use with customers. We also have local asset
1561 protection of people in the store. We try and act as an advocate for the loss
1562 prevention within the store. We try to use aggressive hospitality to drive that type
1563 of environment away from our area. Then when it does become absolutely
1564 necessary, we have asset protection on site that can minimize the amount of
1565 police presence needed.

1566

1567 Mr. Vanarsdall - You have a video system with a lot of cameras too.

1568

1569 Mr. Frazier - Absolutely. A large number of those cameras are in
1570 the parking lot, which is a lot of times a concern with the 24-hour operation.

1571

1572 Oh, and with the parking you had brought up earlier, Staples is the only other
1573 open operation in that parking lot. So the parking impact would be minimal from
1574 the hours of midnight until six a.m., which is the time in which we're talking about.

1575
1576 Mr Branin - Would you like me to comment on that?
1577
1578 Mr Frazier - No sir
1579
1580 Mr Archer - All right, are there further questions for Mr Frazier
1581 from the Commission?
1582
1583 Mrs Jones - Mr Frazier, you wanted to have this 24-hour
1584 operation for the holiday season. Your other stores that are open in the
1585 Richmond area are open for twenty-four hours. Is that correct?
1586
1587 Mr. Frazier - Yes ma'am.
1588
1589 Mrs Jones - All through the year?
1590
1591 Mr. Frazier - Yes ma'am, except for Christmas Day.
1592
1593 Mrs. Jones - Except for Christmas?
1594
1595 Mr. Frazier - Except for Christmas Day is the only day
1596
1597 Mrs. Jones - Just for my education, the seasonal impact of the
1598 Thanksgiving to Christmas sales, would you estimate that's half your sales, a
1599 quarter of your sales, ten percent? What do you think?
1600
1601 Mr. Frazier - I would not say that it's half our sales. I would say that
1602 the months of November and December, although they're only twenty-four
1603 percent of the year, I would say they are approximately together thirty-five
1604 percent of the sales.
1605
1606 Mrs. Jones - And your request is driven by—what is your main
1607 goal? Is it to be consistent with corporate policy or is it because you realize you
1608 need to have the extra time for sales? What is your main goal in your request?
1609
1610 Mr. Frazier - I appreciate the fact that you asked that question. The
1611 driving force behind this request is that the company comes up with different
1612 programs throughout the holiday season that our store would like participate with.
1613 Like you said, our competitors around with Macy's, it comes from their corporate
1614 office that they're going to do an all-night sale. We wanted to make sure that in
1615 order for us to participate with those programs that the company comes out with,
1616 that we can do that and abide by the County, and the planning and zoning that
1617 we're in, that we're inside of those requirements.
1618
1619 Mrs Jones - Are you as a store considering a request for twenty-
1620 four hours all the time?

1621
1622 Mr. Frazier - No ma'am
1623
1624 Mrs. Jones - The security officers. You still will have conditions
1625 imposed by the PUP from 2005, including the security escorts for employees to
1626 their vehicles
1627
1628 Mr. Frazier - Yes ma'am
1629
1630 Mrs. Jones - How often do folks ask for a security officer to go with
1631 them?
1632
1633 Mr. Frazier - Rarely, if ever. Because we're asked so rarely, we
1634 make an effort in meetings to remind associates that it is something that we will
1635 supply if that's something they desire, just in case we've had any new associates
1636 that may wish for that service that didn't know it was available.
1637
1638 Mrs. Jones - All right. Thank you. Any other questions?
1639
1640 Mr. Branin - I'd like to talk to Ms. Vann.
1641
1642 Mrs. Jones - Thank you, Mr. Frazier, don't go far.
1643
1644 Mr. Frazier - Thank you
1645
1646 Mr. Archer - Good evening, Ms. Vann
1647
1648 Ms. Vann - Good evening. Kim Vann with Henrico Police
1649
1650 Mr. Branin - Ms. Vann, I have two questions. One, would police be
1651 more comfortable because of the ability of rapid response in radioing and so forth
1652 with a Henrico officer versus rented security?
1653
1654 Ms. Vann - We certainly will try to have officers work off duty if
1655 there are officers available. That's really not a position that I can state what the
1656 County is going to do, it's through our Henrico Personnel and they follow strict
1657 requirements. We actually have full-time sergeants working with the off-duty
1658 component of Henrico Police.
1659
1660 Mr. Branin - Okay. The second question I have, is this the lowest
1661 incident-call location that Walmart has?
1662
1663 Ms. Vann - That's what the calls-for-service did say. It would be
1664 something that I would want to double check
1665

1666 Mr. Branin - This is the only one that is not twenty-four hours,
1667 correct?

1668

1669 Ms Vann - Right

1670

1671 Mr Branin - Could there be a correlation between those two?

1672

1673 Ms Vann - Certainly There certainly could

1674

1675 Mr Branin - That's all I need Thank you.

1676

1677 Mr. Archer - Okay. Anything further from any of the Commission
1678 members? Mrs Jones, do you need to hear from anyone else?

1679

1680 Mrs. Jones - No, I think I have talked long and hard about this
1681 case, and had a lot of conversations with staff and other folks about it I'm ready
1682 to move forward, unless there are other questions All right

1683

1684 I wanted to just underscore that nothing happens on a PUP unless, of course,
1685 there is tremendous scrutiny, certainly for requests such as this because safety
1686 and security have to be primary to our approach. I think that one of the
1687 advantages obviously, is to accommodate what seems to be a request from the
1688 public. It's a habit that has been well established from Black Friday on through
1689 the holiday season. This is the shopping time for American consumers in many
1690 respects and we do hope to be a good partner for the businesses in the area. If
1691 the requests are reasonable, we hope to be able to accommodate.

1692

1693 I am hopeful that this is a benefit for the public as well as a benefit for the
1694 business should this be approved. Tonight we are simply making a
1695 recommendation on this permit. One of the characteristics of these—that I hope
1696 Mr. Frazier is well aware of—is that should this prove to be problematic in any
1697 way—whether there are disturbance complaints or calls to the police or other
1698 issues which arise that make it obvious that this is not a tenable permit—that
1699 there is a process whereby it could be recalled. And therefore I would ask that
1700 the applicant keep that in mind as it goes forward with the possibility of operating
1701 for the holiday season. I would have a completely different approach to this
1702 request were it for 24-hour operations all year long As it is, I would hope to give
1703 a nod to the business in the area' wish them well. This is a tough environment
1704 and I would hope that maybe this would make a difference that's positive for the
1705 business as well as the public.

1706

1707 I will make a motion to recommend this Provisional Use Permit to the Board of
1708 Supervisors As such, that's where the final decision will be Nothing is official
1709 until the Board of Supervisors says it's official I want to make sure you
1710 understand that

1711

1712 So, with that, I would like to make a motion to recommend to the Board of
1713 Supervisors that P-13-11, William C. Frazier for Walmart, be approved. This
1714 would be with the revised recommended conditions as listed in the handout
1715 today, numbers 1 through 4, and continuing 5 through 12 as conditions of P-3-05.
1716

1717 Mr. Jernigan - Second.

1718
1719 Mr. Archer - Motion by Mrs. Jones, seconded by Mr. Jernigan. All
1720 in favor say aye. All opposed say no. The ayes have it, the motion passes.

1721
1722 Let the record show that Mr. Branin voted "no." The motion passes.
1723

1724 **REASON:** Acting on a motion by Mrs. Jones, seconded by Mr.
1725 Jernigan, the Planning Commission voted 4-1 (one abstention, one opposed) to
1726 recommend the Board of Supervisors grant the request because the conditions
1727 should minimize the potential impacts on surrounding land uses and it would not
1728 be expected to adversely affect public safety, health or general welfare.
1729

1730 **C-18C-11 Robert Atack for Hunton Park Land Partners,**
1731 **LC:** Request to amend proffered conditions accepted with Rezoning Case C-
1732 25C-10 on Parcel 763-774-5187 located along the north line of Hunton Park
1733 Boulevard approximately 200 feet west of its intersection with Hunton Ridge
1734 Lane. The applicant proposes to amend Proffers 3, 13, 14, & 15 related to the
1735 site plan, tree save area, and streets. The existing zoning is RTHC Residential
1736 Townhouse District (Conditional). The 2028 Comprehensive Plan recommends
1737 Suburban Residential 1, density should not exceed 2.4 units per acre, and
1738 Environmental Protection Area. The staff report will be presented by Mr.
1739 Livingston Lewis.
1740

1741 Mr. Archer - Thank you, Mr. Secretary. Is there any opposition to
1742 C-18C-11, Robert Atack for Hunton Park Land Partners, LC? I see no opposition.
1743 Mr. Lewis, how are you, sir?
1744

1745 Mr. Lewis - I'm well, Mr. Chairman; thank you.
1746

1747 This is a request to amend four proffers previously approved with case C-25C-10
1748 earlier this year for additional townhomes in the Hunton Park community. The
1749 3.3-acre site is located just west of Abbots Cross Lane and is zoned RTHC,
1750 consistent with the adjacent Townes at Hunton Park development.
1751

1752 The applicant wishes to make the following changes.

- 1753
1754 • Proffer 3 – This revised Exhibit A would be substituted as the new conceptual
1755 layout. The eight-unit building previously shown backing up to the existing
1756 townhomes to the east would instead be two 4-unit buildings oriented with
1757 their sides facing the Townes neighborhood.

- 1758 • Proffer 13 – A change to this item was submitted after publication of the staff
1759 report and a copy of the additional language has just been distributed
- 1760 Essentially, this amendment ensures buffer landscaping along Hunton Park
1761 Boulevard would be equivalent to the Transitional 25 standard
- 1762 • Proffer 14 – Specific dimensional references to the tree save area would be
1763 removed
- 1764 • Proffer 15 – Minimum width of the private internal streets would be changed
1765 from thirty-six feet to twenty-four feet, which is consistent with streets in the
1766 existing Townes and other townhome developments in the County.

1767
1768 These four proposed amendments would not change the proposed use its
1769 density, or the overall compatibility with adjacent uses, therefore, staff supports
1770 the request.

1771
1772 This concludes my presentation. I will be happy to take any questions.

1773
1774 Mr. Archer - Thank you sir. Are there questions from the
1775 Commission for Mr. Lewis? We had no opposition that I know of. I'm sorry, are
1776 you—? Sir, you'll have to come up. Are you opposed or do you just have a
1777 question? Okay, come on up. We need your name for the record, if you would,
1778 sir. Thank you.

1779
1780 Mr. Makely - Good evening, my name is Timothy Makely. I actually
1781 reside in the Hunton Park subdivision. My question just has to do with—that area
1782 is a very densely wooded area right now. This new rezoning, you're more or less
1783 cutting back that. And you can see within this picture your new area that you're
1784 building the new townhomes—

1785
1786 Mrs. Jones - Excuse me, Mr. Makely, could you—for those of us
1787 who can't see what you're pointing to—

1788
1789 Mr. Makely - Oh, I'm sorry.

1790
1791 Mrs. Jones - —could you show us on that?

1792
1793 Mr. Makely - Oh, okay. All right, excuse me. This area right here
1794 that they're proposing, this is all wooded with a small little waterway right here.
1795 By removing these woods and actually building this new little development here,
1796 these three buildings, there is actually going to be a very, very narrow wooded
1797 area between two developments or two townhome sections there. That natural
1798 area is now going to be removed and there is already limited area on Hunton
1799 Boulevard that has a wooded section. I know that it's a popular spot and a lot of
1800 people are coming in there. The development in which I moved into a year ago
1801 was fifty percent vacancy. Now there is no one, every lot has been filled.

1802

1803 I guess my question is are we eventually going to be going in a way if we accept
1804 this type of proposal that another wooded area is going to be susceptible for
1805 another expansion, another rezoning? That's it

1806
1807 Mr Archer - I don't know if we can answer that question for you,
1808 sir, but we'll try to let you learn as much as you can tonight from the applicant

1809
1810 Mr Vanarsdall - As far as where that space is, there is no more room
1811 for anything else This has already been rezoned; all we're doing tonight is
1812 changing three of the proffers that were on the original rezoning It makes it even
1813 better than it was

1814
1815 Mr. Makely - Okay, all right I'm learning as I go here.

1816
1817 Mr Vanarsdall - Appreciate you coming down

1818
1819 Mr Jernigan - Maybe Mr. Lewis can—

1820
1821 Mr Makely - Thank you sir

1822
1823 Mr Jernigan - Mr. Lewis, could you show the original case so the
1824 gentleman can see?

1825
1826 Mr Lewis - Yes sir, I do have that previous conceptual plan right
1827 here. The difference—depending on the speed of switching back and forth here
1828 This is what was approved back in March of this year, this layout. So this line
1829 right here is the Resource Protection Area line related to the Chesapeake Bay
1830 Preservation requirements and regulations. There is no clearing west of this line.
1831 That would not be changed with this current request to change the four proffers.
1832 It's hard to see the scale on this exhibit, but I would venture to guess there is
1833 probably in the neighborhood of a 250-foot-wide swath of trees there, it is pretty
1834 thick. Again no disturbance can take place west of that line. The site probably
1835 would only be half cleared with the proposed development.

1836
1837 Mr. Vanarsdall - Thank you

1838
1839 Mr Archer - Excuse me, sir does that answer your question? You
1840 don't have to come up, just nod Thank you, Mr Lewis. He's asking is there just
1841 one entrance for the record

1842
1843 Mr. Lewis - There is just one entrance, and it is off of Hunton Park
1844 Boulevard. The movement to enter would be to travel east on Hunton Park
1845 Boulevard, make a U-turn, and then enter the twelve-unit section

1846
1847 Mr Archer - Thank you again, Mr. Lewis Okay, Mr. Vanarsdall.

1848

1849 Mr Vanarsdall - As you can see, what's down there, that's the original
1850 Eight homes back up to the other subdivision. With this new plan there will only
1851 be two sides instead of eight backyards. They found that the original street was
1852 thirty-six feet wide. All the rest of them in the Hunton area are twenty-four and
1853 they should be twenty-four. That's what caused this. Then they changed the tree
1854 save land use to be more in accordance with what is right in that area instead of
1855 the entire Hunton Parkway. So it's really an improvement. As Mr Lewis said, it
1856 doesn't change anything; all of the rest of the proffers are still in effect.

1857
1858 With that I would like to make a motion, if nobody has any questions.

1859
1860 Mr Archer - Anybody else have questions before the motion?

1861
1862 Mr Vanarsdall - I move C-18C-11, Robert Atack for Hunton Park Land
1863 Partners, LC, be recommended to the Board of Supervisors for approval.

1864
1865 Mr. Branin - Second.

1866
1867 Mr. Archer - Motion by Mr Vanarsdall, seconded by Mr Branin. All
1868 in favor say aye. All opposed say no. The ayes have it, the motion passes.

1869
1870 **REASON:** Acting on a motion by Mr. Vanarsdall, seconded by
1871 Mr Branin, the Planning Commission voted 5-0 (one abstention) to recommend
1872 the Board of Supervisors grant the request because the changes do not greatly
1873 reduce the original intended purpose of the proffers.

1874
1875 **Deferred from the October 13, 2011 Meeting.**

1876 **P-11-11 Andrew M. Condlin for Michael J. Carroll:** Request
1877 for a Provisional Use Permit required under proffered condition #9 accepted with
1878 C-60C-08 to allow twenty-four (24) hour operation of a convenience store with
1879 gas pumps (Wawa) on Parcel 818-712-7504 located at the northeast intersection
1880 of S. Laburnum Avenue and Eubank Road. The existing zoning is B-3C Business
1881 District (Conditional). The 2026 Comprehensive Plan recommends Commercial
1882 Concentration. The site is located in the Airport Safety Overlay District. The staff
1883 report will be presented by Mr. Roy Props.

1884
1885 Mr. Archer - Thank you, Mr. Secretary. Is there anyone present
1886 who is opposed to this case, P-11-11, Andrew M. Condlin for Michael J. Carroll?
1887 We have opposition, Mr. Props, go ahead.

1888
1889 Mr Props - Mr. Chairman, members of the Commission, as you
1890 recall, staff comments were presented at your August 11th and October 13th
1891 public hearings. Those comments included a number of concerns and little has
1892 changed since the last staff report. Staff's main issues still include the following:

1893

- 1894 • A 24-hour operation would be intrusive and disruptive to the adjacent
- 1895 residential neighborhood;
- 1896 • Over-intensifying a permitted commercial use,
- 1897 • Prior 24-hour convenience store approvals have been limited to locations
- 1898 surrounded by concentrations of commercial and/or office uses;
- 1899 • Set a precedent for future extended hour requests in the area,
- 1900 • Negatively influence area development;
- 1901 • Increase Police calls for service; and
- 1902 • Remove a condition accepted with case C-60C-06 intended to protect the
- 1903 Robinwood neighborhood from the impacts of intense by-right uses

1904
 1905 The ability to mitigate the residential impacts associated with late-night noise,
 1906 traffic and spillover lighting extends beyond the scope of this case. While the
 1907 Plan of Development has been approved, it does not make the 24-hour operation
 1908 appropriate. For these reasons, staff does not support this request. Should the
 1909 Planning Commission deem this request acceptable, conditions have been
 1910 included in Section IV of the staff report.

1911
 1912 This concludes my presentation and I would be glad to answer any questions

1913
 1914 Mr. Archer - Thank you, sir. Are there questions for Mr. Props from
 1915 the Commission?

1916
 1917 Mr. Jernigan - Mr. Props, you've given this so many times. We all
 1918 know about it, so you did good. You didn't have to get at all lengthy.

1919
 1920 When you were speaking of lighting by Code, am I correct that you can't put but
 1921 a half-a-foot candle on somebody else's property?

1922
 1923 Mr. Props - That sounds correct, sir, yes sir.

1924
 1925 Mr. Jernigan - I would guess we discussed this at the last meeting
 1926 that the distance back to the first residence is probably about 400 feet.

1927
 1928 Mr. Props - I did measure it. From the property line to the first
 1929 occupied residential lot—you're going across a vacant residential lot—is 260 feet.
 1930 To the house itself I think was about 380, to the actual dwelling itself.

1931
 1932 Mr. Jernigan - Three hundred and eighty feet to the residence?

1933
 1934 Mr. Props - To the actual building line of the residence, yes sir.

1935
 1936 Mr. Jernigan - I guess we have asked a lot of questions. Do you
 1937 have any questions? I mean we've been over this a few times.

1938

1939 Mrs Jones - I just want to ask because I want to make sure. When
1940 we tackled this parcel and rezoned it there was a very clear understanding with
1941 the neighborhood that this would not be a 24-hour operation. Is that correct?
1942
1943 Mr Jernigan - I had them pull the minutes and what it said was it
1944 would not be twenty-four hours, but the developer had a right at the time if it had
1945 a tenant that wanted to go in there we'd come back for a Provisional Use Permit.
1946
1947 Mrs Jones - I read the minutes as well. I don't think that developer
1948 had special rights. Anyone has a right to come back and request a provisional
1949 use permit for a 24-hour operation, correct?
1950
1951 Mr Jernigan - But it was noted that he would do that.
1952
1953 Mrs. Jones - And for the record, this case was just a short while
1954 ago.
1955
1956 Mr. Jernigan - 2006. Five years.
1957
1958 Mr Vanarsdall - When it was rezoned there was no proffer on it.
1959
1960 Mr. Jernigan - Yes. It was zoned B-3C with B-2C conditions.
1961
1962 Mrs Jones - And there was a reason for that. I guess I'm trying to
1963 make my mind up here by talking it through. There was a reason for that, and the
1964 reason was that it was deemed to be too intense a use at the time for a B-3 with
1965 the traditional B-3 regulations.
1966
1967 Mr Emerson - That would be correct, yes ma'am.
1968
1969 Mr Jernigan - And we didn't want to leave it wide open.
1970
1971 Mr. Emerson - They had the option, as any B-2 operation does, to
1972 come forth and request a 24-hour operation Provisional Use Permit and the
1973 Commission has the option to consider it and either recommend approval or
1974 denial.
1975
1976 Mrs Jones - And I do agree. Anybody, obviously, has that
1977 opportunity. The people who came in representing this use clearly understood
1978 that there was no guarantee this would be a 24-hour operation. Am I right on
1979 that?
1980
1981 Mr. Emerson - Yes ma'am.
1982
1983 Mrs Jones - Okay.
1984

1985 Mr. Archer - Any further questions? Thank you, Mr. Props. We
1986 have opposition, Mr. Jernigan. Do you want to hear from the opposition first?
1987

1988 Mr. Jernigan - Yes. They've been sitting there for a while, so that will
1989 be great
1990

1991 Mr. Archer - Please be aware that the ten-minute rule does apply,
1992 and that includes everyone within the opposition. So if you're the spokesperson
1993 then that's fine. Then the applicant has the right to reserve some time for
1994 rebuttal. Thank you, ma'am. Just identify yourself for the record.
1995

1996 Ms. Robinson - My name is Sheila Robinson. I live at 5206 Coxson
1997 Road. I've lived there for eighteen years. One thing that I've noticed in the
1998 meetings that we've been to is nobody has mentioned that there are a lot of
1999 children in this subdivision, there are a lot of people that walk in this subdivision,
2000 and there are a lot of people that ride their bikes. And some of these people even
2001 ride their bikes to their place of employment. The increase in traffic over the last
2002 couple of years has increased quite a bit around Robinwood subdivision. And a
2003 lot of times cars cut through there, and trucks. This is a major concern to
2004 everybody in the neighborhood for having twenty-four hours where Eubank is a
2005 major route to the airport and other businesses in the area. Those are my major
2006 concerns.
2007

2008 Mr. Vanarsdall - Ms. Robinson, you understand that's what before us
2009 tonight, what we call a PUP, a Provisional Use Permit, is to go from midnight to
2010 six a.m.?
2011

2012 Ms. Robinson - Yes sir.
2013

2014 Mr. Vanarsdall - You don't object to Wawa going in there, you just
2015 don't want the extended hours? Is that correct?
2016

2017 Ms. Robinson - Yes sir.
2018

2019 Mr. Jernigan - Ms. Robinson, what you're speaking of, children in the
2020 neighborhood. The PUP is from midnight to six when you're not going to have
2021 people out. Kids aren't going to be out there riding at that time and probably not
2022 that many people walking. When we started working on this case, we heard that
2023 you had a cut-through problem. Everybody does. But I think Ms. Morgan has
2024 been working with our Police Department to try to—it's about a six-month
2025 process with Public Works and the Police to see if you can get bumps in there.
2026

2027 I don't think that from twelve to six you're going to have an increase in any traffic
2028 because people take shortcuts to get away from traffic. Between twelve and six
2029 there is not that much traffic on Laburnum Avenue, I'd much rather keep on
2030 Laburnum and go up to the stoplight than I would to cut through Robinwood.

2031
2032 Ms Robinson - Well, I'd just like to say that I don't work and I'm there
2033 most of the time, and there are a lot of cut-throughs. And also I'm concerned
2034 about the crime. There would be more people drawn to that area and at night.
2035 We have had break-ins in that area before. So that's just one more concern I
2036 have

2037
2038 Mr. Jernigan - Thank you

2039
2040 Ms Robinson - Thank you very much

2041
2042 Mr Archer - We do have additional time left if there's someone
2043 else from the opposition who would like to speak.

2044
2045 Ms Morgan - Good evening members of the Commission, Mrs
2046 O'Bannon. My name is Alysa Morgan. I'd like to thank you for allowing me to
2047 speak before the Planning Commission again tonight. I live in the 5300 block of
2048 Raleigh Road, which is off of Eubank Road. I am concerned that allowing the 24-
2049 hour operation at Eubank and Laburnum is unnecessary, inappropriate, and
2050 would have a negative impact on the adjacent residential area for numerous
2051 reasons.

2052
2053 There are already sufficient 24-hour locations in the immediate vicinity, which are
2054 all located more commercially and are not intrusive to residential areas. If a
2055 convenience store is desired along the Laburnum corridor between Williamsburg
2056 Road and 895, there are many sites available for development in this four-and-a-
2057 half mile segment that would be a more desirable location than two-tenths of a
2058 mile from the only other gas station on Laburnum Avenue south of Williamsburg
2059 Road.

2060
2061 Residents would be exposed to more crime. And in regards to calls for service to
2062 Police if you look at the number of calls at nearby 24-hour locations, only nine
2063 percent of the calls for service occur between midnight and six a.m. at
2064 pharmacies, as opposed to twenty percent for convenience stores with gas
2065 pumps. The Wawa at Audubon Drive at Airport has twenty-two percent of their
2066 calls for service occurring between midnight and six a.m. The types of calls
2067 reported during this time frame include drug violations, disorderlies, suspicious
2068 situations, larcenies, and shoplifting.

2069
2070 In an attempt to show that the number of calls that would actually occur between
2071 midnight and six a.m. would be negligible if the PUP were approved, Mr. Condlin
2072 at the Planning Commission meeting on October 13th spoke of the number of
2073 calls at the 24-hour Exxon at Laburnum and Williamsburg between the hours of
2074 midnight and six a.m. from January of 2009 through June of 2011. I think the best
2075 predictor of how many calls could occur during the overnight hours at Wawa in
2076 the area is to look at the Wawa in the area. While the Exxon may have only had

2077 four calls in thirty months, the Wawa at Audubon and Airport had fifty-two calls
2078 for the same time period, which is thirteen times greater. This is very concerning
2079 to me. I even spoke with the Wawa representative about this at the second
2080 community meeting that was held on September 8th. He did not deny a large
2081 number of calls. He said that some calls were situations that did not involve the
2082 Wawa, but were incidents such as people involved in a domestic who just
2083 happen to come to their store. I don't disagree with that statement, but it's not in
2084 the least reassuring that this location can be a catchall for people needing
2085 intervention from law enforcement. As for the employees' zero tolerance policy in
2086 calling police, that's good that if they saw something—a drug transaction on their
2087 lot for example—that they would call. The concern is that the drug transaction
2088 was occurring to begin with.

2089
2090 Another alarming statistic is that there were more calls for police at the Wawa at
2091 Audubon and Airport from January of 2009 to June of 2011 than there were for
2092 the 7-Eleven at Audubon at Laburnum and the Exxon, CVS, and Walgreen's at
2093 Laburnum and Williamsburg Road combined for the same time period. Unless
2094 we assume that this particular Wawa is such an exceptionally busy store that the
2095 statistics are an anomaly, of all the Wawa's in Henrico County, this is not the
2096 store with the most calls for service, nor the one with the highest percentage of
2097 them occurring between midnight and six a.m. For example, the Wawa at 5231
2098 Brook Road had more calls. And the Wawa at 8851 Staples Mill Road had
2099 twenty-six percent of their calls occurring from midnight to six a.m. In fact, if you
2100 look at the six current locations in Henrico County there are almost 1500 calls for
2101 police during this time frame.

2102
2103 Even with the proposed traffic improvements, the impact on traffic would be
2104 substantial. No other Wawa in Henrico County is directly beside a residential
2105 area such as this. Customers to convenience store, with gas pumps will bring
2106 constant vehicular traffic through the residential streets. And depending on the
2107 direction you're traveling, driving through the residential area to get to this
2108 business would not only be more convenient, but the most logical route. Even if
2109 the store closed at midnight and employees were still working overnight inside
2110 the store and receiving deliveries, limiting the hours of operation to six a.m. to
2111 midnight would assist in limiting the vehicular traffic in residential areas during
2112 the overnight hours.

2113
2114 Noise and light are minor in comparison to these other concerns, but are still an
2115 issue. The noise and light generated by a business that closed at midnight would
2116 be a great deal less intrusive than one that operated twenty-four hours a day.
2117 After attending the two community meetings in July and September, the residents
2118 were told that in deference to the nearby homes, the original layout had been
2119 rotated so that the store would be between the gas pumps and the
2120 neighborhood, and block much of the noise and the light. While the building may
2121 be taller than the canopy, it was not discussed that it's not as wide. Even as

2122 recently as the last plan of development meeting there were still issues with the
2123 canopy design which have not been resolved.

2124
2125 Residents in my neighborhood have been participating in the development of this
2126 site since August 2006 when we received the first of several letters from Williams
2127 Mullen stating they wanted to present their proposal to the surrounding property
2128 owners for our input and suggestions. They stated they envisioned typical retail
2129 of a quality and type similar to Laburnum Green. After two community meetings,
2130 a letter from Williams Mullen, November 7, 2006, described several revised
2131 proffers to the original proposal to include hours of operation for all uses shall be
2132 restricted to six a.m. to midnight. These highlights, the letter states, are in
2133 addition to numerous other changes including those previously incorporated to
2134 address the neighborhood and staff concerns. It was after these changes to their
2135 proposal that they were able to appease residents' concerns. It was one of the
2136 main selling points. And now that the time has come for building on the property,
2137 they've requested a Provisional Use Permit to allow for 24-hour operation.

2138
2139 In reference to Mr. Condlin's statements made at the October 13th Planning
2140 Commission meeting, this does feel a bit like a bait-and-switch. It may have been
2141 their intention all along to request a provisional use permit at a later date, but it
2142 was never presented to the neighborhood as such.

2143
2144 There have been two community meetings this year—one in July and one in
2145 September—and the premise of these meetings were to inform the community of
2146 the 24-hour-use request and to answer any questions. These meetings were
2147 appreciated, but much of what was discussed was unrelated to the Provisional
2148 Use Permit request. There was much discussion focused on a narrow path of
2149 reasoning showing what a good store Wawa is, how there were other applicants
2150 from different businesses for this site. They were not a superior convenience
2151 store, that Wawa only operates stores that are twenty-hours, and that if 24-hour
2152 operations were not approved they would not come. I fear that any support
2153 expressed at the September 7th community meeting had less to do with the 24-
2154 hour PUP and more to do with being afraid of what would be built there if not a
2155 Wawa.

2156
2157 The Board of Supervisors in January of 2007 approved the rezoning of this
2158 property at Eubank and Laburnum to a B-3C Business District with a proffer of
2159 business hours restricted from six a.m. to midnight. Residents don't oppose the
2160 development of the property, we only ask for your consideration to not subject
2161 the nearby homes to having businesses operating from midnight to six a.m. The
2162 restriction of hours of operation was put in place by the Board of Supervisors for
2163 certain reasons, and those reasons are no less valid today. The area has not
2164 undergone any significant changes which would make a twenty-four operation in
2165 this location desirable. The staff report does not support this request.

2166

2167 The 2026 Comprehensive Plan section on land use states that a keystone policy
2168 in addressing development and land use issues within residential areas is to
2169 avoid encroachment of non-residential uses into residential areas. This
2170 Provisional Use Permit will be a critical turning point. Approving the 24-hour
2171 Provisional Use Permit and allowing this property to be developed in such a
2172 manner would be a gateway to more intense uses on the property on the
2173 southeast and southwest corners of Eubank and Laburnum. It would set a terrible
2174 precedent and would have an irrevocable negative impact on the adjacent
2175 neighborhood.

2176
2177 I thank you very much for your time and consideration.

2178
2179 Mr. Archer - Thank you, Ms. Morgan. Are there questions from the
2180 Commission?

2181
2182 Mr. Vanarsdall - You already know that Wawa is approved to go
2183 there?

2184
2185 Ms. Morgan - Yes sir.

2186
2187 Mr. Vanarsdall - You don't mind twelve to six?

2188
2189 Ms. Morgan - Yes sir. Thank you.

2190
2191 Mr. Vanarsdall - Mr. Jernigan, they're not going to have any kind of
2192 security are they?

2193
2194 Mr. Jernigan - No sir.

2195
2196 Mr. Vanarsdall - Are they going to have cameras and a video system,
2197 but they're not going to have anybody on site?

2198
2199 Mr. Archer - Okay. The opposition has about a minute and ten
2200 seconds if somebody else would like to speak. Go ahead, sir. Please state your
2201 name for the record.

2202
2203 Mr. Robinson - David Robinson. I also live at 5206 Coxson Road.
2204 The only thing I would like to state is that we were assured by representatives
2205 from Wawa that they had control over their deliveries so that they wouldn't be a
2206 disturbance to the neighborhood. However, what they don't have control over is
2207 the—well, Coke and Pepsi, the outside vendors who also supply Wawa. They
2208 have no control over what route they use to come to the store.

2209
2210 Mr. Vanarsdall - Mr. Robinson, I don't believe they have any control
2211 over anything.

2212

2213 Mr. Robinson - No Well they said they had control over their own
2214 deliveries
2215
2216 Mr. Vanarsdall - You think a truck is coming in every morning at two
2217 o'clock or twelve o'clock, it may come in a couple times at that time and then you
2218 don't know when they're coming and they don't know when they're coming
2219
2220 Mr. Robinson - I know. But they assured us that they would be able to
2221 control that
2222
2223 Mr. Vanarsdall - Who assured you of that?
2224
2225 Mr. Robinson - The representatives from Wawa
2226
2227 Mr. Jernigan - Their trucks
2228
2229 Mr. Robinson - Yes, their trucks.
2230
2231 Mr. Jernigan - Their delivery trucks
2232
2233 Mr. Robinson - They neglected to mention that they also have the line
2234 of outside trucks that deliver continuously that they do not have control over that
2235 would be disturbing the neighborhood. That was all I wanted to say.
2236
2237 Mr. Jernigan - The last meeting that we had, which went about two
2238 and a half hours—we've been together a lot—at the end of that meeting I asked
2239 for a show of hands. Do you remember how that count came?
2240
2241 Mr. Robinson - At the top of my head—
2242
2243 Mr. Jernigan - We had about seven for, and four against
2244
2245 Mr. Robinson - That was for them being there, but not for the
2246 midnight to six a.m. yes. That's what I'm addressing is the midnight to six a.m.
2247
2248 Mr. Jernigan - That's what we had the meeting on was for the
2249 Provisional Use Permit. We were in there and we talked about it for two and a
2250 half hours. David, I don't remember his last name. the tall redheaded fellow, he's
2251 not here tonight. He had called me and told me that he was in support of it.
2252
2253 I've had a hard time on this case, that's the reason we deferred it so many times.
2254 I was pretty much ready to rule on it, or ask for a ruling last time, but when they
2255 threw the diesel in there, that did put a kink in the thing. I was told that they will
2256 not have diesel.
2257
2258 Mr. Robinson - That will be the only Wawa that didn't have diesel

2259

2260

Mr. Jernigan - Well, they're putting diesel in, but they're not going to have diesel in this one. I do want you all to know that that Wawa gave in on that one. They will not have diesel.

2261

2262

2263

2264

Mr. Robinson - I was just talking about the late hours and the fact that there would be deliveries going through the neighborhood because they don't have control over those outside vendors.

2265

2266

2267

2268

Mr. Jernigan - I can't control traffic. I can't say I don't know why a delivery truck would go through your neighborhood when they can go right down Laburnum Avenue

2269

2270

2271

2272

Mr. Robinson - Because they have to stop at a stoplight and they don't want to do that.

2273

2274

2275

Mr. Vanarsdall - They'll go anywhere they want to go. You can't control that

2276

2277

2278

Mr. Robinson - If they have to stop at a stoplight, they don't want to do it

2279

2280

2281

Mr. Jernigan - Okay thank you

2282

2283

Mr. Archer - That just about exhausts the time, Mr. Jernigan. Do you need to hear from the applicant?

2284

2285

2286

Mr. Jernigan - Yes, please.

2287

2288

Mr. Vanarsdall - Mr. Jernigan, let me ask you a question. Do you have a proffer on this case that says they'll be not diesel fuel served?

2289

2290

2291

Mr. Emerson - Number 12. It's not a proffer; it's a condition, Mr. Vanarsdall. It's number 12

2292

2293

2294

Mr. Vanarsdall - Here's what happened. We don't know who was to blame, if anybody is to blame, but these people think that there was never going to be anything past midnight. This is one of these things sort of like a he-said, she-said. They don't have anything in writing and we don't have anything in writing. It makes it hard on them. You've heard this speech by me before. I like Wawa. I like it in its place. One near here I go to all the time. Where it's located it's not bothering a neighborhood. That bothers me about this one. I want you to know how I feel about it.

2295

2296

2297

2298

2299

2300

2301

2302

2303 Mr. Jernigan - All right. Like I said, that's the reason Mr. Props did
2304 the measurement for the closest house. I had asked him at the last meeting how
2305 far, and I thought it was around 400 feet.

2306
2307 Mr. Vanarsdall - The trucks will go anywhere they want to go, they'll go
2308 anytime. They don't care about signs or anything. The only language they know
2309 is a barrier.

2310
2311 Mr. Archer - All right, Mr. Condlin. Good evening again

2312
2313 Mr. Condlin - Mr. Chairman, members of the Commission, Mr.
2314 Emerson Andrew Condlin from Williams Mullen here on behalf of Mike Carroll. I
2315 have with us a representative Ted Iobst, from Wawa to the extent that we have
2316 any operational questions. And we have Tom and Jim Kinter as well

2317
2318 Just to touch upon a couple of the points first. The distances that we've
2319 measured from the back of store—this is to the closest residential lot where there
2320 is no home—is 385 feet. It's almost 800 feet to the nearest home with 140 feet
2321 between the back of the building and the canopy itself. So we're talking almost
2322 600 feet between us and the nearest home

2323
2324 I do also want to point out that from the standpoint of the twenty-four hours, there
2325 does seem to be some question about that. We originally applied—and I handled
2326 the case—for B-3. We applied for B-3 because we wanted the twenty-four hours,
2327 so we limited a lot of the uses. And in the course of the conversation we actually
2328 showed as part of the plan that's part of the case, we showed a gas station on
2329 this site. We had a layout with the canopy and everything showing on it, with a
2330 little bit different configuration, not with the building behind Robins Road where
2331 we have it now. But we have the canopy and we showed it during the case. They
2332 said who is going to be? We said we're not sure yet, we don't have a contract.
2333 Because they didn't know the quality of the user, because they didn't know what
2334 it would look like and we couldn't guarantee it, that's when we agreed to that

2335
2336 Now that letter that's referring to? I know that letter, I've read that letter. It's
2337 saying that we've restricted it to the B-2, which currently allows for six a.m. to
2338 midnight subject to the PUP. That's why we had Mr. Tyson—during the hearing
2339 in the minutes that you see—specifically call out for, and why we specifically
2340 provided for in the proffers, not limiting the hours to midnight, but allowing for a
2341 Provisional Use Permit and come back at a later time. That was always the
2342 discussion with the neighborhood, depending upon the quality of the user. Now
2343 we may disagree with the quality of the user here, but we did mention Wawa and
2344 that was our intent. Again, I don't think we're being disingenuous. I handled that
2345 case. I always try to be honest in these cases no matter what we do. I think we
2346 were definitely honest in this case in discussing. We specifically discussed a
2347 Sheetz and a Wawa. And the question became if it's somebody else we wouldn't
2348 like it.

2349

2350

Mr. Vanarsdall - Mr. Condlin, you live in an area if a motorcycle came down through there loud at night, a Harley, everybody in the place would be calling the police

2351

2352

2353

2354

Mr. Condlin - I live right next to a shopping center zoned B-2 with a gas station.

2355

2356

2357

Mr. Vanarsdall - Six hundred, three hundred feet from it?

2358

2359

Mr. Condlin - Yes sir.

2360

2361

Mr. Vanarsdall - The B-3 or the B-2, I don't see where that has any bearing on the PUP, and that's why we have PUP's. If you can't get it all in one belt of wax it can come back and be evaluated

2362

2363

2364

2365

Mr. Condlin - I'm only stating the point because it was insinuated that we were not asking for past midnight and that was one of the deals. That was not the deal in part of the zoning case. We did not limit our hours to midnight.

2366

2367

2368

2369

2370

Mr. Vanarsdall - You've dealt with me long enough to know if I'm going to have something like that I'm going to put it in writing, and they're going to put a proffer on it

2371

2372

2373

2374

Mr. Condlin - Well we did put our proffer. We drafted it specifically and described it. I'll tell you Mr. Vanarsdall, this area—

2375

2376

2377

Mr. Vanarsdall - On this one?

2378

2379

Mr. Condlin - On this property. This is not a quiet, quaint neighborhood that doesn't have anything around it. If you look the at the zoning map, in behind the—

2380

2381

2382

2383

Mr. Vanarsdall - It doesn't have anything around it, that's the reason you're here?

2384

2385

2386

Mr. Condlin - Well, it has Eubank Road that carries a lot of traffic. This is an industrial area right here that sits behind there. All of this property that's zoned B-3 is B-3 Unconditional that runs along Laburnum Avenue, that runs right along Robins Road. They can go twenty-four hours. As a matter of fact, just at the end of Robins Road, with a house directly next to it, Woodlin Oil has a 24-hour commercial diesel operation Unmanned. Twenty-four hours With a house right next to it. In this neighborhood it's already existing in this area

2387

2388

2389

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2392

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2394

Mr. Vanarsdall - Let me ask you another question.

2439 This is an industrial area. We talked about the safety. I've told you some of the
2440 figures that we have that I think are more corresponding. I'll have to disagree with

2437 that we have.

2436 station one way or other is what our belief is at this point based on the contracts
2435 Wawa will not go in, but we want to be able to have them. This will be a gas
2434 only asking for these extended hours. If we don't get the twenty-four hours,
2433 a surprise. This is a use that was specifically provided for in our proffers. We're
2432 And what we're talking about is we can't put this use in right now. This should be
2431 increase in traffic. What we're talking about here is between midnight and six
2430 I guess the other point that I would make is we've already talked about the

2428 they're selling it, they're in violation

2427 condition. I think it's absolutely enforceable. You know it's being sold as diesel. If
2426 appropriate, and after we talked to Wawa, that they're willing to accept that
2425 whether its just fuel or diesel. This is a concern in this case and we'll
2424 differentiation in the code itself that specifically differentiates for a gas station
2423 Mr. Condlin - I understand that, but there's actually no

2421 Mr. Vanarsdall - We don't like to get into products that people sell.

2419 If you don't comply and if you are continuing not in compliance—

2418 talked about on the last case, to withdraw that PUP. They can file a violation and
2417 terms of the Provisional Use Permit. The County has every right, just like they
2416 that says you can't sell diesel fuel. If you're selling diesel fuel you're violating the
2415 Mr. Condlin - I apologize for that sir. There is a condition on there

2413 Mr. Vanarsdall - That's not intelligent?

2411 Vanarsdall You can withdraw the PUP

2410 Mr. Condlin - I'll have to respectfully disagree with you, Mr.

2408 Mr. Vanarsdall - police in here and say take that diesel fuel out.

2406 Mr. Condlin - The County has every authority—

2404 County has no authority—

2403 Mr. Vanarsdall - And if they put it in a month after they open, the

2401 Mr. Condlin - I think that's easy.

2399 Mr. Vanarsdall - Who is going to police that to see that they do not
2398 ever put in diesel fuel? Who is going to do that?

2396 Mr. Condlin - Yes sir

2441 the statement that says the Airport Wawa is not that much busier. It is a lot busier
2442 than a lot of other Wawa's. And as Ms. Vann had pointed out in one of the other
2443 meetings that we had specifically regarding this is that a call does not mean a
2444 crime. It's not a bad thing to make a call, and Wawa has a zero tolerance policy.
2445 We think it's a good thing. If you shut down at midnight from operators then there
2446 are no eyes on there. All you have are the cameras. If there are operations, there
2447 are no eyes on the property.

2448
2449 I also want to point out that certainly a lot of stores that close at midnight still
2450 have activity. We can still accept deliveries. We talked about whether you can
2451 enforce it. I don't think that's enforceable to say you can't accept deliveries. You
2452 can under B-2 currently. You can accept deliveries right now, closing at midnight,
2453 between the hours of midnight and six. Trucks can come in there right now
2454 between those hours under the B-2. They can still stock shelves. I think this is
2455 safer, a little bit easier operation with someone on site, guaranteed to be there for
2456 that purpose.

2457
2458 With that I'll be happy to answer any questions that you may have.

2459
2460 Mr. Archer - Thank you, Mr. Condlin. Are there any questions?

2461
2462 Mrs. Jones - Sure, Mr. Condlin, I must be not recollecting this quite
2463 right. There is B-3 north, there's B-3 south of this parcel.

2464
2465 Mr. Condlin - It was B-3. We zoned this B-3.

2466
2467 Mrs. Jones - You zoned it B-3 and you specially saw fit to agree to
2468 B-2 with restrictions. Tell me again why you did that.

2469
2470 Mr. Condlin - There was a concern with the neighborhood, with the
2471 neighborhood opposition not knowing who the user would be for the 24-hour
2472 operation. Not knowing the quality and the look of the building and the
2473 operations. We legitimately opened up our books and said we can't tell you who
2474 that is; we think it's going to be a gas station. We would like to get a Wawa or a
2475 Sheetz in there. But because of that, because we couldn't guarantee them those
2476 users, they said we want to limit it to midnight until you can come later. I've done
2477 this on a number of other cases. Limit it to the B-2 and coming back with a
2478 Provisional Use Permit so you can show, and the County can add additional
2479 conditions at that point to make it safe, to address concerns like the diesel, like
2480 the cameras and the safety survey issues.

2481
2482 Mrs. Jones - And I haven't heard anyone, including those of us up
2483 here, say that we don't think Wawa is anything but a first-class operation.

2484
2485 Mr. Condlin - I appreciate that.

2486

2467 Mrs. Jones - I come back to why do we go through this process if
2488 we don't make good-faith agreements up and down the line.

2489
2490 Mr. Condlin - This is entirely in good faith. If I came forward with
2491 someone that has no track record, that does not have a good operation, that's a
2492 first-time operator, that doesn't operate a good service, that doesn't operate a
2493 good business, I think there would be legitimate concern and people would say
2494 where is the track record, where are the operations and the controls that you
2495 have. But because we specifically said we're going to go for a Wawa and a
2496 Sheetz, and they said we don't want any local person operating past midnight.
2497 We said we understand that and we'll come forward with someone with a more
2498 national control operation. I think there is a difference here because we did talk
2499 about that, and that was an important part.

2500
2501 Mrs. Jones - I read the minutes. I didn't read anything about if it's
2502 local people they can't be there past twelve; if it's national they can go twenty-
2503 four hours.

2504
2505 Mr. Condlin - I'm talking about the neighborhood meetings that we
2506 had. I ran those meetings I specifically did those meetings. Mr. Tyson was at
2507 those meetings. That's why we asked him to refer to that in his presentation that
2508 we can go until midnight currently under the B-2, but we can apply for a PUP.

2509
2510 Mrs. Jones - And the closest 24-hour convenience store with gas,
2511 so that everyone is not put out by having to go very far, is what, a mile, half a
2512 mile, quarter mile?

2513
2514 Mr. Condlin - It's up the road at Williamsburg and Laburnum

2515
2516 Mrs. Jones - Extremely close.

2517
2518 Mr. Condlin - Well sure, sure.

2519
2520 Mrs. Jones - It's not like this is a pressing need in the area

2521
2522 Mr. Condlin - From a use standpoint, when you look at use permit
2523 provisions in the code, it doesn't talk about the market and whether there's a
2524 need Wawa sees a need for this and there is a market for this. This has
2525 operations that are currently nearby. There is a 24-hour operation currently within
2526 the neighborhood at the end of Robins Road just north of this. An unmanned
2527 station. There is another station here. There is a service that Wawa provides
2528 that's more than just gas. As you know, you go to a Wawa, there's a lot of
2529 sandwiches, you have a lot of services otherwise and fobo products, and grocery
2530 products. It's more than just gas. Gas is the one that gets them in there, but they
2531 provide other services that aren't being served by this area. That's from a
2532 marketing standpoint.

2533

2534 Mrs. Jones - I agree. I think they have wonderful food, I seek it out
2535 on the road. But I'm not usually doing that between midnight and six

2536

2537 Mr. Condlin - But some people are. People work shift work. This is
2538 near and in an industrial area. They feel like they have an opportunity and this
2539 part of their—like you talked about with Walmart. This is part of their operations
2540 that they have and that people expect. And it's also because people want to get a
2541 cup of coffee before six a.m. when they have to start work at five. When they get
2542 off of a midnight shift they want to grab a sandwich on the way by. This is what
2543 they're offering here, and we think this is a good operation that won't have traffic
2544 impacts, won't have safety impacts. We're talking three calls at the Exxon in
2545 eighteen months—or actually more than that. Three calls between the hours of
2546 midnight and six from a crime standpoint.

2547

2548 Mrs. Jones - With respect, this is not a holiday season request.
2549 You're talking year-round.

2550

2551 Mr. Condlin - But with the Provisional Use Permit the question is
2552 from the impact, not the market, is there a market here? That's not one of the
2553 considerations.

2554

2555 Mrs. Jones - No, it's not our consideration at all.

2556

2557 Mr. Vanarsdall - If it goes through, you and I will meet one night at
2558 midnight and have a cup of coffee.

2559

2560 Mr. Condlin - Am I buying or are you buying? All right, we'll buy
2561 each other—I don't drink coffee, but I'll have a Coke with you.

2562

2563 Mrs. Jones - Thank you.

2564

2565 Mr. Archer - Any further questions of Mr. Condlin?

2566

2567 Mr. Condlin - Thank you.

2568

2569 Mr. Archer - Mr. Jernigan, anyone else you'd like to hear from?

2570

2571 Mr. Jernigan - We have a representative here from Wawa; I'd like for
2572 him to come down. How are you, sir?

2573

2574 Mr. lobst - I'm fine; and yourself?

2575

2576 Mr. Jernigan - Would you state your name for the record?

2577

2578 Mr. lobst - Ted lobst.

2579
2580 Mr Vanarsdall - You came down from Pennsylvania again, didn't you?
2581
2582 Mr lobst - I did
2583
2584 Mr Jernigan - Mr. lobst, last time we were here we discussed the
2585 diesel and you told us that was your new market and that you would put it in
2586 there. But on this case they've decided not to do it. I need you to state that for the
2587 record.
2588
2589 Mr lobst - Sir, after consideration for the neighborhood we've
2590 decided to withdraw the diesel from this project
2591
2592 Mr Jernigan - You realize that a Provisional Use Permit is revocable
2593 by the County?
2594
2595 Mr lobst - Sure
2596
2597 Mr Jernigan - If this was to pass and had problems down the road,
2598 the County can come in and pull the Provisional Use Permit.
2599
2600 Mr. lobst - We understand that.
2601
2602 Mr. Jernigan - Okay.
2603
2604 Mr Branin - I have a couple questions. Mr lobst, are there any
2605 Wawa's in the U S that are currently operating that aren't twenty-four hours?
2606
2607 Mr lobst - Yes As I mentioned before, last month, we have
2608 some legacy stores which are older stores that do not have gas that are not
2609 twenty-four hours. We also have seasonal stores at the Jersey Shore, along the
2610 shore points, Ocean City, Maryland, that only operate partial years. And that's
2611 due to the migration of seasonal residents.
2612
2613 Mr. Branin - All right Someone had said to me recently why
2614 doesn't Henrico County like Wawa's, they're the Cadillac of service stations. I
2615 think Wawa's are great. I travel up and down the East Coast all the time, and I
2616 know from being in New Jersey quite often—for instance the one in Berlin, New
2617 Jersey closes early because it's surrounded by a neighborhood. What is the
2618 need for you to go past 12:00, legitimately? For instance, there is a location that
2619 would be perfect for a Wawa across town in the Three Chopt District. I know if a
2620 Wawa was going to be proposed there the community is going to say no 24-hour.
2621 So why is Wawa not flexible enough to say we want to put a store in, we know
2622 it's going to be a large-grossing store, we can let the 24-hour thing go to
2623 operate? There's a difference between going into a community and going on
2624 Broad Street. When you guys push into communities, I would think to be a good

2625 neighbor and be a good corporate citizen you would have that flexibility to say on
2626 major thoroughfares yes, against communities we'll work with the community and
2627 only go to midnight. Do you make that much money between 12 and 6 that you
2628 have to stay open?
2629

2630 Mr. Iobst - It's not about the money, it's about the consistent offer
2631 to our customers. So, consistent offer to our customers. so when you see a
2632 Wawa with gas you know you can go in there and purchase gas at whatever time
2633 you need to. There are shift workers. Obviously right now with the economy they
2634 are not as prevalent as they used to be, second and third shift. People out for
2635 various reasons in the evening. Those are the offers that we provide to the
2636 customer. Our older stores are smaller stores without gas, typically back up to
2637 residential neighborhoods. That's a different offer. As I believe I spoke last
2638 month, in my own community, in my own school district there's a new Wawa with
2639 gas that immediately abuts four residential lots that are upper middle-class
2640 homes. We cohabitate in that neighborhood just fine. We arrange our deliveries
2641 to be conducive to the daylight hours. We've adjusted our music system to be
2642 different. We've adjusted our lighting to be different. So we do all those things to
2643 meld into the neighborhood. But in terms of the 24-hour operation, we do that as
2644 a consistent offer. And essentially we're going to get the deliveries and we want
2645 someone there to receive the deliveries. And oh, by the way, the person that gets
2646 off work at 11.00 or goes fishing or boating at 5 a.m., or the blue collar worker
2647 that's in his truck on the way to work at 5 a.m., there's a place for them in our
2648 business model.
2649

2650 Mr. Vanarsdall - Mr. Iobst, I heard you say that the old ones don't have
2651 gas, I don't guess you would have a traffic problem if it wasn't selling gas. You
2652 wouldn't have any at all if you weren't selling gas
2653

2654 Mr. Iobst - I'm not sure I understand that question
2655

2656 Mr. Vanarsdall - You said that you have some old ones that don't have
2657 24-hour service that don't sell gas
2658

2659 Mr. Iobst - Correct.
2660

2661 Mr. Vanarsdall - If they don't sell gas how is a truck or car going to
2662 disturb the neighborhood?
2663

2664 Mr. Iobst - Well they're still moving in and out of the parking lot to
2665 buy whatever they want to, whether it's coffee, a sandwich, groceries. It's still
2666 traffic.
2667

2668 Mr. Vanarsdall - Like a regular convenience store.
2669

2670 Mr. Iobst - Correct.

2671
2672 Mr. Archer - Any further questions for Mr. Iobst?
2673
2674 Mr. Jernigan - I'm done
2675
2676 Mr. Archer - Okay
2677
2678 Mr. Iobst - Thank you.
2679
2680 Mr. Archer - Thank you, sir.
2681
2682 Mr. Jernigan - I'm going to just say a few things, I can see how this
2683 case is going to go Mr. Chairman. when we vote on this, I would like to poll each
2684 member
2685
2686 Mr. Archer - Okay.
2687
2688 Mr. Jernigan - As I told everybody, this has been a tough case for
2689 me because I'm sensitive to the residents. And even at the last meeting there
2690 seemed to be at least—I'll say I had more hands for than against but let's say it's
2691 even. I have talked to a lot of people up and down the road I've had a lot of
2692 people come to me and say why would I even have a problem with this, it's a
2693 commercial corridor Laburnum Avenue is a commercial corridor. I think the way
2694 Wawa has designed this, it cuts down on noise about as much as you can,
2695 they've had to redesign it twice. They've put pumps up next to the road and have
2696 the building blocking it. Ms. Morgan is right, there are probably two lanes that are
2697 not blocked with the building.
2698
2699 Anyway, we need to move this on, I think I know how it's going to go But we
2700 need to get this on up to the Board to see what they're going to do Mr.
2701 Chairman, as I said, I'd like you to poll each person individually I'll ask for
2702 approval of P-11-11, Andrew M. Condlin for Michael J. Carroll, to send to the
2703 Board of Supervisors.
2704
2705 Mr. Archer - Is there a second?
2706
2707 Mr. Emerson - Mr. Chairman, according to article—
2708
2709 Mr. Jernigan - Somebody has to second it
2710
2711 Mr. Emerson - Well no According to Article 5 of the PC Rules and
2712 Regs, if you do not have a second, the motion fails So if there is no second then
2713 that motion fails and there needs to be another motion
2714
2715 Mr. Jernigan - All right. Well if that fails then I make a motion that
2716 we—

2717

2718 Mr. Branin - Mr. Jernigan, I can make that motion for you.

2719

2720 Mr Jernigan - Yes, would you do that please, Mr Branin?

2721

2722 Mr Branin - Not a problem, sir I'd like to move that P-11-11,
2723 Andrew M Condlin for Michael J Carroll, move forward with a recommendation
2724 for denial

2725

2726 Mr Vanarsdall - Second

2727

2728 Mr Archer - Motion by Mr. Branin, seconded by Mr Vanarsdall
2729 that the motion go forward with a recommendation of denial

2730

2731 Mrs Jones, your vote?

2732

2733 Mrs Jones - Aye.

2734

2735 Mr Branin - Aye

2736

2737 Mr. Archer - Aye

2738

2739 Mr Vanarsdall - Aye

2740

2741 Mr Jernigan - Aye

2742

2743 Mrs O'Bannon - And I abstain of course.

2744

2745 Mr Archer - The motion passes with a recommendation of denial
2746 The Board of Supervisors will hear this on December 13th

2747

2748 **REASON:** Acting on a motion by Mr Branin, seconded by Mr.
2749 Vanarsdall, the Planning Commission voted 5-0 (one abstention) to recommend
2750 the Board of Supervisors deny the request because the extension of hours could
2751 impact the health, safety, and welfare of residents in the area and it could have a
2752 precedent setting impact on existing land uses in the area.

2753

2754 Mr Emerson - The motion to deny passed And it will be on the
2755 Board agenda on December the 13th

2756

2757 **Deferred from the October 13, 2011 Meeting.**

2758

2759 **C-11C-11 Steve Faris for Osborne Glen, LLC:** Request to
2760 conditionally rezone from A-1 Agricultural District to R-5AC General Residence
2761 District (Conditional) part of Parcel 800-695-7559 containing approximately 58.7
2762 acres located at the northwest intersection of Sholey Road and Osborne
Turnpike. The applicant proposes a zero-lot-line subdivision of no more than 119

2767 lots The R-5A District allows a minimum lot size of 5,625 square feet and a
2764 maximum density of six (6) units per acre. The use will be controlled by zoning
2765 ordinance regulations and proffered conditions. The 2026 Comprehensive Plan
2766 recommends Traditional Neighborhood Development, Suburban Mixed-Use, and
2767 Environmental Protection Area. The staff report will be presented by Ms.
2768 Rosemary Deemer.

2769
2770 Mr Archer - Thank you, Mr. Secretary. Is there anyone present
2771 who is opposed to C-11C-11, Steve Faris for Osborne Glen, LLC? We do have
2772 opposition: thank you Ms. Deemer. good evening

2773
2774 Ms. Deemer - Good evening, Mr. Chairman, members of the
2775 Commission.

2776
2777 This request is to rezone 58.7 acres located at the northwest intersection of
2778 Osborne Turnpike and Sholey Road from A-1 Agriculture to R-5AC General
2779 Residence (Conditional) to allow the construction of up to 119 detached zero lot
2780 line homes. The 2026 Comprehensive Plan recommends Traditional
2781 Neighborhood Development (TND), Suburban Mixed Use (SMX), and
2782 Environmental Protection Area. The property also falls within the Osborne
2783 Turnpike Existing Character Protection Area.

2784
2785 The applicant has submitted proffers dated October 26, 2011 which includes the
2786 conceptual layout before you. It includes a 210-foot setback from Osborne
2787 Turnpike, 1.5 acres of centrally located open space with a gazebo, a grassed
2788 multi-purpose field and picnic area, a garden area and walking paths, and 25.5
2789 additional acres of open space. Other proffers include:

- 2790
2791 • A minimum lot width of 60 feet,
2792 • House sizes ranging from 1,650 to 2,000 square feet; and
2793 • Eighty-five percent of the homes will have an attached or detached garage.

2794
2795 Additional proffer items involve building, driveway, road materials; cantilevered
2796 features, utilities; covenants, sidewalks; and other features.

2797
2798 While the residential use could be appropriate and the applicant has made
2799 attempts to incorporate elements of rural character into the development, several
2800 outstanding concerns remain. Without either an adopted TND or SMX ordinance,
2801 the challenge is to use traditional zoning districts to accomplish the master
2802 planned community intended by the TND and SMX land use designations. As
2803 this development has the potential to change the character of the Osborne
2804 Turnpike corridor, efforts should be made to preserve and enhance the rural
2805 character through significant improvements in site design and proffers.

2806
2807 The Community Character Chapter of the 2026 Comprehensive Plan
2808 recommends residential development have variety and creativity in the design of

2809 dwellings to ensure visual interest and internal compatibility. As proposed, staff
2810 is concerned about the lack of variety in architectural elevations, the potential
2811 that the housing proposed is too large for the proffered lot sizes and the lack of
2812 usable of open space. While the applicant has submitted a Landscape Plan, it is
2813 not proffered and staff does not believe it sufficiently buffers or screens the
2814 development or enhances the character of Osborne Turnpike. A commitment to a
2815 Transitional Buffer 35 or 50 planted with native vegetation, should be
2816 considered. Appropriate fencing and signage should also be addressed.

2817
2818 As this site is recommended for TND and SMX, it is appropriate to note that the
2819 Community Character chapter of the Plan states that while cul-de-sacs are
2820 popular in Suburban Residential development, they should only be used
2821 elsewhere when they are necessary to accommodate natural features or other
2822 site constraints. Staff recommends the elimination of cul-de-sacs that are not
2823 needed due to the existence of environmental constraints and staff further
2824 recommends the addition of at least one stub connection. Staff also
2825 recommends the long line of lots shown here be mitigated with additional open
2826 space.

2827
2828 Regarding the proffers, staff recommends the applicant consider changes which
2829 would bring the development more in conformance with other recent
2830 developments in the county. They include:

- 2831
- 2832 • Recessing front-loaded garages a minimum of four feet;
 - 2833 • Including windows on side elevations,
 - 2834 • Excluding Dryvit and considering alternative materials to vinyl, such as
2835 HardiPlank;
 - 2836 • Including full porches and wrap-around porches on corner lots,
 - 2837 • Brick or stone steps, sloops or porches,
 - 2838 • Sidewalks on both sides of the street;
 - 2839 • An entrance feature,
 - 2840 • Exterior hours of construction; and
 - 2841 • Correction of the right-of-way dedication proffer.

2842
2843 The recommended land uses of TND and SMX contemplate planned
2844 developments that anticipate larger tracts of land to accommodate unique
2845 development with a variety of home styles and uses. This zero lot line
2846 development represents a piecemeal approach that does not preserve or
2847 enhance the rural character of the area and therefore may be premature without
2848 the assemblage of additional acreage or a TND or SMX ordinance in place. As
2849 proposed, staff does not support this request and recommends deferral of this
2850 request to allow the applicant time to address the issues in the staff report

2851
2852 That concludes my presentation and I'd be happy to take any questions.

2853

2854 Mr. Archer - Thank you so much, Ms. Deemer. Are there questions
2855 from the Commission?
2856
2857 Mr. Jernigan - The acreage of the open space?
2858
2859 Ms. Deemer - The total would be I believe twenty-five acres
2860
2861 Mr. Jernigan - At our last meeting which was number three.
2862
2863 Ms. Deemer - Yes sir.
2864
2865 Mr. Jernigan - They haven't proffered the four-foot setback on the
2866 garages?
2867
2868 Ms. Deemer - No sir
2869
2870 Mrs. Jones - Ms. Deemer?
2871
2872 Ms. Deemer - Yes ma'am
2873
2874 Mrs. Jones - Looking at The Village at Osborne, how would you
2875 compare that development as far as its density, layout, and that kind of thing with
2876 what is proposed? This may be an unfair questions because obviously this is not
2877 part of your purview, but I'm just trying to remember our discussions about that
2878 development as it came along. As I drove through it and looked at it the other day
2879 I was trying to envision how it might compare. It may be something that Mr.
2880 Jernigan could almost answer better than you could.
2881
2882 Mr. Jernigan - Osborne Landing is entirely different
2883
2884 Mrs. Jones - No, The Village at Osborne
2885
2886 Mr. Jernigan - I mean The Village at Osborne is a different setup
2887 than this project because it's after a TND that's called the Stonehouse golf
2888 course called The Orchards. That's where we rode down and looked at the way
2889 they developed. It seemed to be very acceptable to the neighbors. That's the
2890 reason we were working on this. I wish I had a movie of that; it would be a whole
2891 lot easier to look at, but I don't. Okay
2892
2893 Mrs. Jones - Thank you.
2894
2895 Mr. Archer - Anything further from the Commission?
2896
2897 Mr. Jernigan - Let me hear from the applicant
2898

2899 Mr. Archer - All right. Yes, we'll get to the opposition after the
2900 applicant, sir.

2901
2902 Mr. Wilton - Good evening. For the record, my name is Henry
2903 Wilton and I represent Osborne, LLC.

2904
2905 Mr Archer - Mr Wilton, would you like to reserve any time for
2906 rebuttal, sir?

2907
2908 Mr. Wilton - Yes sir. Five minutes would be fine for me.

2909
2910 Mr. Archer - Thank you.

2911
2912 Mr Willon - I will have to apologize to Rosemary and Jim. They've
2913 done a good job on this. We inundated them with so much product today with
2914 new plans. All plans that are being built in TND's in Charleston, Raleigh, some in
2915 Richmond, all being built by HHHunt who is our builder. What we did is we
2916 inundated them with all the product that is being built in TNDs right now. They
2917 said what we've done is we do have TND product. Will it fit on the lot? Yes it will
2918 because we have lots from fifty to seventy feet wide. In the end they may be
2919 seventy-five feet wide.

2920
2921 Originally it was our proposal to go ahead and only develop the lower portion to
2922 the right. I had a hundred lots in there. There are like fifty to fifty-five lots. The
2923 west of the area was going to be left as open space. The staff liked it. We went to
2924 the first meeting with the residents and I'll just say they didn't like it as much.

2925
2926 We had another meeting. We had two meetings with the general population and
2927 we also had one with the Varina Beautification, Mr. Nelson. We've had numerous
2928 meetings with Mr. Jernigan. Between now and the Supervisor level, we will
2929 correct all the proffers because we are in agreement in most of the cases. We did
2930 have to go ahead and get the okay from the builder as to the four-foot setback.
2931 We got his agreement to go ahead and do that. But what we were concentrating
2932 on was getting product that's selling everywhere else down the Eastern
2933 Seaboard. And this is TND product.

2934
2935 This piece of property has been scheduled on your 2026 Plan as a TND project.
2936 The problem you have is a TND project is 200 to 400 acres. I've done a number
2937 of them; they haven't been built. A TND does not make sense in a forty- or fifty-
2938 acre parcel. And I would think that the planners would agree with that. We can
2939 give characteristics of a TND, and I'll go over those characteristics that we've put
2940 in this plan. But again, the original development was just in the TND area only a
2941 hundred lots. And then the exact size of the lots would have been approved
2942 during the tentative subdivision hearing. Now it looks like we have fifty-to
2943 seventy-foot lots. And that was per staff's suggestion; they wanted different size
2944 lots. They did not like it that we moved more lots to the back. In order to have

2945 fifty-to seventy-five-foot lots, and to be able to have different types of homes on
2946 different sized lots, we had to go ahead and move approximately forty-five lots to
2947 the back, leaving seventy in the front. So that's what happened when we moved
2948 to the back.

2949
2950 Now, staff does not like the back part of it because it is a cul-de-sac. You don't
2951 find a lot of cul-de-sacs in TND, but that's the SMX area. What the SMX area is, I
2952 don't exactly know.

2953
2954 The extensions of the lots going back east of Osborne Turnpike has allowed us
2955 to conform to the TND plan. It has allowed us to grant more flexibility in the lot
2956 size, and therefore more diverse product design. It's allowed us to increase the
2957 100 foot buffer we originally had on Osborne Turnpike all the way up to 210 feet.
2958 Within that 210 feet we have a fifty-foot natural landscape berm buffer. In
2959 addition to the buffer along Osborne Turnpike, we also have a smaller but similar
2960 landscape plan for the neighbors on Sholey Road and on the north side of the
2961 property. We do this with forty-five percent open space. So we do all this
2962 development, we put 119 lots in, and we're over forty-five percent in open space.
2963 So I think it's a good use of the property.

2964
2965 Mr. Archer - Mr. Wilton, you have about four minutes left, sir.

2966
2967 Mr. Wilton - Okay. We have connectivity in the back. Additional
2968 amenities were put in—trails, multi-purpose fields, vegetable garden areas, picnic
2969 and ponds. These were all culminating from the meetings that we had with the
2970 people. We are going to have one, possibly two before the Supervisor level to get
2971 everything straight. We are planning to put a barn-like community facility at the
2972 front, about 600 to 700 square feet. And we're actually working with Mr. Strauss
2973 in regard to that use.

2974
2975 Again, this project will be built by HHHunt. I would like to just go over the proffers
2976 if you have any questions. You'll see all the houses that we have. Again, these
2977 are all house built in TNDs in Raleigh, Charleston, and Williamsburg.

2978
2979 Mr. Branin - Would that be Charleston, West Virginia or South
2980 Carolina?

2981
2982 Mr. Wilton - That would be Charleston, South Carolina, I believe.

2983
2984 Mr. Branin - I just wanted to get clarification.

2985
2986 Mr. Wilton - Yes sir. In regard to the proffers I didn't know if you
2987 had any questions. We've broken it down to at least a third would be 1,650, a
2988 third would be 1,850 and everything else has to be over 2,000. It could be fifty
2989 percent are 2,000-square-foot houses. It's basically what the market does.

2990

2991 The landscaping we talked about and that's a proffered plat that we're carrying
2992 with this. It could be adjusted. The native plants on there.

2993
2994 Mr Archer - You're down to two minutes, Mr. Willon.

2995
2996 Mr Willon - Okay. Should I talk faster? Okay The landscaping
2997 plan itself is thirty feet. The plants are native, that was the point. These are
2998 Loblolly Pines, Sweet Bay Magnolias, River Birches, and Eastern Red Cedars.
2999 This is the type of plant that we're going to put into effect

3000
3001 The house elevations we will pick and choose as you need it. If any additional
3002 house elevations are decided upon, they will be submitted to the Director of
3003 Planning along with my approval before they are built. So right now you have a
3004 huge assessment of houses that can be built there. Any changes in that, we'd
3005 want to build a different type of house, we will come to the Director of Planning
3006 so he knows that we are going to continue on with that same thought

3007
3008 We are changing the proffers. We want to meet with the people one more time
3009 with the changed proffers so everybody can have their say. And then we'll
3010 basically sign off on those and that will be at least two weeks prior to the Board of
3011 Supervisors.

3012
3013 I'll be happy to answer any questions, if I have any minutes left

3014
3015 Mr Archer - Thank you, Mr. Willon. Are there questions from the
3016 Commission for Mr. Willon?

3017
3018 Mr Branin - I have a question for Mr. Jernigan. Mr. Jernigan, I'm
3019 very impressed that you actually got this many amenities out of HHHunt. How did
3020 you do that? Please teach me that trick

3021
3022 Mr Jernigan - I'm going to go on and say this now because I'm
3023 going to clear things up. Hank, this case is not ready now. We had a tough
3024 situation here. We received elevations this afternoon, the proffers aren't straight.
3025 Under any normal condition I would defer this case. But we're in a situation here
3026 where we need to move this on, but I can't ask for approval because it's not
3027 going to pass. I can tell you that right now.

3028
3029 Mr Willon - I'm in agreement with you. I think we need to finish it
3030 up.

3031
3032 Mr Jernigan - I think what we need to do here is I'm going to ask for
3033 denial and move this case up because I don't want to see my replacement be the
3034 first suicide in Varina. What I want you to do is you all get your stuff together
3035 before it goes to the Board and get these proffers straight. Get all this stuff ironed
3036 out and go to the Board

3037
3038 Mr. Willon - Yes sir.
3039
3040 Mr. Jernigan - This is the only thing I can do
3041
3042 Mr. Willon - And I appreciate that and I think we can work it out. I
3043 didn't know we needed so many of those
3044
3045 Mr. Jernigan - It's just not ready. And like I said, under normal
3046 conditions I'd defer this case, but we're on a timeline here. I'm going to get you in
3047 front of the Board, but it's going to be with a denial
3048
3049 Mr. Branin - I would still like to vote for approval just because I'm
3050 so amazed that you got this many additions on from HHHunt. I'd vote yes.
3051
3052 Mr. Jernigan - I don't think we're going to have anybody other than
3053 you, Mr. Branin. All right
3054
3055 Mr. Archer - Mr. Jernigan, before you go on, we did have some
3056 people who were opposed. Would you want to hear from any of them or would
3057 you like for them to come up and speak?
3058
3059 Mr. Jernigan - We had pretty much worked out a deal at the last
3060 meeting. Hold on a minute.
3061
3062 Mr. Archer - He's a fair person.
3063
3064 Mr. Jernigan - I'm going to ask for denial on the case so there's no
3065 sense in coming up here and telling it all now. Why don't you just save it for the
3066 Board? Does anybody have a problem with that? Okay, come on up, Andy
3067
3068 Mr. Archer - I asked that question because you all did bother to
3069 come up, and we'll honor the ten-minute rule. But I think by Mr. Jernigan's
3070 indication you know what the decision is going to be tonight. But you came up so
3071 we want to hear your comments.
3072
3073 Ms. Newell - Good evening Commission members, and my
3074 favorite. My name is Bernice B. Newell. I have lived in the Varina District all my
3075 life. As a child I grew up down in the Varina area. Many hours of pleasure during
3076 that time. I have concerns about this property in Varina—all of it. How many of
3077 you people read the newspaper? Have you been reading the real estate pages
3078 lately? There are three-and-a-half and four pages of houses for sale. Excuse me,
3079 but why are we tearing up the land to build more houses to sit vacant?
3080 Everywhere you go in Henrico County, the City of Richmond, and Chesterfield
3081 there are houses that are being repossessed, and we want to tear up the land to
3082 build more. We need to think. One day we're going to need this land to grow our

3083 food I'm old I'm a pre-World War II baby, and I remember those hard days. My
3084 father and my grandfather always had a garden, and boy I ate well. And as you
3085 can see, I'm so big and fat and I'm really strong. But I just wanted to say how
3086 much I think that we ought to think about building so much on our land. Put a
3087 park up there. If I would have been born rich instead of so good looking, I'd buy
3088 that land and just sit there and dare anybody to put their foot on it. Thank you

3089
3090 Mr. Archer - Thank you, Ms. Newell.

3091
3092 Mr. Jernigan - Ms. Newell, one of the reasons that we hear this is
3093 because the law says that a person has a right to develop their property

3094
3095 Ms. Newell - I know they have a right to develop their property

3096
3097 Mr. Jernigan - When somebody comes to me with a case and says
3098 they want to do this, by law we're supposed to hear that case, we're following the
3099 law. But I appreciate you coming out tonight.

3100
3101 Ms. Newell - I'm just very much concerned about it.

3102
3103 Mr. Jernigan - Okay, thank you so much.

3104
3105 Mr. Archer - Is someone else coming to speak? We have
3106 approximately eight minutes left.

3107
3108 Mr. Edmunds - I'm Andrew Edmunds. I live at 9510 Osborne
3109 Turnpike. I'm not looking for a Patrick Henry moment here or anything. I just want
3110 to make a voice heard about our area out there in the County

3111
3112 Many of us for many months came to collaborate with the County on the 2026
3113 Plan. One thing that came out as a result of that 2026 Plan is that Eastern
3114 Henrico is truly unique and it's a unique economic asset that could be exploited
3115 to sell this quality of life, this lifestyle, to attract more businesses to this part
3116 of the County. As a result of that the Osborne Turnpike Corridor was established as
3117 a special use corridor, and within this corridor there should be special treatment
3118 to preserve the rural character. So this particular development falls right in that
3119 corridor and there should be special attention paid to it. And unfortunately the
3120 tools are not in the toolbox yet to put in the requirements that should be in there
3121 for that view shed on each side of this corridor

3122
3123 Additionally, we keep talking about TND—this is not a TND development. It's like
3124 trying to play ping-pong on a pool table; it could happen but it just doesn't make
3125 any sense. TND, Traditional Neighborhood Development, incorporates retail, an
3126 opportunity for people to walk to a store. This is using TND and the density
3127 therein to put a bunch of houses on a piece of rural land. The 2026 Plan calls for
3128 special treatment of this corridor, as well as TND at this site. This does not fit

3129 TND in any way because it doesn't have the elements of TND. So we keep
3130 talking about these houses are in TND developments in Charleston, etcetera, but
3131 it just was not intended for that use, to take an R-5 and put it on this piece of land
3132 this close to this corridor. I think we should really pay special attention and come
3133 up with proper guidelines to treat this corridor as it should be treated and respect
3134 this area between the river, Route 5, 295, and Tree Hill. In that whole area we're
3135 going to have the Capital to Capital Bike Trail, we have the World Cycling
3136 Championship coming in 2015. We'll have 300 million people watching
3137 Richmond. The biking community, the horseback community—we can really sell
3138 this part of Richmond and Henrico County as an asset that will attract business
3139 and more tax revenue. So that's my commentary. Thank you.

3140
3141 Mr. Archer - Thank you for coming, sir

3142
3143 Mr. Jernigan - If VDOT can get straight on where the bike trail is
3144 going to be it would be a whole better wouldn't it?

3145
3146 Mr. Archer - Okay, we have about five and a half minutes.

3147
3148 Ms. Godden - I'm going to be real quick. I'm Bland Godden. I live in
3149 the neighborhood just adjacent to this property and I just want to add a few
3150 comments to what Andy said

3151
3152 In the Comprehensive Plan there are five existing character protection areas that
3153 are defined. Of those five, four of them are in this immediate area, one of them
3154 being Marion Hill. But the other three are parallel: the James River, Osborne
3155 Turnpike, and the New Market/Route 5. Three of the five are special character
3156 protection areas. And it seems to me that Henrico County has a goldmine there.
3157 It's mostly agricultural land or a gravel pit. There is a lot of room for planning
3158 there to make use of the James River and to make use of all the historical assets
3159 that we have along there.

3160
3161 We would hope that you would study that area carefully before it's developed
3162 piecemeal so that we can protect what we do have. And I want to thank the staff
3163 for their comments. I thought you all did a great job. Thank you.

3164
3165 Mr. Archer - Thank you, ma'am

3166
3167 Mr. Jernigan - Mr. Emerson, do you know where the Osborne Study
3168 falls? I think we have thirty projects on there

3169
3170 Mr. Emerson - Yes sir. It's about midway on the list. I think we're on
3171 study number two at this point. The Innsbrook Study was the first one. We're
3172 beginning a third one. Based on the amount of time and the level of staffing we
3173 have right now it'll be about ten years out unless it gets moved up. That's just

3174 based on the schedule that was endorsed by the Board, and of course that can
3175 be changed

3176
3177 Mr. Jernigan - So you say it's about two years out.

3178
3179 Mr. Emerson - Ten Ten years, yes sir.

3180
3181 Mr. Jernigan - Did anybody else have anything to say? Yes sir.

3182
3183 Mr. Archer - You have about three and a half minutes.

3184
3185 Mr. Jordan - I'll try to be quick. My name is Harry Jordan and my
3186 daughter is Erin Jordan. She owns the property that abuts the proposed
3187 development

3188
3189 I feel like we've been the victim of a three card monte deal. We did read the
3190 report. We were supporting the prospect and think it was handled very well. Now,
3191 if I understand the process, it is going to be denied and go directly to the Board

3192
3193 I wanted to point out one thing and maybe the applicant could answer this. My
3194 daughter's property has an easement. It's land-bound. It's her only access to her
3195 property. I've looked at the proposals that he has and there is no provision for
3196 that access road. He's going to say they'll give her a right-of-way. We're talking
3197 about weaving in and out of these houses to get to her property. There are huge
3198 trucks going up there. There are two to four thousand bales of hay at one time.
3199 He has no other access to her lot except for the far end [unintelligible] [2:26:52],
3200 and that is mud and water. It would cost thousands of dollars to put a bridge in
3201 there and to run a road along the property. I don't know whether that's going to
3202 be addressed in the report. The value of our property will be extremely depleted.
3203 I was going to ask today if that would be addressed. She has a direct easement,
3204 it's been with the property for 30 years

3205
3206 Mr. Jernigan - Please.

3207
3208 Mr. Willon - I did speak to your daughter. I think at the last
3209 meeting. She backs up to the picnic area. And we've already talked about going
3210 out there because we need to put some landscaping right there. For one thing it
3211 would go ahead and help her with—because that's where she keeps her horses
3212 back in there and that's where she feeds them; she told me that. In addition to
3213 that, there is an access road. She has a deeded access that's already been
3214 reviewed by the attorneys. We've prepared a road that comes down and hooks
3215 onto the County road system

3216
3217 Do you have my new layout? Yes, okay. Yes. She would come out of her
3218 property down that road where the little hand is and come through there. If she
3219 needs truck access, I have no problem with opening up a much larger access

3220 point on the side where that six-acre parcel is to go ahead and help her with her
3221 horses. We just need to meet out there. We'll get it set before we go to the Board
3222 of Supervisors.

3223

3224 Mr. Jernigan - Come on up, sir. You have to come up to the
3225 microphone.

3226

3227 Mr. Jordan - As it now stands, she has that little corridor there. The
3228 access road goes straight through Osborne Tumpike. Straight through. For her to
3229 get out of her property now, if he were to drop his proposal, she'd have to come
3230 down here, come down this way, down this way, and out one of these ways. She
3231 does not have the straight right-of-way which was deeded to her when she
3232 bought the property. He's talking about going back here somewhere and opening
3233 up an access for her.

3234

3235 Mr. Jordan - The only access that she has there is Sholey Road.
3236 Right there.

3237

3238 Mr. Wilton - She said it's too muddy.

3239

3240 Mr. Jordan - You're saying that if this is not available to her she
3241 could come down Sholey Road and go in like this to her road and then go up
3242 there. Now who is going to pay to do that, to make that accessible? Who is going
3243 to pay for the value of the loss of easement?

3244

3245 Mr. Wilton - [Inaudible conversation off microphone.]

3246

3247 Mr. Jordan - Will you pay for it?

3248

3249 Mr. Wilton - Sure.

3250

3251 Mr. Jordan - What do you think it would cost to do that? It's a five
3252 or six—

3253

3254 Mr. Wilton - [Inaudible conversation off microphone.]

3255

3256 Mr. Jordan - Our concern, going along with the gentleman, (this is
3257 his proposal. he has cut off our road which runs all the way to here. It's a dirt
3258 road. If you go by, you can't miss it. It's been there for thirty years and it's the
3259 entrance to this property. The property, again, has no value unless it has that
3260 access. He's proposing here—I have put all these houses in here and your
3261 daughter can have access to her property, but she's going to have to go through
3262 a maze to do it. You're talking about safety, children, any number of things. I'm
3263 saying to you that it is a farm area with horses, chickens, goats. There are huge
3264 trucks going back and forth. And his proposal would mean those trucks go
3265 through these neighborhoods. I find that not to be a safety factor.

3266

3267

Mr. Wilton - [Inaudible conversation off microphone]

3268

3269

Mr. Jordan - Let me ask you this. You put this road in at your expense, [unintelligible] [2.32.07]*, and you will pay us for the value of the lost easement.

3270

3271

3272

3273

Mr. Wilton - [Off microphone.] There is [unintelligible and then blank section] [2 32 12]^ any of that property.

3274

3275

3276

Mr. Jernigan - Hold on. We're going above what the Planning Commission can handle here. This sounds like a civil issue. What I recommend is you all can get together and see if you can work something out on this. I'm sure his attorneys have already looked at things. You have a feeling of what you need to do. If you all can go out there and work out a suitable solution to this then that's what I think you should do. But right now the Planning Commission can't make decisions on that. Our staff, this looks like this is an approved layout.

3277

3278

3279

3280

3281

3282

3283

3284

Mr. Jordan - No. The staff in its report—

3285

3286

Mr. Emerson - We know it's in our report, yes sir, we do

3287

3288

Mr. Jordan - That was in the report as an impediment that needs to be addressed.

3289

3290

3291

Mr. Emerson - This does need to be addressed; that is in the staff report.

3292

3293

3294

Mr. Jernigan - You all meet out there and see what you can do. We can't settle that here.

3295

3296

3297

Mr. Jordan - All I'm doing is pointing this out. He's been here and he's talking about the benefits and safety and everything else back there. Property rights but it's also safety.

3298

3299

3300

3301

Mr. Emerson - Yes sir, that's duly noted. Thank you very much.

3302

3303

Mr. Archer - Thank you, sir. We have time for maybe one more person. We have about a minute.

3304

3305

3306

Ms. Goodwin - Good evening ladies and gentlemen of the Commission and Mrs. O'Bannon. My name is AR Goodwin. I live in Marion Hill out in Varina. As Bland Godden pointed out, there are five of the twenty-nine special strategy areas in the 2020 Plan that involve existing character protection. Now, Mr. Emerson, you point out that your part of the way into the second of those special strategy—

3307

3308

3309

3310

3311

3312
3313 Mr. Emerson - Correct. Based on the schedule that was set forth to
3314 the Board, this study would probably be five to ten years out unless that was
3315 rearranged

3316
3317 Ms. Goodwin - Right, right. And I think Mr. Jernigan said that as well,
3318 unless it was rearranged. And I'd point out now that it bodes well to think about
3319 the fact that those five at the top, the River Road corridor, Marion Hill, the ones
3320 out in Varina, that those are the only ones that have to do with existing character
3321 protection. The other areas have to do with retail or commercial revitalization.
3322 These five at the top, they're one through five and they have to do with areas that
3323 having something to lose, something, as it says in the Plan, that makes the
3324 County special and desirable. I think that appeals in this case, as well as other
3325 cases out in the Varina area.

3326
3327 I just thought I'd make a point of that because to put the Osborne Turnpike
3328 corridor midway into ten years of studies when these are the areas at the top that
3329 have something to lose and they're written for existing character protection, by
3330 that time, the way plans are passed, there will be nothing left to protect. Unless
3331 due to the good graces of the developers like Mr. Wilton—I'm glad that there are
3332 people that are concerned about this and want to build this into their PODs, but
3333 those five special strategy areas for character protection that exist now will not
3334 exist in ten years and need to be looked at closer than ten years away.

3335
3336 I appreciate your time.

3337
3338 Mr. Archer - Thank you, ma'am. Okay, I think that's about all the
3339 time we have left for the opposition. We kind of varied from what we usually do
3340 but, you took the time to come up here and I felt like we should take the time.
3341 Mr. Jernigan?

3342
3343 Mr. Jernigan - Mr. Chairman, with that I will move for denial of case
3344 C-11C-11, Steve Faris for Osborne Glen LLC, to move to the Board of
3345 Supervisors

3346
3347 Mr. Branin - Second

3348
3349 Mr. Archer - Motion by Mr. Jernigan, seconded by Mr. Branin. All
3350 in favor say aye. All opposed say no. The ayes have it, the motion passes.

3351
3352 **REASON:** Acting on a motion by Mr. Jernigan, seconded by Mr.
3353 Branin, the Planning Commission voted 5-0 (one abstention) to recommend the
3354 Board of Supervisors deny the request because the proposed R-5A zoning
3355 district would introduce piecemeal development substantially out of context with
3356 the surrounding area; it would likely set an adverse zoning and land use
3357 precedent for the area and it failed to include the proffered conditions deemed

3358 necessary to lessen impact of the A-1 zoning in the area and the rural character
3359 of the Osborne Turnpike corridor
3360

3361 The Board of Supervisors will hear that case on December 13th.
3362

3363 Mr Emerson - Mr Chairman, that now takes us to page three of our
3364 agenda which is the consideration of approval of the minutes from the Planning
3365 Commission meeting of October 13, 2011
3366

3367 Mr. Archer - Mr. Secretary, I did notice three "unintelligibles," I
3368 believe On page 16. line 673, it said, "That kinda died down a little bit because,"
3369 and then it was unintelligible. And I think I said because the newness had worn
3370 off of the church. And then on line 681, "Faith Landmarks" I think should be just
3371 Faith Landmark. And on line 685, I'm quoted as saying they had to park all the
3372 way up in Chesterfield. I think I said Eastgate Mall even though it's not Eastgate
3373 Mall anymore. Okay, anyone else have corrections to the minutes?
3374

3375 Mr Vanarsdall - I was a little confused on the second page.
3376

3377 Mr Emerson - We were discussing the previous minutes I believe.
3378 sir.
3379

3380 Mrs. O'Bannon - One of the things that I recall from years ago when
3381 being on the Planning Commission and it being verbatim if there's someone that
3382 I can call or that we can call or you can fax them or e-mail them a correction so it
3383 doesn't continue to be a loop in the minutes. I read it that way also
3384

3385 Mr. Emerson - If you'd like, certainly we'd like to have your
3386 comments ahead of time on the minutes. If you want to send them in to us you
3387 can send them to Sylvia Ray, or you can get them to Ms Deemer. She is trying
3388 to keep these minutes straight for me as well. So if you could forward your
3389 comments to her prior to the meeting we could handle it that way
3390

3391 Mrs O'Bannon - Then you can say I've already forwarded my
3392 comments. I've already made corrections and hopefully they're reflected in the
3393 minutes
3394

3395 Mr Emerson - Correct. Some of what we have a hard time picking
3396 up are our work sessions, which in the conference rooms they don't record quite
3397 as well. In these rooms I guess we need to be mindful, and I should remind the
3398 Commission at the beginning of the meeting, to try to lean forward and speak into
3399 the microphone. That would be helpful too
3400

3401 Mr Archer - Okay. Any further corrections for the minutes? How
3402 about a motion to approve them?
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Mr. Jernigan - So moved

Mrs Jones - Second

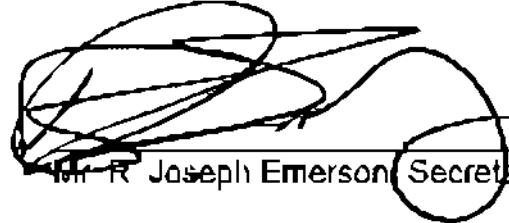
Mr Archer - Motion by Mr Jernigan, second by Mrs Jones to approve the minutes as corrected. All in favor say aye. All opposed say no. The ayes have it the motion passes.

Anything else to bring before the Commission, Mr Secretary?


Mr. Emerson - No sir, Mr Chairman, that's all we have this evening.

Mr. Archer - We are officially adjourned at 9:41.

The meeting adjourned at 9:41 p.m.



Mr. R. Joseph Emerson, Secretary



Mr. C. W. Archer, Chairperson