

Virginia Beach Planning Commission
January 11, 2023
Public Hearing Verbatim

Mr. Alcaraz: Welcome to the January 11, 2023, Planning Commission Public Hearing. My name is George Alcaraz. I'm the Chairman of the Virginia Beach Planning Commission. Commissioners Cuellar and Coston will not be in attendance today, and before we get started, I'd ask Commissioner Wall to lead us in the prayer, followed by the Pledge of Allegiance by Commissioner Oliver.

Mr. Wall: Please stand. Lord, thank you for bringing us here today. I pray for this Commission. I pray for these Commissioners that you would grant them wisdom and understanding, that you would lead them in the way that is right and true, and that builds this community up in a way that honors you. Lord, I pray for the staff, I pray that they have and continue to grow, and that they honor you in what they do, and that what they do is aligned with your word. Lord, I pray for the people here that have come to speak, I pray that you grant them boldness, grant them peace that the Planning Commission, you know, sees them in their true light that that you grant the Commission empathy for them, and we hear them and hear them fully. Lord, I pray for this City, I pray that you watch over it, and continue to have it grow in a way that honors you, that it's a refuge for everyone in particular to the men and women of valor that serve our nation, and in the name we pray, Amen.

[Group Pledge]

"I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all."

Mr. Alcaraz: Alright, thank you. I've asked Commissioner Redmond to introduce the members of the Planning Commission.

Mr. Redmond: Thank you, Mr. Chairman. I'm going to start on my right over here, and undoubtedly, I will make a mistake. I always do on these introductions, so bear with me. I will not make a mistake with Kay Wilson. Ms. Wilson is a Deputy City Attorney, and she has for many years helped us in this role, part of her purview is Planning and Community Development, and so she keeps us straight when we stray. Normally sitting in that seat is Mr. John Coston. John is a retired Fire Chief, but for whatever reason he's not able to be here today. Mr. Michael Clemons is a Professor of Political Science at Old Dominion University, and he represents what used to be called the Centerville District. This is all confusing now. This gentleman next to me is Jack Wall. Jack represents the Rose Hall District. He is an engineer by trade. He is also a former chairman, immediate past chairman of the Commission, and also a former vice-chairman of the

Commission. My name is Dave Redmond. I'm a commercial real estate broker, and I live in what used to be called the Bayside district. This man is Donald Horsley. He serves At-large. He is a farmer, and he is our new vice-chairman. He is also longest tenured member of this Commission. In the center, there is George Alcaraz. He is our new Chairman of the Commission. He does a bunch of stuff. He's a contractor. He's an events promoter, and he represents the Beach district. Also jack of all trades is Dee Oliver who sits just to George's left. She's in the funeral business. She's an author. She's a speaker. I probably left seven or eight things out, and she serves At-large as well. Mr. David Weiner represents the Kempsville District. He is a commercial contractor in the building business. Both Dee and David are former vice chairman and chairman of the Planning Commission. To the left of David, is David Bradley. David is a retired budget chief for the City of Virginia Beach, and he represents the Princess Anne District. Barry Frankenfield is a former Planning Director, and he represents the Lynnhaven district, and as a result of his past employment, we all look to him for all sorts of expertise, and I know the City will be looking to him for some more advice and help as we move forward. Hoa Dao is seated in the captain's chair today, where normally sits the Planning Director. I do want to take a moment; we are without today, Bobby Tajan. Mr. Robert Tajan was our Planning Director until very recently. He has recently accepted a new position with another city. So we're all disappointed about that, but we wish him well and will miss him, and I'm sure he will not be a stranger. So Hoa is as I said, sitting in the captain's seat and taking the slings and arrows today, and I'm sure he'll do a fine job of that, and Hoa, if you would take a minute and introduce some of the staff here today with us, I would appreciate that.

Mr. Dao: Thank you, Commissioner. Clerking today, we have Pam Sandloop, Madison Harris, as well as Lynn Roenker and Claudia Wodziak who is assisting outside of chamber with speaker registration. With Planning Administration, we have Marchelle Coleman, Elizabeth Nowak, Michaela McKinney. Also in attendance today is Interim Planning Director Kathy Warren as well as our interim Deputy Director Carrie Bookholt. Katelyn Alcock is also in attendance. She is our Development Liaison, and Tori Eisenberg is from the City Attorney's Office. With Management and Support we have Tiffany Gardner Smith as well as Johnnie Horn, and one of our new staff Elyssa Huertas, and from Zoning we have Hannah Sabo as well as Garek Hannigan.

Mr. Redmond: I thank you Hoa, as you can tell this is a large and complex operation. What you don't see is a lot of the folks who run all this technology and keep television streams going to folks who are behind the scenes, and they do a wonderful job as all of our staff members. We are very appreciative of that. Certainly, going into a new year with a new regime and charge, and with that, Mr. Chairman, I turn it back over to you.

Mr. Alcaraz: Thank you, Mr. Redmond, and Mr. Dao. Next I'd like to ask Madam Clerk to read the rules and order of business for today's meeting.

Madam Clerk: Thank you, Mr. Chairman. The Virginia Beach Planning Commission takes pride in being fair and courteous to all parties in attendance. It is important that all involved understand how the Commission normally conducts its meetings. It's equally important that everyone treat each other and the members of the Commission with respect and civility. We request that cell phones be put on silent during this meeting. Following is an abbreviated explanation of the rules. The complete set of rules is located in the front of the Planning Commission agenda. The order of business for this public hearing, withdrawals, and deferrals. The chairman will ask if there are any requests to withdraw or differ an item on the agenda. Consideration of these requests will be made first. Consent agenda, the second order of business is a consideration of the consent agenda, which are those items that the planning commission believes are unopposed and which have favorable staff recommendation. Regular agenda, the commission will then proceed with the remaining items on the agenda. When an agenda item has been called, we will recognize the applicant or representative first, following the applicant or representative, in-person speakers will be called next and then speakers participating via WebEx. Speakers and support or opposition of an agenda item will have three minutes to speak unless they are representing a large group such as a Civic League or Homeowners Association, in which case they will have 10 minutes. If a speaker does not respond or if a technical issue occurs which renders the comments unintelligible, we will move on to the next speaker or the next order of business. Please note that the actions taken by the Commission today are in the form of a recommendation to the Virginia Beach City Council. The final decision to approve or disapprove an application will be made by the City Council. The commission thanks you for your attendance, and we hope that your experience here today leaves you feeling that you have been heard and treated fairly, thank you.

Mr. Alcaraz: Thank you, Madam Clerk. Alright, the next order of business is requests for withdrawals or deferrals. At this time, are there any withdrawals? Okay, thank you. Are there any deferrals? Thank you. Okay, so the next order of business, Mr. Vice-Chair, if you could handle the consent agenda.

Mr. Horsley: Thank you, Mr. Chairman. Today we have five items on our consent agenda. Item #1 is the City of Virginia Beach, and I will ask Hannah if she'd come forth and explain what that Ordinance changes.

Ms. Sabo: Item#1 is an Ordinance to add 901 B3 of the City's Zoning Ordinance pertaining to accessory use of ice vending machine units in large shopping centers. This amendment was sponsored by Vice Mayor Wilson, and previously ice vending

**Virginia Beach Planning Commission
 January 11, 2023, Public Meeting
 Agenda Item # 1**

City of Virginia Beach – An Ordinance to amend Section 901 of the City Zoning Ordinance to allow for Ice Vending Machine as accessory uses in specific Commercial Zoning Districts.

RECOMMENDED FOR APPROVAL – CONSENT

Mr. Horsley: Thank you, Mr. Chairman. Today we have five items on our consent agenda. Item #1 is the City of Virginia Beach, and I will ask Hannah if she'd come forth and explain what that Ordinance change is.

Ms. Sabo: Item #1 is an Ordinance to add 901 B3 of the City's Zoning Ordinance pertaining to accessory use of ice vending machine units in large shopping centers. This amendment was sponsored by Vice Mayor Wilson, and previously ice vending machines were considered to be not permitted in the city, it was considered to be a use that was not allowed, and this proposal would allow this use as an accessory use to large shopping centers with specific conditions. These are standalone units; they manufacture and vend ice. They do provide flexibility for customers so the standalone units that you would have outside that you can go ahead and put ice directly into a cooler rather than having to go inside of a store and pick up bags of ice. The proposed standards listed they would only be permitted as an accessory use to shopping centers which feature 60,000 square feet of existing retail establishments. It would only be permitted in the B2, B3, B4 Zoning Districts. It will be excluded from any Historic and Cultural District, and it would not be allowed within the Historic Kempsville area overlay. There will be a maximum of one per shopping center, and there will be a required 100 foot setback from any residential and apartment districts or residential uses, and in mechanical screening, any mechanical equipment would need to be screened and signage would be limited.

Mr. Horsley: Thank you. Is there any opposition to this ordinance change? Hearing none, we move along.

Mr. Horsley: To summarize, we've got five items on the consent agenda, #1 City of Virginia Beach, #2 Tony Saady, and Lina Saady, #4 Lucy Gwaltney Clay, #6 K.M. Cash Construction Corporation, and #7 AGI-VB Holdings, LLC. Mr. Chairman, I have placed the motion that we approve these applications by consent.

Mr. Alcaraz: Thank you, Mr. Vice Chair. Thank you. Do I have a motion to approve the consent as read by the Vice Chair. I have a motion to approve, Mr. Horsley and a second by Mr. Weiner.

Madam Clerk: The vote is open. Mr. Horsley and Mr. Weiner, can you hit motion and second please. Vote is open. By a vote of 9 in favor, and 0 against agenda items #1, 2, 4, 6, and 7 have been recommended for approval by consent.

	AYE 9	NAY 0	ABS 0	ABSENT 2
Alcaraz	AYE			
Bradley	AYE			
Clemons	AYE			

Coston				ABSENT
Cuellar				ABSENT
Frankenfield	AYE			
Horsley	AYE			
Oliver	AYE			
Redmond	AYE			
Wall	AYE			
Weiner	AYE			

**Virginia Beach Planning Commission
January 11, 2023, Public Meeting
Agenda Item # 2**

Tony Saady & Lina A. Saady (Applicants)
Tony J. & Lina Azar-Saady, Trustees of Tony & Lina Saady Revocable Living Trust
(Property Owner)

Subdivision Variance (Section 4.1(m) of the Subdivision Regulations)

Addresses: 5020 Lord Felton Lane & parcel directly west of 5020 Lord Felton Lane

RECOMMENDED FOR APPROVAL – CONSENT

Mr. Horsley: Next is Item #2, Tony Saady and Lina A. Saady, it's a Subdivision Variance. Please come forward representative Mr. Bourdon.

Mr. Bourdon: Thank you Mr. Horsley, Mr. Chairman, and members of the Commission, for the record Eddie Bourdon, Virginia Beach Attorney representing Tony and Lina Saady. Tony has come down to the meeting this afternoon. We greatly appreciate being on the consent agenda. All four conditions as recommended by the staff are acceptable. Appreciate Hoa's work on this application, thank you.

Mr. Horsley: Thank you, Mr. Bourdon. Are the conditions acceptable?

Mr. Saady: Yes, all four conditions are acceptable.

Mr. Horsley: Thank you, sir. Are there any opposition to this item? Hearing none, Mr. Redmond will read the item #2.

Mr. Redmond: Thank you, Mr. Vice-chairman. This is an application of Tony and Lina Saady for a Subdivision Variance Section 4.1(m) of the Subdivision Regulations at 5020 Lord Felton Lane in Virginia Beach in what used to be called the Bayside district. The applicant has a fairly simple application. The applicant seeks to divide two existing lots into three single-family dwelling lots. Subdivision Variance Section 4.1 of the Regulations is needed as the existing street width is only 16 feet wide, where the Ordinance requires a minimum street width of 24 feet. Two current lots were created in 1951 prior to the adoption of those Subdivision Regulations. Lot B1 is identified on the site layout that you can see before you and is developed with a single-family dwelling that will remain. Lot B2 is also identified on site layout and is currently vacant. There will be three lots created by this. The Commission has found, and the staff has found, and recommended approval that there is no hardship created to the public. All three lots to be created will be R-40, which is a minimum of 40,000 square feet. It's a very secluded spot. You wouldn't even know that there were a difference between 24 and 16 feet. There is no opposition to this application. As I say the staff recommended approval, and the Planning Commission therefore consents. Thank you, Mr. Vice Chairman.

Mr. Horsley: To summarize, we've got five items on the consent agenda, #1 City of Virginia Beach, #2 Tony Saady and Lina A. Saady, #4 Lucy Gwaltney Clay, #6 K.M. Cash

Construction Corporation, and #7 AGI-VB Holdings, LLC. Mr. Chairman, I have placed the motion that we approve these applications by consent.

Mr. Alcaraz: Thank you, Mr. Vice Chair. Thank you. Do I have a motion to approve the consent as read by the Vice Chair. I have a motion to approve, Mr. Horsley and a second by Mr. Weiner.

Madam Clerk: The vote is open. Mr. Horsley and Mr. Weiner, can you hit motion and second please. Vote is open. By a vote of 9 in favor, and 0 against agenda items #1, 2, 4, 6, and 7 have been recommended for approval by consent.

	AYE 9	NAY 0	ABS 0	ABSENT 2
Alcaraz	AYE			
Bradley	AYE			
Clemons	AYE			
Coston				ABSENT
Cuellar				ABSENT
Frankenfield	AYE			
Horsley	AYE			
Oliver	AYE			
Redmond	AYE			
Wall	AYE			
Weiner	AYE			

CONDITIONS

1. When these properties are subdivided, they shall be substantially in accordance with the submitted subdivision exhibit entitled "Subdivision Plat of Part of Site B2," dated January 5, 2022, and prepared by MSA, P.C. Said exhibit has been exhibited to the Virginia Beach City Council and is on file in the Department of Planning and Community Development. A final plat shall be recorded with the Clerk of Court reflective of the layout referenced herein.
2. When Lots B2-A and B2-B are developed, the building exteriors shall substantially adhere to the renderings shown on page eight (8) of this report, which have been exhibited to the Virginia Beach City Council and are on file in the Department of Planning and Community Development.
3. The applicant shall reserve for dedication to the City land toward making Lord Felton Lane a minimum of 24 feet wide. Said reservation for future dedication shall be a minimum of four (4) feet wide along the entire length of Lord Felton Lane that fronts the proposed lots, and the dedication shall be completed prior to the development or redevelopment of any of the proposed lots.
4. The land seaward of the site along Lake Smith is City of Norfolk's property. Management of vegetation and trees within this area shall be coordinated with the City of Norfolk.

Further conditions may be required during the administration of applicable City Ordinances and Standards. Any site plan submitted with this application may require revision during detailed site plan review to meet all applicable City Codes and Standards. All applicable permits required by

the City Code, including those administered by the Department of Planning / Development Services Center and Department of Planning / Permits and Inspections Division, and the issuance of a Certificate of Occupancy, are required before any approvals allowed by this application are valid.

The applicant is encouraged to contact and work with the Crime Prevention Office within the Police Department for crime prevention techniques and Crime Prevention Through Environmental Design (CPTED) concepts and strategies as they pertain to this site.

**Virginia Beach Planning Commission
January 11, 2023, Public Meeting
Agenda Item # 3**

VB BTS II, LLC (Applicant)

Virginia Electric and Power Company d/b/a Dominion Energy Virginia (Property Owner)

Conditional Use Permit (Communication Tower)

Address: 568 North Lynnhaven Road

RECOMMENDED FOR APPROVAL – HEARD

Madam Clerk: Thank you, Mr. Chairman. Our first item is agenda item #3 VB BTS II, LLC, a request for a Conditional Use Permit, a Communication Tower at 568 North Lynnhaven Road in Council District 8. Would the applicant or the applicant's representative, please step to the podium.

Ms. Murphy: Good afternoon, Chairman Alcaraz, Vice-chairman Horsley, members of the Planning Commission and staff. For the record, my name is Lisa Murphy, local zoning attorney, and I'm here today on behalf of the applicant VB BTS II, LLC, which does business as Vertical Bridge. I'd like to thank Marchelle for all of her work with us on this application. I also have with me today, Jeff Holland, who's from Dewberry Engineers, who's able to answer any questions that you all might have of a technical nature. As the staff report indicates the applicant is proposing to construct and operate 125-foot wireless communication facility with a five-foot lightning rod on the Dominion Energy substation property located at 568 North Lynnhaven Road. The facility as is indicated in the staff report would be disguised as a pine tree and it would enable for Verizon Wireless and two other wireless carriers to be able to provide much needed enhanced wireless coverage in the Kings Grant area. As most of you all know in the late 90s and early 2000s, consumers used wireless phones in their cars. Real estate agents had the people who traveled a lot had them, and that largely meant that initial networks were built out along major roadways and along the interstate. At that time mobile phones really were just phones if you can imagine, and they were more of a nice to have instead of a have to have. To put this in perspective, in December of 2007, just under 16% of all homes were wireless only. You fast forward to the most recent data that we have, which takes us to June of last year, that number was 71% for adults living in wireless only homes, and just under 82% of children are in homes that are wireless only. If you look at millennials, that number is closer to 90%. Many millennials have never had a wire line phone. So, as you can imagine, in addition to that you have today's smartphone, which is not just a phone, it's a way to surf the internet, take and send videos and photos, watch Netflix, pay bills, order goods and services, and really connect us virtually with our customers, clients, friends and loved ones. So as the number of users and uses has increased dramatically, obviously that means there's need for additional wireless facilities. In order to keep up with the demand we need more antenna sites in the Little Neck Peninsula, and specifically in the Kings Grant area. For several years now Verizon Wireless and other carriers have been looking for ways to enhance their wireless service. Most people will look first for a structure that's already there. It's cheaper, it's faster, it requires far less capital investment. When new facilities are

necessary, that's when it gets kind of tricky, as you know, you have to find a site that meets the Zoning Ordinance requirements, you have to find a willing landlord, and you have to find something with enough space for the facility. The proposed facility, as I mentioned, will enhance, and provide much more robust coverage to the residents in the Kings Grant area who are now largely served by the 210-foot light pole facilities at Little Neck Swim and Racquet Club. Those were done back in the early 2000s, and those are approximately a mile to the north. Due to the height and design, those facilities really have a limited coverage and if you live in the area, you've probably recognized that you do have some dead zones and challenges with wireless coverage on the entire peninsula. At this point other than those two light pole replacements, and then a site at the Little Neck United Methodist Church, which is further north of this Swim and Racquet Club, there's really virtually very little infrastructure on the whole peninsula. On the Great Neck quarter by contrast, you have some sort of wireless facility about every mile, so that gives you a sense of what you would be looking for. As the staff report indicates the monopine will be located within a 40 by 50-foot fenced compound located within a 2500 square foot lease area, and if you look at the site plan that's before you, the facility will share the entrance with the substation and then will be located just behind the existing substation equipment that's there now. The proposed towers, the staff report indicate meets the minimum setback requirements, and as a staff report indicates we did hold a balloon test, and those photo simulations of that balloon test should be in your packet. Initially we're looking at some other type of stealth facility, a monopole, but in this particular location, as you'll notice from the photo sims the monopine at this particular height fits very well. I know some of you may have seen monopines that are in the middle of field somewhere, or in a commercial area, and it doesn't really fit, but in this case, you've got on that property itself, some trees that are in the 80-90-to-200-foot range. So, 125-foot monopine, which is what you're looking at now, a facility disguised to look like a pine tree really sort of fits in that area. So, we felt like this would be the ideal stealth designed for the facility. As Marchelle mentioned this morning, and as the staff report indicates, we did go ahead and hold a community meeting. We sent out over 60 notices with my name, phone number, and telephone number on them. We had one gentleman come to the meeting, and then I received one email. As you know, the case always I'm happy to talk to anybody with any questions. We believe in full transparency. The application, as Marchelle mentioned complies with all the requirements of the zoning ordinance, and your comprehensive plan. Staff is recommending support and we also request that you recommend approval to city council. I'm happy to answer any questions and I will standby.

Mr. Alcaraz: Thank you. Are there any questions?

Mr. Wall: No thank you very much. Madam Clerk, do we have a speaker?

Madam Clerk: Mr. Chairman, we have one speaker and it's via WebEx. Mr. Russell Kelly. Mr. Kelly, we're going to un-mute your audio feed. Once that happens, please state your name and you have three minutes for your comments.

Mr. Kelly: [No Audio]

Mr. Alcaraz: Are there any questions for Mr. Kelly from the commissioners?

Mr. Clemons: Yeah, I'm just curious. You mentioned that the tower would be close to homes, and about how close, could you be a little bit more specific about that?

Mr. Kelly: [No Audio]

Mr. Alcaraz: Alright, thank you, sir. Mrs. Murphy, did you want to come up and rebut on that?

Ms. Murphy: Sure, I guess I'll address them in reverse order. So, if you look directly across North Lynnhaven, the closest house is about 150 feet. To answer your question, if you look at it on Google Earth, the applicant did look at there are two churches in the area, St. Nicholas Catholic Church, you've got Kings Grant Presbyterian, we looked at the ball fields, the elementary school, and any property of any size in the area, and that's how they ended up with the substation property. As far as safety concerns, I can say that the emissions at the ground level, as you all know, because these are at light pole replacements at the high schools, and pretty much everywhere in the city is going to be far less than what you would get from the lights in this room, your wireless router, your microwave, those are things that are much closer to you. So there really isn't any concern there. Having said that, as Kay would probably tell you, safety concerns from RF emissions is not really something that's in within the purview of the local zoning body. It's the federal government regulates that, our requirement is to provide proof to the local government that the facility is going to meet and exceed all of the safety requirements, and that really is handled by the federal government. So, I'm happy to answer any other questions that you have.

Mr. Alcaraz: Great. Are there any questions? Alright, thank you. At this time, I'll look forward for discussion, or I'll entertain a motion, Mr. Wall?

Mr. Wall: I've got a question, maybe Ms. Wilson, can you elaborate on that. I think that there are some legalities with that this body can't make a decision based on the cell towers in terms of their radiation or whatever the radio waves, maybe you can expand on that a little bit.

Ms. Wilson: Okay, the federal government does play a heavy hand in the telecommunications field, and so they have an ordinance, have a requirement that the local governments cannot control the placement of telecommunications facilities in regard to citizens' concerns about health issues from the RF emissions, that is handled by the federal government, the federal government has set those emissions, and the applicant sends in to the local government that they meet the regulations, and if they meet them, there is no other concern, and it cannot be a part of the discussion with the local government.

Mr. Alcaraz: Alright, thank you, Mr. Wall thanks for asking this, and thank you for explaining that.

Mr. Horsley: With regard to the safety net, we've had experience with having a 200-foot cell tower within probably 100 yards of our house and our facilities for some 15 years or so, and we haven't seen if they've added extra antennas to it, and we still haven't seen any effects from it so far as vegetation or animals around there and whatever, and we haven't seen any effects from at all. So, I think that may be a little bit of a

misnomer, and if nobody else has got any questions, I'll offer a motion application be approved.

Mr. Wall: One thing about the application is that, you know, I can see where it could be impactful, maybe impactful, but it's behind a power substation, so it's in while, and I'm sure there's going to be you know, 2500 square feet of land disturbance of clearing, it's going to at least the ground level features are going to be behind the power substation, and so it should mitigate some of the negative effects of you know, a change along the roadway, you know, along the view shed and then the use of them, you know, the pine or whatever they call it the, the monopine that helps mitigate the visual effects also. I tend to support this application.

Mr. Alcaraz: Thank you, Mr. Horsley? Mr. Redmond?

Mr. Redmond: I was gonna second Mr. Horsley's motion.

Mr. Alcaraz: Are there any Planning Commissioners abstaining from this vote? Alright have none. There was a motion for approval made by Commissioner Horsley and seconded by Mr. Redmond.

Madam Clerk: By a vote of 9 in favor, 0 against the application agenda item #3 has been recommended for approval.

	AYE 9	NAY 0	ABS 0	ABSENT 2
Alcaraz	AYE			
Bradley	AYE			
Clemons	AYE			
Coston				ABSENT
Cuellar				ABSENT
Frankenfield	AYE			
Horsley	AYE			
Oliver	AYE			
Redmond	AYE			
Wall	AYE			
Weiner	AYE			

CONDITIONS

1. The Communication Tower shall be located within the lease area and developed substantially in conformance with the submitted plan packaged entitled "US-VA_5087 (KINGS GRANT – 568 N. Lynnhaven Road – Virginia Beach, VA 23452", prepared by Vertical Bridge, and dated 11/30/2022, which has been exhibited to the Virginia Beach City Council and is on file in the Department of Planning and Community Development.
2. A full structural report shall be submitted during detailed site plan review.
3. A depiction of the location of required FCC hazard safety signage on the site, if any, and sign diagrams shall be required during detailed site plan review.

4. Subject to federal law, the maximum height of the tower shall be 130 feet above ground level, inclusive of the lighting rod.
5. As required by Section 202 of the City Zoning Ordinance, the applicant shall obtain a Determination of No Hazard (DNH) to Air Navigation from the Federal Aviation Administration/ Obstruction Evaluation Office (FAA/OE) and shall submit a copy during detailed site plan review. No building permit shall be issued until the tower is determined to be a non-hazard to air navigation.
6. No signs indicating the location of this facility are allowed.
7. In the event that the antennae on the tower are inactive for a period of two years, the tower, antennas, and related equipment shall be removed at the applicant's expense.

Further conditions may be required during the administration of applicable City Ordinances and Standards. Any site plan submitted with this application may require revision during detailed site plan review to meet all applicable City Codes and Standards. All applicable permits required by the City Code, including those administered by the Department of Planning / Development Services Center and Department of Planning / Permits and Inspections Division, and the issuance of a Certificate of Occupancy, are required before any approvals allowed by this application are valid.

The applicant is encouraged to contact and work with the Crime Prevention Office within the Police Department for crime prevention techniques and Crime Prevention Through Environmental Design (CPTED) concepts and strategies as they pertain to this site.

**Virginia Beach Planning Commission
January 11, 2023, Public Meeting
Agenda Item # 4**

Lucy Gwaltney Clay Living Trust (Applicant & Property Owner)

Change in Nonconformity (Expansion of a Nonconforming Use)

Addresses: 102A & 102B 45th Street

RECOMMENDED FOR APPROVAL – CONSENT

Mr. Horsley: Thank you, Mr. Redmond. The next item on the consent agenda is item #4, Lucy Gwaltney Clay is an application for Change of Nonconformity, Mr. Bourdon.

Mr. Bourdon: Thanks again, Mr. Horsley, Mr. Chairman, and members of Commission, Eddie Bourdon Virginia Beach Attorney representing Ms. Clay and her family. The application for the Change in Nonconformity has five conditions, and we are in agreement with all five conditions. I appreciate the efforts of Elizabeth Nowak working with us on this application. Thank you.

Mr. Horsley: Thank you, Mr. Bourdon. Is there any opposition to this item? Hearing none, we've asked Ms. Oliver if she would read this.

Ms. Oliver: Thank you. This application is requesting a Change in a Nonconformity to renovate a secondary dwelling at 102-B 45th Street, and the primary dwelling is known as 102-A 45th Street. The secondary dwelling and the subject of this application is known as 102-B 45th Street. Both dwellings are contributing resources in the Cavalier Shores National Register Historic District.

Prior to this, this property was originally platted preceding any Zoning Ordinance in Virginia Beach and that's why we have this nonconformity that exists. So, this area was developed in the 20s and the 30s, and it was common practice back then to have two dwellings on a single lot of practice today, which is prohibited in most of our residential zoning classifications.

The proposed renovation will increase the square footage of the secondary dwelling, thereby expanding the existing nonconformity. The applicant proposes to enclose the exterior staircase on the western elevation, and to construct a second story that spans the full width of the second floor or the first floor. The enclosure of the exterior staircase will increase the square footage of the footprint of that guest house about 40 square feet, and the second story addition will increase the second floor from 130 square feet to about 315 square feet. The alteration of the second story will accommodate the relocation of the two first floor bedrooms and the roof of the building will be altered, as the building will be raised to a full two story. The proposed alterations will occur within the existing footprint of the building. The primary dwelling won't be altered or directly affected as part of this project, and lastly the applicant did meet with the Zoning and Land Use Committee of the North Virginia Beach Civic League on December the 8th, 2022, and the neighborhood residents were informed of their proposed plan. They had three signatures of support, which were submitted to staff.

Staff recommends approval of this application and therefore we've placed it on the consent agenda.

Mr. Horsley: To summarize, we've got five items on the consent agenda, #1 City of Virginia Beach, #2 Tony Saady, and Lina Saady, #4 Lucy Gwaltney Clay, #6 K.M. Cash Construction Corporation, and #7 AGI-VB Holdings, LLC. Mr. Chairman, I have placed the motion that we approve these applications by consent.

Mr. Alcaraz: Thank you, Mr. Vice Chair. Thank you. Do I have a motion to approve the consent as read by the Vice Chair. I have a motion to approve, Mr. Horsley and a second by Mr. Weiner.

Madam Clerk: The vote is open. Mr. Horsley and Mr. Weiner, can you hit motion and second please. Vote is open. By a vote of 9 in favor, and 0 against agenda items #1, 2, 4, 6, and 7 have been recommended for approval by consent.

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Alcaraz	AYE			
Bradley	AYE			
Clemons	AYE			
Coston				ABSENT
Cuellar				ABSENT
Frankenfield	AYE			
Horsley	AYE			
Oliver	AYE			
Redmond	AYE			
Wall	AYE			
Weiner	AYE			

CONDITIONS

1. The front yard setback shall be nine feet for the primary dwelling. The east side yard setback shall be a minimum of five feet and the west side yard setback shall be a minimum of four feet for both the primary and secondary dwellings. Additionally, the rear yard setback for the secondary dwelling shall be zero feet. This is a deviation to the required setbacks identified in Section 502 of the Zoning Ordinance.
2. The maximum lot coverage shall not exceed 38%. This is a deviation to the required maximum lot coverage identified in Section 502 of the Zoning Ordinance.
3. Except as modified by any condition below, or as necessary to meet City Development Ordinances and Standards, the Site shall be developed substantially in accordance with the submitted concept site layout entitled "Non-conforming use exhibit Lot 38," prepared by WPL and dated 10/28/2022.
4. Except as modified by any condition below, or as necessary to meet City Development Ordinances and Standards, the Site shall be developed substantially in accordance with the submitted elevations exhibited below on page eight and prepared by Battaglia Designs, n.d.

5. The maximum number of dwelling units on the subject Site shall not exceed two (2).

Further conditions may be required during the administration of applicable City Ordinances and Standards. Any site plan submitted with this application may require revision during detailed site plan review to meet all applicable City Codes and Standards. All applicable permits required by the City Code, including those administered by the Department of Planning / Development Services Center and Department of Planning / Permits and Inspections Division, and the issuance of a Certificate of Occupancy, are required before any approvals allowed by this application are valid.

The applicant is encouraged to contact and work with the Crime Prevention Office within the Police Department for crime prevention techniques and Crime Prevention Through Environmental Design (CPTED) concepts and strategies as they pertain to this site.

**Virginia Beach Planning Commission
January 11, 2023, Public Meeting
Agenda Item # 5**

LaShawna D. Powell (Applicant)
SST Holdings, LLC (Property Owner)

Conditional Use Permit (Assembly Use)

Address: 701 South Military Highway, Suite F

RECOMMENDED FOR APPROVAL – HEARD

Mr. Alcaraz: Thank you; next item?

Madam Clerk: Our next item is agenda item #5 LaShawna D Powell, a request for a Conditional Use Permit - Assembly Use - 701 South Military Highway Suite F in Council District 1. Would the applicant or the applicant's representative please step to the podium.

Mr. Burrus: Greetings. How are you? Terrance Burrus is my name. First of all, Happy New Year to everybody. I'm here on behalf of The 818, which is an establishment created to provide service and hospitality for individuals with a unique approach of having a good time. It is designed to allow people a place to de-stress in a comfortable manner without sexual exploitation, consumption of alcohol, and/or tobacco usage. The 818 is not confined to religion, but rather ordained to a gospel image of entertainment. The establishment will create a space outside of the church environment where people can go and relax, mingle and enjoy variety of inspirational music without conforming to the traditional aspects of praise and worship, and not being defined as a lounge or a nightclub.

The 818 will be operating certain hours Tuesday through Thursday from 4 p.m. to 10 p.m. and on Fridays and Saturdays from 4 p.m. to 12 a.m. The target market will be geared towards professional middle-aged and retired individuals aged 30 and beyond. The select group will consist of working-class individuals with a mature background and appreciation for gospel. They will not be subject to discrimination based on race, color, creed, religion, background, origin, etc. The goal is for the short-term goals or long-term goals for The 818 Gospel Entertainment Spot: the short-term goals will be to provide more events focusing on consumer participation that can reward gifts and freebies. The 818 Gospel Entertainment Spot would also like to sponsor, we do autism and breast cancer awareness charities.

As part of the growth and development, twice a month the establishment will feature professional singers, and songwriters, and musicians and try to get some local talent as well, and the long-term goals will be to increase personal wealth to the point in which the business can stand on its own being debt free. The 818 Gospel Entertainment Spot would like to establish personal relationships with celebrity artists and such and such forth. That is all I have.

Mr. Alcaraz: Alright, thank you. Are there any questions for the applicant? Are there any speakers?

Madam Clerk: Yes, Mr. Chairman, we have one speaker via WebEx, Aaron Siegrist. Mr. Siegrist, we are going to un-mute your audio feed, would you please state your name and then you have three minutes for your comments.

Mr. Siegrist: Yes, my name is Aaron Siegrist, and I appreciate the opportunity to make a comment. I live directly adjacent to this building where the proposal is being made, and it really sounds like a very positive thing as regard to all the things this gentleman just spoke of. I just have a concern of loud music, and things of that nature disturbing the residents, and it's a condo association, but 170 units directly adjacent to this place, and there's already issues with music coming from that commercial establishment and obviously concerned this might bring an additional problem, be detrimental to our property values, you know, you know, our quality of life being kept up at night. Most of us like to go to sleep around 9 or 10; the others are older folks. So, I guess I would want to hear some kind of reassurance that there'd be some mitigation of music, soundproofing, or for I'd just like to hear more about how that will be accomplished to ensure that there isn't going to be any noise pollution, beyond 10 o'clock is definitely an issue, I would say, having any kind of noise coming from a commercial establishment immediately next to a residential area. Thank you.

Mr. Alcaraz: Thank you. Are there any questions for the speakers? Yes, Mr. Redmond.

Mr. Redmond: No, but I might be able to help a little bit, and just to my thinking, this is a 1,700 square-foot unit in this building, it's a real small unit; the amount of amplification it would take in such a small place is very-very low. So, I would be very surprised if there were any, if there would be any noise that would come out of it from amplified music, it doesn't take a lot of amplification for such a small space, and the other point, I'd say, and I think this, I would hope this would give you some comfort too, this is a Conditional Use Permit. So, this business has to operate according to certain strictures, and their conditions in this report, which I'm sure you've read. If it violates those conditions, if the business is a nuisance, then that Conditional Use Permit can be revoked. So, this is not something that necessarily exists forever. Even if it's a nuisance in any way, then there are forms of redress. I think you have a fair amount of or could have a fair amount of assurance that it's not going to be impactful in a negative way. I hope to do anyway, but because I do think those are things that are that I would consider reassuring if I lived in proximity to this business, thank you.

Mr. Alcaraz: Alright, Mr. Redmond, thank you. Any other questions for the speaker? Sir, would you like come forward and answer some of these concerns if you have any.

Mr. Burrus: To assure: what I've already put in place is we've purchased the sound acoustic foams that is going to go on the interior of the facility. So, it will reduce any sound at all for the consideration of the housing, and anyone else that stays in close proximity. Anyway, so it's not something that was just done for just something to do, but everything in every measure has been taken into consideration, as well as the communities.

Mr. Alcaraz: Alright, thank you, any other questions for the applicant? Alright, at this time, I'll open the floor for discussion or entertain a motion.

Mr. Wall: The speaker certainly has some valid points with the noise, but we do have a noise ordinance that we all need to be held to and are held to. So, I think that would help mitigate not completely, but if there is some noise and sound leakage that that, you know, there are ordinances out there that could help address that, but I mean, I certainly support this application.

Mr. Alcaraz: Thank you, Mr. Wall. Anybody else? Yes, Mr. Bradley.

Mr. Bradley: I would like to make a motion to approve this item.

Mr. Weiner: Second.

Mr. Alcaraz: We got a motion by Mr. Bradley, and a second by Mr. Weiner. Are there any Planning Commissioners abstaining?

Madam Clerk: By vote of 9 in favor, and 0 against agenda #5 has been recommended for approval.

	AYE 9	NAY 0	ABS 0	ABSENT 2
Alcaraz	AYE			
Bradley	AYE			
Clemons	AYE			
Coston				ABSENT
Cuellar				ABSENT
Frankenfield	AYE			
Horsley	AYE			
Oliver	AYE			
Redmond	AYE			
Wall	AYE			
Weiner	AYE			

CONDITIONS

1. The applicant shall obtain all necessary permits and inspections from the Department of Planning & Community Development/Permits and Inspections Division. The applicant shall secure a Certificate of Occupancy from the Building Official's Office for use of the existing building as an Assembly Use.
2. The maximum occupancy load shall be determined by the City of Virginia Beach Fire Marshal.
3. Any on-site signage for the establishment shall meet the requirements of the City Zoning Ordinance, and there shall be no neon, electronic display or similar sign installed on the exterior of the building or in any window, or on the doors. A separate sign permit shall be obtained from the Department of Planning & Community Development for the installation of any new signs.
4. All event activities shall occur within the building.

5. No amplification of music or use of speakers shall be permitted except within the enclosed building.
6. Hours of operation shall be limited to 4:00 p.m. to 10:00 p.m., Tuesday through Thursday and to 4:00 p.m.- 12:00 a.m. on Friday and Saturday.

Further conditions may be required during the administration of applicable City Ordinances and Standards. Any site plan submitted with this application may require revision during detailed site plan review to meet all applicable City Codes and Standards. All applicable permits required by the City Code, including those administered by the Department of Planning / Development Services Center and Department of Planning / Permits and Inspections Division, and the issuance of a Certificate of Occupancy, are required before any approvals allowed by this application are valid.

The applicant is encouraged to contact and work with the Crime Prevention Office within the Police Department for crime prevention techniques and Crime Prevention Through Environmental Design (CPTED) concepts and strategies as they pertain to this site.

**Virginia Beach Planning Commission
January 11, 2023, Public Meeting
Agenda Item # 6**

K.M. Cash Construction Corp (Applicant & Property Owner)

Subdivision Variance (Section 4.4(b) of the Subdivision Regulations)

Addresses: 3536 Boyd Road & parcel between 3536 and 3538 Boyd Road

RECOMMENDED FOR APPROVAL – CONSENT

Mr. Horsley: Thank you, Ms. Oliver. Next item is item #6, K.M. Cash Construction Corporation Subdivision Variance, is there a representative here. Please state your name.

Ms. Harris: Hi, my name is Betty Harris. I'm with Cooper's Consulting representing the applicant and owner K. M. Cash Construction Corporation with this proposal. We are amenable to the staff's three recommendations, and also we would like to thank staff for their support and recommendations with this proposal.

Mr. Horsley: Thank you, ma'am. Is there any opposition to this application? Hearing none I've asked Mr. Jack Wall if he would read it.

Mr. Wall: Thank you. Like you said this is an application for a Subdivision Variance. The applicant and property owner K.M. Cash Construction Corporation located at 3536 Boyd Road. The applicant seeks to reconfigure two lots by moving a lot line 12 feet to the east in order to resolve the side yard encroachment issue and to build a new single family dwelling on the new proposed lots. The reconfiguration is due to the applicant's wish to maintain the existing residence. The proposed reconfiguration of the lot line will result in lot 110-A being deficient lot width by 12 feet, thereby, requiring a Subdivision Variance request. Lot 109-A is currently developed with a single family dwelling that was constructed in 1961. The dwelling was built across a property line between the lots as they were under common ownership. The proposed development on lot 110-A includes construction of a one story single-family dwelling with an attached garage. The exterior building materials will consist of stone and metal roofing. The proposed lots meet the dimensional standards for property zoned R-7.5 Residential District except for the lot width. The Subdivision Regulations states that no variance shall be authorized by the Council unless it meets certain criteria including the hardship of this is created by the physical character of the property. The staff's analysis and our opinion as well as the hardship is not self-inflicted. The properties were established prior to the adoption of the Subdivision Regulations. Staff recommends approval. There's no known opposition and the conditions are acceptable to the applicant. Therefore, we have placed this item on the consent agenda.

Mr. Horsley: To summarize, we've got five items on the consent agenda, #1 City of Virginia Beach, #2 Tony Saady, and Lina Saady, #4 Lucy Gwaltney Clay, #6 K.M. Cash Construction Corporation, and #7 AGI-VB Holdings, LLC. Mr. Chairman, I have placed the motion that we approve these applications by consent.

Mr. Alcaraz: Thank you, Mr. Vice Chair. Thank you. Do I have a motion to approve the consent as read by the Vice Chair. I have a motion to approve, Mr. Horsley and a second by Mr. Weiner.

Madam Clerk: The vote is open. Mr. Horsley and Mr. Weiner, can you hit motion and second please. Vote is open. By a vote of 9 in favor, and 0 against agenda items #1, 2, 4, 6, and 7 have been recommended for approval by consent.

	AYE 9	NAY 0	ABS 0	ABSENT 2
Alcaraz	AYE			
Bradley	AYE			
Clemons	AYE			
Coston				ABSENT
Cuellar				ABSENT
Frankenfield	AYE			
Horsley	AYE			
Oliver	AYE			
Redmond	AYE			
Wall	AYE			
Weiner	AYE			

CONDITIONS

1. When these properties are subdivided, they shall be substantially in accordance with the submitted "Preliminary Subdivision Plat for the Subdivision of Parcel A"; dated December 8, 2022, and prepared by Bonifant Land Surveys, Inc. Said exhibit has been exhibited to the Virginia Beach City Council and is on file in the Virginia Beach Planning Department. A final plat shall be recorded with the Clerk of Court reflective of the layout referenced herein.
2. The design, size, and materials of the building shall be substantially in adherence, with the submitted elevation exhibits dated May 12, 2021. Said elevations have been exhibited to the Virginia Beach City Council and are on file with the Department of Planning & Community Development.
3. When Lot 110-A is redeveloped, the building exteriors shall substantially adhere to the renderings shown on page 7 of this report, which has been exhibited to the Virginia Beach City Council and are on file in the Department of Planning and Community Development.

Further conditions may be required during the administration of applicable City Ordinances and Standards. Any site plan submitted with this application may require revision during detailed site plan review to meet all applicable City Codes and Standards. All applicable permits required by the City Code, including those administered by the Department of Planning / Development Services Center and Department of Planning / Permits and Inspections Division, and the issuance of a Certificate of Occupancy, are required before any approvals allowed by this application are valid.

The applicant is encouraged to contact and work with the Crime Prevention Office within the Police Department for crime prevention techniques and Crime Prevention Through Environmental Design (CPTED) concepts and strategies as they pertain to this site.

**Virginia Beach Planning Commission
January 11, 2023, Public Meeting
Agenda Item # 7**

AGI-VB Holding, LLC (Applicant & Property Owner)

Modification of Proffers

Address: 1925 Fisher Arch

RECOMMENDED FOR APPROVAL – CONSENT

Mr. Horsley: Thank you, Mr. Wall. Our last item on the consent agenda is #7. AGI-VB Holdings LLC, Modification of Proffers, Mr. Bourdon.

Mr. Bourdon: Thank you again, Mr. Horsley, members of the Commission, for the record Eddie Bourdon Virginia Beach Attorney representing AGI that is Anderson's Nursery, and it's a proffered modification and we appreciate Michaela McKinney's help on this as well as the rest of staff. Thank you.

Mr. Horsley: Thank you, sir has any opposition to this Modification of Proffers. Hearing none we've asked Mr. Bradley if he would read this.

Mr. Bradley: Thank you. The applicant is requesting a Modification of Proffers to amend the proffered conceptual site plan associated with the 2014 Conditional Rezoning request. The request will include the addition of a 2100-square foot outdoor seating and activity area as well as two 814 square foot storage buildings used to store equipment for the existing retail business. Staff recommended approval of this. Since there's no known opposition, we were placing this on the consent agenda.

Mr. Horsley: To summarize, we've got five items on the consent agenda, #1 City of Virginia Beach, #2 Tony Saady, and Lina Saady, #4 Lucy Gwaltney Clay, #6 K.M. Cash Construction Corporation, and #7 AGI-VB Holdings, LLC. Mr. Chairman, I have placed the motion that we approve these applications by consent.

Mr. Alcaraz: Thank you, Mr. Vice Chair. Thank you. Do I have a motion to approve the consent as read by the Vice Chair. I have a motion to approve, Mr. Horsley and a second by Mr. Weiner.

Madam Clerk: The vote is open. Mr. Horsley and Mr. Weiner, can you hit motion and second please. Vote is open. By a vote of 9 in favor, and 0 against agenda items #1, 2, 4, 6, and 7 have been recommended for approval by consent.

	AYE 9	NAY 0	ABS 0	ABSENT 2
Alcaraz	AYE			
Bradley	AYE			
Clemons	AYE			
Coston				ABSENT
Cuellar				ABSENT
Frankenfield	AYE			
Horsley	AYE			
Oliver	AYE			
Redmond	AYE			
Wall	AYE			
Weiner	AYE			

PROFFERS

The following are proffers submitted by the applicant as part of a Conditional Zoning Agreement (CZA). The applicant, consistent with Section 107(h) of the City Zoning Ordinance, has voluntarily submitted these proffers in an attempt to “offset identified problems to the extent that the proposed rezoning is acceptable,” (§107(h)(1)). Should this application be approved, the proffers will be recorded at the Circuit Court and serve as conditions restricting the use of the property as proposed with this change of zoning.

Proffer 1:

When the Property is developed, it shall be developed substantially as shown on the exhibit entitled, "REVISED CONCEPTUAL DEVELOPMENT PLAN OF ANDERSON'S HOME AND GARDEN CENTER", dated October 31, 2022, prepared by Kellam Gerwitz, P.C., which has been exhibited to the Virginia Beach City Council and is on file with the Virginia Beach Department of Planning and Community Development (hereinafter referred to as the "Revised Conceptual Development Plan").

Proffer 2:

Except as modified herein, the remaining unchanged proffered covenants, restrictions and conditions as set forth in the 2014 Proffers are hereby ratified and affirmed.

Staff Comments: Staff has reviewed the Proffers listed above and finds them acceptable. The City Attorney’s Office has reviewed the agreement and found it to be legally sufficient and in acceptable legal form.

PROFFERS FROM THE 2014 CRZ

Proffer 1:

When the Property is developed, it shall be developed substantially as shown on the exhibit entitled "REZONING EXHIBIT OF PROPOSED ANDERSON'S HOME AND GARDEN CENTER FOR PRINCESSBORO DEVELOPMENT", dated 02/06/14, prepared by Kellam Gerwitz, P.C., which has been exhibited to the Virginia Beach City Council and are on file with the Virginia Beach Department of Planning (hereinafter referred to as the "Conceptual Development Plan").

Proffer 2:

When the Property is developed, the structures depicted on the Conceptual Development Plan shall be developed using architectural designs, materials and colors substantially as designated and shown on the three (3) exhibits entitled "ANDERSON'S HOME AND GARDEN SHOWPLACE" (a) "Elevation - Sandbridge Road", (b) "Perspective" and (c) "Material Color Selections", prepared by arci architects, copies of which have been exhibited to the Virginia Beach City Council and are on file with the Virginia Beach Department of Planning (hereinafter referred to as the "Elevations").

Proffer 3:

The freestanding sign depicted on the Conceptual Development Plan shall be a monument style sign substantially as depicted on the exhibit entitled "ANDERSON'S HOME AND GARDEN SHOWPLACE, Elevation – Street Signage", prepared by arci architects, a copy of which has been exhibited to the Virginia Beach City Council and is on file with the Virginia Beach Department of Planning (hereinafter referred to as the "Sign Elevation").

Proffer 4:

When the Property is developed, it shall be extensively landscaped in substantial compliance with the detailed landscape plans designated "LANDSCAPING SHEET OF ANDERSON'S SHOWPLACE", Sheet L 1 and "LANDSCAPE NOTES & DETAILS OF ANDERSON'S SHOWPLACE", Sheet L2 presented by Kellam Gerwitz, P.C., which have been exhibited to the Virginia Beach Department of Planning (the "Landscape Plan").

Proffer 5:

Further conditions may be required by the Grantee during detailed Site Plan review and administration of applicable City Codes by all cognizant City Agencies and departments to meet all applicable City Code requirements.

**Virginia Beach Planning Commission
January 11, 2023, Public Meeting
Agenda Item # 8**

Legacy Haven Animal Rescue (Applicant)
Elaine Swartz (Property Owner)

Conditional Use Permit (Residential Kennel)

Address: 5433 Hunt Club Drive

RECOMMENDED FOR DENIAL – HEARD

Mr. Alcaraz: Thank you. Next item.

Madam Clerk: Mr. Chairman, our last agenda item for the day is agenda item #8, Legacy Haven Animal Rescue. It's a request for a Conditional Use Permit for a Residential Kennel in 5433 Hunt Club Drive in Council District 1. Would the applicant or the applicant's representative, please step to the podium.

Ms. Swartz: Okay, my name is Elaine Swartz. I am the owner of the property at 5433 Hunt Club Drive. I am also the founder, director, and chief foster home for Legacy Haven Animal Rescue, and I'm going to admit I am not a public speaker. Mr. Alcaraz can vouch for that one. I can probably answer your questions, but I'll give you a little bit of a background on Legacy Haven, and how I ended up standing here. Legacy Haven is a dream come true for me. Over 20 years ago, I started rescuing animals, rescuing dogs, one dog at a time. I have worked with various rescues in the area, again fostering one or two dogs at a time. That was in 1998 when I started. A few years ago, I was forced into retirement and decided to work towards my dream. That dream started coming true. Unfortunately, my health failed. Since 2019, I have had four major operations. I had a friend who was supposed to be my caregiver, supposed to be caring for my dogs at the same time, only come to find out a year ago that I wasn't being very well taken care of, nor were the animals being very well taken care of, and that steps were taken to rectify the problem, she was forcibly removed from my home. Legacy Haven endeavors to rescue or what we call pull animals from small rural shelters. We unfortunately don't pull too often from Virginia Beach because they have such a large budget and a lot of supporters. We were reaching out to shelters like Brunswick County, and places like that, minimal shelters with 10 to 12 kennels, and exceedingly small budgets. We're trying to save the lives that we can save. We're pulling what some people refer to and excuse me, it's uncomfortable to say ride or die. Meaning by the time I'm made aware of the dog, the dog either has to leave the kennel within a few certain hours or it'll be euthanized. We also get a lot of sick dogs, senior dogs. I'm sure you've all seen some of the horror stories about these 10, 12, and 14-year old animals being surrendered to shelters when the owners no longer can handle it. Legacy Haven is there to provide that safe haven and landing for the dogs. That's what we were endeavoring to do. Unfortunately, somewhere along the line that all went awry, and then I discovered that I'm in violation, my dogs are not being taken care of, and excuse me, but that's a sore subject and makes me very angry. I have to admit, part of this is my fault because I trusted someone, while I concentrated on my health. I'm scrambling to rectify these problems, and

that's why I'm standing here today asking for this Residential Kennel permit. The numbers of the dogs have decreased considerably within the house. Some of the dogs were transferred to other rescues. Unfortunately, some of the, what we call hospice dogs have gone to what we call the Rainbow Bridge, or they have been euthanized for their health issues, and I had unfortunately also had one euthanized by Virginia Beach Animal Control for behavior. I have a zero tolerance for human aggression in a dog. I don't care what breed of dog it is; I can't tolerate aggression towards humans. That's just me. That's a personal thing that a lot of rescuers will disagree with. We're endeavoring to raise the money to get these dogs, their shots, and things. We're getting very close to having everything up-to-date and getting it where it needs to be. As a matter of fact, I think probably within the next 10 days, we'll have it all in place where it needs to be with these dogs vetted, cared for everything they need. I'm just asking the Planning Commission to give me a chance to save Legacy Haven and go on saving one dog at a time because that is a decision that the Board of Directors for Legacy Haven has made, one dog at a time. We asked for 10 when we started this process. I noticed in the paperwork that Michaela sent to me that a compromise of five was offered. We're quite willing to accept that compromise. We're willing to accept all of the recommendations that we received, and at this point, I don't know what else to say. I'm happy to answer any questions anyone has.

Mr. Alcaraz: Thank you, Ms. Swartz. Are there any questions for the applicant? Yes, Mr. Horsley?

Mr. Horsley: We understand that the animal control came to your house in 2018, and explained to you that the number of dogs you had, you had to get Conditional Use Permit for it, and why is it taken four years to do that?

Ms. Swartz: I'll be honest with you sir, I do not remember that. If it's what I think it was, I don't even remember having that many dogs at that time. There was a complaint made to Animal Control by a Regina Quinn as a means to get at me or coming at me to get at a rescue that I was working with.

Mr. Horsley: No, but the report we got that Animal Control had told you to have those number of animals, and you need to get a Conditional Use Permit, and it has taken four years for you to finally decide to do that.

Ms. Swartz: I'll be honest with you sir, I hadn't planned on continuing it this way.

Mr. Horsley: Okay, but do you know that you can have four without any permit?

Ms. Swartz: Yes.

Mr. Horsley: So if you want to do one dog at a time, wouldn't four suffice.

Mr. Swartz: At this point in time, I currently own three dogs.

Ms. Horsley: So that would be enough. Okay, thank you.

Mr. Alcaraz: Ms. Oliver, you have a question?

Ms. Oliver: So, you say you own three dogs? How many dogs are you fostering in your home?

Ms. Swartz: I currently have three fosters, I have two what we call adoptable, meaning we're actively aggressively looking for homes for them, and the third one is what is called a hospice.

Ms. Oliver: So, you have a total of three dogs?

Ms. Swartz: No, a total of six dogs within the house.

Ms. Oliver: So, there is a difference there?

Ms. Swartz: Yes.

Ms. Oliver: So not only has Animal Control, and I know you stated that you had a surgery in 2019; you started in 1998, correct. So you starting practicing in 1998, Animal Control came in 2018, and you had 20 dogs in resident at the time.

Ms. Swartz: 2018, and I had 20 dogs?

Ms. Oliver: May 4, 2018, you had over 20 dogs.

Ms. Swartz: I have never had that many dogs in my house.

Ms. Oliver: My point being this is a report from Animal Control, and April 27, 2022 of this past year, you had 17 dogs, and nobody was up to date on shots. You had an operation in 2019, but this is 2022 now. The dogs are in bad condition, the house is in bad condition. I don't know if you have a read the report from Animal Control.

Ms. Swartz: No, I have not been able to get a hold of it, but I requested it before. I have requested it from Animal Control. No one seems to be able to provide me that with that report.

Ms. Oliver: I'm just curious on this timeline from 1998, to Animal Control, letting you know that you needed a permit from the City in 2018, and now we're in spring of 22, less than a year, and the problem has gotten worse, and I'm just trying to understand exactly how you're fostering animals.

Ms. Swartz: As I stated in starting in 2019, I had four major surgeries.

Ms. Oliver: I understand that, but that's when you give the dogs to somebody.

Mr. Swartz: There was supposed to be someone in that house caring for the dogs.

Ms. Oliver: So, the dogs were left alone in the house, were you not in the house?

Ms. Swartz: I was in the house. I was recovering from the surgeries. I had four surgeries, my last surgery being in April of 2021.

Ms. Oliver: How many square feet is that house?

Ms. Swartz: 1800.

Ms. Oliver: So, it is 1800 square feet, Animal Control states that you have 20 dogs in there. There are two adults, and you don't know that's going on.

Ms. Swartz: Because of the type of surgery that I had had no. I had been medicated and being cared for or supposed to have been being cared for.

Mr. Alcaraz: Alright, any other questions for the applicant? Alright, I think we have a speaker, and then we will let you come back to rebut, thank you.

Madam Clerk: Elizabeth Blackwell.

Ms. Blackwell: My name is Elizabeth Blackwell. I live at 5522 Hunt Club Drive, so the house in question is diagonally across the street. First thing I'd like to say is she has cleaned up the house in the last month, the grass is cut, the junk is gone, but historically over the years, it's been never ending. It's always dumped around mailbox; I don't know if that the city hasn't picked it up. It will be weeks. There's always junk in the driveway ranging from appliances, to cages, to a rusty RV. Anyway, the houses in our subdivision are very close together. It's not an ideal location for a kennel of any kind, including a 1700 square foot house. My house lots are the exact same dimensions, 7500 square feet is generous for the entire thing. Her website says that she will start with adult dogs, but will eventually be taking puppies, cats, and kittens. There's a picture on the website of the dogs. The grass is up to the dogs, you know, I have a small backyard. It's exactly the same as hers. My elderly neighbor whose house is catty-corner cannot open her patio door most days for the smell and the noise, more the smell. My neighbors are in their 90s. I don't know how it would affect my property value, but I can't imagine it would not be good, and that is a concern. My husband just went over there about two weeks ago to ask if he could call someone to come pick up some appliance in the driveway that was sitting there, and that's not unusual, and thank you, I don't know what else to say without going on.

Mr. Alcaraz: Thank you. Are there any questions for the speaker? Alright, Ms. Swartz you can come back up if you would like to rebut on her concerns.

Ms. Swartz: Not quite sure where to start. The appliances including the one that she mentioned that her husband asked about is a result of appliances within the house that have failed or broken. They've been moved to the curb by the tradesmen who's helped me replace it. All pickup has been arranged, and they're gone. I've been in the house since 1998. Appliances fail. Some tradesmen will take the appliances with them, some move them to the curb for me to contact for bulk pickup. The RV belong to the person who was supposed to be caring for me. That took a lot of debate, heated discussions and help from the city to finally get it towed out of there. Neighbors didn't complain, didn't say anything to me personally, no one offered to help me. As far as the neighbors beside me and the smell, I'm more than a little bit confused because I scoop regularly, and that house is nowhere near close enough to smell my backyard, or my trash cans. So that I'm just not quite sure I understand what her complaints are. My dogs are not out the front door except to go from the front door to the car for a vet, or appointment, or something like that. The barking is kept to a minimum, we go so far as to teach the dogs not to put their

feet on the fence, and that we call don't bark at the neighbors, meaning they're not allowed to run the fences and bark at anyone. I can't stop the dogs from barking when someone knocks on the door, and they're going to bark. They are just never more than one or two dogs in the yard at a time and I'm always out there with them. So, I'm a little bit confused as to why a neighbour across the street who has never seen fit to speak to me has complaints about what's going on in my personal life. I don't understand why she didn't come to me directly instead of coming here, but, like I said, when I started this, I'm not a professional speaker, all I can do is speak from my heart and hope that I'm heard and heard correctly.

Mr. Alcaraz: Okay, well, I'm gonna ask the Commissioners for any questions. So, are any additional questions you'd like to ask the applicant? One I'm going to ask. So, we got a lot of letters of opposition, those neighbors do you ever hear from them complaints? None?

Ms. Swartz: None of them. No one ever came asked me what was going on, what I was doing. When things were bad during my surgeries and my recoveries, no one offered to help, no one came to see what was going on. As a matter of fact, and I'm just gonna throw it out there, when my ex-husband was beating me half to death, and I'm screaming bloody murder for help, none of these neighbors who were posting my life at this point in time, even call the police department, but now they suddenly oppose what I'm trying to do. They've never even spoke to me, come to my door, and told me their concerns or offer to help.

Mr. Alcaraz: Then I need to ask when Animal Control was there and there was a complaint in these numerous years, did you ever work that out?

Ms. Swartz: They're all worked out. Everything was taken care of.

Mr. Alcaraz: Did you work it out with the complaint, whoever made the complaint?

Ms. Swartz: I am not allowed to know who makes those complaints. They protect the identity of those complainants. Now the complaint that was made in April of last year, I know who that person was. She tipped her hand, when she made some complaints about one of the dogs in my care demanding that the dog be turned over to her. It was also the person who was supposed to be my caregiver, who by that stage of the game had already threatened my life bodily, and I had already gotten a protective order against her. So that legal actions are still processing on that. In April of last year was done out of pure spite simply to get me in trouble.

Mr. Alcaraz: Okay, well, I'm just bringing this up because this is really; these complaints are really against you.

Ms. Swartz: I only know two people that make complaints to me, and I think the one of them I know with Regina, I think it was Quinn attacking me to get to the Director of Operations, they have a shelter dog that I was fostering with at the time, and she made up a lot of things that were totally bizarre. There were not 20 dogs in that house. I think that was what she stated, but there were not 20 dogs in that house at that time, and the one in April, I admit that things were wrong, but I was just getting to a point in my recovery where I was becoming aware of things, and I realized I should not have let that get to that point.

Mr. Alcaraz: We got to move on because I've heard that part, I just need to let you know that this report is really against you right now, and on the report, it did say on visual inspection you had 15 dogs. So right now, unless there are any other questions, I think we'll close this so we can discuss it. Just have a seat for a second. Thank you. Are there any questions, discussions, or motion? Mr. Redmond?

Mr. Redmond: Well, I would like to make just a couple of points in this applicant's defense, we look at the land use, and whether or not there's a washing machine on the front lawn or something really doesn't seem to impact whether or not this is an appropriate place, density, environment. Whether the conditions that we think should be in place to operate a kennel, you know, are there, so but that said, it doesn't seem to me like those conditions are in place. This is a very densely packed neighborhood. It does not surprise me that neighbors would be disturbed by dogs barking, dogs will bark, you're exactly right, I understand that. That's what those animals do, and I understand that the applicant has had some very difficult personal challenges of late. Nonetheless, I'm convinced that resolving some of those personal challenges, and getting to a bit more stable situation would probably be necessary before I'd be comfortable recommending approval of the permit for kennel. There is a certain amount, a certain number that's allowed by right, and what's allowed by right strikes me as appropriate in this instance, so I will not support this application.

Ms. Alcaraz: Alright, thank you, Mr. Horsley.

Mr. Weiner: I kind of echo what David just said, and the fact that you know, the size of this lot, the size of the house and conditions, and I can understand the lady has been in some hard times, but I don't think given a permit to handle 10 dogs is gonna help or eliminate some of those issues. I think we just make matters worse, and to be honest, I think four is probably too many, but that's what our ordinance allows, and we've got to allow that, but I can't support this application today either. From the reports that we've gotten from Animal Control, and the letters from the neighbors just didn't want support putting this in a community like this, thank you.

Mr. Alcaraz: Alright, Mr. Horsley, any other comments? Mr. Wall.

Mr. Wall: I think the applicant's heart is certainly in the right place, you know, looking at the comprehensive plan, it states to, you know, protect the stability of the suburban area and the plans primary guiding principles to create great neighborhoods, and I think this is, in the historical aspect of this, that it seemed been fairly impactful to the neighbors. So I find it, at this point, hard to support.

Mr. Alcaraz: Alright, thank you, Mr. Wall. Anybody else?

Ms. Oliver: I will make a motion to deny this application.

Mr. Alcaraz: Alright do I have a second? I have a second with Mr. Horsley. Any Commissioners abstaining from this vote? None, alright there's a motion to deny it by Ms. Oliver and second by Mr. Horsley.

Madam Clerk: Vote is open. By a vote of 9 in favor, 0 against agenda item #8 has been recommended for denial.

Mr. Alcaraz: Alright, the meeting is adjourned, thank you.

	AYE 9	NAY 0	ABS 0	ABSENT 2
Alcaraz	AYE			
Bradley	AYE			
Clemons	AYE			
Coston				ABSENT
Cuellar				ABSENT
Frankenfield	AYE			
Horsley	AYE			
Oliver	AYE			
Redmond	AYE			
Wall	AYE			
Weiner	AYE			

CONDITIONS

If the Planning Commission chooses to recommend approval of this proposed residential kennel, staff recommends the following conditions:

1. This Conditional Use Permit shall be limited to a maximum of five (5) adult dogs.
2. All animal waste from the dogs shall be collected and disposed of in a lawful manner on a daily basis.
3. The applicant shall ensure that all dogs are properly vaccinated and immunized and are licensed through the City of Virginia Beach.
4. The existing fence on the property shall be maintained in good condition for the duration of the Conditional Use Permit for the Residential Kennel.
5. There shall be no breeding of dogs on the site.
6. No more than four (4) dogs shall be permitted to be outdoors at one time and the dogs shall remain under the supervision of the caretaker at all times and shall not be a nuisance to any other property owners or residents.

Further conditions may be required during the administration of applicable City Ordinances and Standards. Any site plan submitted with this application may require revision during detailed site plan review to meet all applicable City Codes and Standards. All applicable permits required by the City Code, including those administered by the Department of Planning / Development Services Center and Department of Planning / Permits and Inspections Division, and the issuance of a Certificate of Occupancy, are required before any approvals allowed by this application are valid.

The applicant is encouraged to contact and work with the Crime Prevention Office within the Police Department for crime prevention techniques and Crime Prevention Through Environmental Design (CPTED) concepts and strategies as they pertain to this site.