

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF BRUNSWICK

ANNE EDWARDS HARTLEY, et al., )

Petitioners, )

v. )

BOARD OF SUPERVISORS OF )  
BRUNSWICK COUNTY, )

VIRGINIA, )

Respondent. )

Case No. CL20000073-00

RECEIVED & FILED  
BRUNSWICK CO. CIRCUIT COURT  
APR 30 2021  
BY: Jacqueline S. Morgan, Clerk  
D.C.

**PETITIONERS' REPLY TO RESPONDENT'S REPLY  
TO PETITIONERS' OPPOSITION TO DEMURRER  
OF SUPERVISORS OF BRUNSWICK COUNTY, VIRGINIA**

COME NOW Petitioners Anne Edwards Hartley ("Hartley") and the Prospect Cemetery Association (the "Cemetery"), by counsel, and hereby submit their Reply in Response to Respondent's Reply to Petitioner's Opposition to the Demurrer of Supervisors of Brunswick County, Virginia (the "Board").

The overarching topic is land use management, its legislated purpose, enforcement, and accountability. The purpose is to prevent the exact scenario that the County approved and is being challenged on the grounds that the County is knowingly evading both Virginia Statues and County Ordinances to arrive at its position.

As their best case, the Board's Reply to Petitioners' Opposition to Demurrer filed on Friday, April 23, 2021 continues to distract, distort, and circumvent the salient legal points of Virginia Statues and County Ordinances. A new example is how they mischaracterize the outcome of the August Demurrer hearing. They state repeatedly in their reply that the Demurrer to the initial Petition was sustained and that is why the Demurrer to the Amended Petition should be

sustained because no additional evidence was provided. If the Demurrer to the initial Petition had been sustained, the case would have been over.

The fact of the matter is that the initial Demurrer was partially sustained on three of seven remedies sought and conditionally sustained if Petitioners did not file an Amended Petition. There was no ruling on the claims of the Petition other than allowing the Petitioner to file an Amended Petition which was done to integrate the evidence details of the claims from Petitioners' Opposition to Demurrer into the body of the Petition itself.

The Board's Demurrer and Reply to Petitioners' Opposition to Demurrer do not overcome the fundamental defects in the Board's decision-making process that are raised by the allegations of the Amended Petition and Petitioners' Opposition to Demurrer.

The Petitioners' desired outcome to reverse the rezoning and deny Dollar General entry into said location is aligned with the land use governance that the County is supposed to be following. This alignment does not diminish the legitimacy of the legal case.

Petitioners reaffirm these facts along with the details found in the Amended Petition and Opposition to Board's Demurrer as probative evidence that the Demurrer must not be sustained:

1. The Board violated the Brunswick County Zoning Ordinance (Brunswick County Code, Appendix ("App'x) B). The Zoning Ordinance does not authorize or permit the Board to unconditionally rezone the subject property directly from A-1 (Agricultural) to B-1 (Business). In fact the Zoning Ordinance specifically dictates that a Conditional Use Permit is the channel that should have been pursued which is designed to preserve and protect the character of the community and do no harm.
  - a. Halifax County, VA was faced with the exact same scenario with Par 5 attempting to bring a Dollar General to a historic A-1 community (Cluster Springs). The

Planning Commission approved it while, in this case, the Board of Supervisors overrode that position, denied the application and offered to reconsider with a Conditional Use Permit. Par 5 walked away. It is reasonable to assume that Par 5 would have conveyed to Brunswick County from the beginning that a Conditional Use Permit would be a showstopper which it appears incentivized those who supported Par 5 to work hard to circumvent the zoning regulations.

2. The Board violated the Brunswick County Subdivision Ordinance (Brunswick County Code, App'x A). The landowners failed to formally subdivide the property subject to Par 5's Rezoning Application from the larger parcel in conjunction with the Rezoning Application. Hence the "parcel" subject to Par 5's Rezoning Application does not exist. Rezoning is intended to be applied to a legally defined parcel with a unique parcel id per the Rezoning Application. On Par 5's Rezoning Application, the parcel size and tax map identification indicated on the Rezoning Application does not match the intended property to be rezoned.
  - a. The Subdivision Ordinance clearly states there are no exceptions for following the ordinances. In a scenario where new development is dependent on rezoning, a rezoning permit should be requested along with the subdivision to ensure there is a legally define property for rezoning. This avoids the ambiguous and illegal practice of allowing the same parcel from having more than one zone. Alternatively, a *provisional* rezoning decision could be made to indicate that if the property is subdivided for intended use requiring the rezoning, then the provisional rezone would be applied to the subdivided parcel. This approach would also keep rezoning

linked to the intended use of property as specified on the Rezoning Application and not unconditionally rezoned for open ended scope.

3. The Board and its Planning Commission failed to follow the required procedures in considering and then granting Par 5's Rezoning Application. For example, the process circumvented Virginia Code §§ 15.2-2232 that calls for a public meeting to determine if the rezoning request is aligned with the Comprehensive Plan (including land use maps). The Rezoning Application should have been denied and perhaps an alternative approached such as Conditional Use Permit suggested. They could have suggested other locations that would be aligned with the Land Use maps.
4. The Board exceeded the scope of its legislative authority by unconditionally rezoning the property in a manner that exceeded the rezoning requested in Par 5's Rezoning Application.
5. The Board's decision reflects that the Board chose to ignore or otherwise failed to take into proper account the required factors set forth in Virginia Code §§ 15.2-2283 and -2284 prior to rezoning the subject property.
6. The Board's decision violated the fundamental tenets and purpose of the Brunswick County Comprehensive Plan ("Plan") and the Board's aligned Vision Statement.
  - a. The Plan includes current and future land use map that designate where B-1 type business is and is not allowed. The location for the subject B-1 rezoning is not in a designated business corridor on the land use map. It is in an area that is defined as Rural Residential | Agriculture | Forestry. It is not designated a "Corridor Business" location that accommodates a retail operation like Dollar General. It is not designated as "Community Business" that allows Par 5 to suggest they align with They do not because of the size of the proposed Dollar General store.

Community Business limits size to 5000 square feet. The Dollar General store is 9100 square feet.

- b. Another key violation of Virginia Statute is that the Board’s decision conflicts with the notion of “substantial accord”. “Substantial Accord” is used repeatedly to reinforce the importance and expectation of following the Comprehensive Plan and its purpose in a holistic manner. Not in a piecemeal fashion as the Board is doing in the case at hand by focusing solely on economic development while excluding all other significant elements of the overall plan.
- c. Glenn Millican, the Lunenburg County Planning Director, and former Hanover County Planning Director read the following to the Lunenburg Planning Commission when they held a properly advertised and public 15.2-2232 hearing on a proposed solar project on March 16, 2021. Being substantially in accord means:

**Substantial:**

Consisting of / or relating to the substance, not imaginary or illusory, being largely, but not wholly that which is specified and in agreement thereto, as determined by fact or data, and/or by code, policy, or to any approved plans or projects, especially a localities Comprehensive Plan.

**Accord :**

Concurrence of opinion, will, or agreement; harmony of purpose(s) between or among multiple choices, propositions, positions, or definitions. In determining such agreement consideration will be given to authoritative sources, approved and adopted plans, approved drawings and engineered plans, or lawful agreements. Such determination may leave a modest or small margin for adjustment in the physical layout of a development or proposal due to final engineering data which clearly proves necessity, provided the adjustment does not alter or adversely impact the scope, intent, or character of the existing regulatory controls, the density of a proposed project, or reduces any provision intended to mitigate the impact of the development or project on adjacent properties, or the community.

- 7. The Board’s decision is based on a false narrative and misrepresentation by the Planning Director about prior B-1 related rezoning in the Ebony Community. The Planning

Department's Staff Analysis and the County's zoning map being used to justify the PAR 5 application approval is misleading.

8. In response to Board's statement that this legal case directed to the Board and not the Planning Director, the Planning Director and Commission work for the Board. The Board is ultimately accountable for any procedural issues that may have occurred in that domain. The mistaken misapplication of the existing laws does absolve the Board of its duty to correct these errors when discovered.

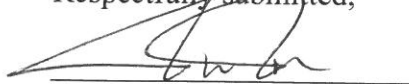
The Board's Demurrer does not overcome the fundamental defects in the Board's decision-making process that are raised by the allegations of the Amended Petition and the Petitioners' Opposition to the Board's Demurrer to Amended Petition.

The reality is that the Board failed to comply with governing state and county laws when it impermissibly voted for the benefit of a few and to the detriment of many to alter the entire landscape of the authentically rural and historic Ebony community by authorizing B-1 commercial development allowing Dollar General instead of a Conditional Use Permit as specifically designated by the Comprehensive Plan and County Ordinances.

### **CONCLUSION**

For the foregoing reasons, the Board's Demurrer should be denied.

Respectfully submitted,



John M. Janson, Esquire  
VSB #91236  
830 West High Street  
South Hill, VA 23970  
Telephone: (434) 953-8794  
Email: [johnmjanson@gmail.com](mailto:johnmjanson@gmail.com)  
*Counsel for Petitioners*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of April, 2021, a true and correct copy of the foregoing Petitioners' Reply to Board's Reply to Petitioners' Response in Opposition to Demurrer of Board of Supervisors of Brunswick County, Virginia was served via email and United States mail, first-class postage prepaid, in an enveloped properly addressed to the following:

Andrew McRoberts, Esq.  
Christopher Mackenzie  
Sean M. Hutson  
SANDS ANDERSON PC  
1111 East Main Street, 23rd Floor  
Post Office Box 1998  
Richmond, VA 23218-1998  
[amcroberts@sandsanderson.com](mailto:amcroberts@sandsanderson.com)  
[cmackenzie@sandsanderson.com](mailto:cmackenzie@sandsanderson.com)  
[shutson@sandsanderson.com](mailto:shutson@sandsanderson.com)

Paul C. Jacobson  
SANDS ANDERSON PC  
1005 Slater Rd., Suite 200  
Durham, NC 27703  
[pjacobson@sandsanderson.com](mailto:pjacobson@sandsanderson.com)

*Counsel for Respondent*



John M. Janson, Esquire  
*Counsel for Petitioners*