

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
January 24, 2017

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) of Tuesday, January 24, 2017, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Robert Grimes in the ABC Conference Room of the George L. Gordon, Jr., Government Center.

MEMBERS PRESENT: Robert Grimes, Steven Apicella, Ernest Ackermann, Danny Kim, Dean Larson, Heather Stefl, Adela Bertoldi, Robert Gibbons

MEMBERS ABSENT: Dana Brown

STAFF PRESENT: Susan Blackburn, Melody Musante, Stacie Stinnette, Evelyn Keith

DETERMINATION OF QUORUM

Mr. Grimes: Good evening ladies and gentleman, and welcome to this meeting of the Stafford County Board of Zoning Appeals. The BZA is a quasi-judicial body whose members are volunteers appointed by the Circuit Court of Stafford County. The purpose of the BZA is to hear and decide appeals for any order, requirement, decision, or determination made by the Zoning Administrator; hear and decide upon requests for Variance from the Zoning Ordinance when a literal enforcement of the ordinance would result in unnecessary hardship to the owners of a property; hear and decide on requests for Special Exceptions where the Zoning Ordinance allows for Special Exceptions. The Board consists of seven regular members and two alternate members. An alternate member may be called upon to participate when a regular member is unable to hear a case. Let the record reflect that we have a quorum tonight with seven voting members present. And I'll provide a clarification. We have seven for the first case and then a different seven for the second case, and we'll clarify that as we proceed. The members present and voting tonight for the first case are Mr. Apicella, Dr. Larson, Mr. Kim, Mrs. Stefl, Dr. Ackermann, Mr. Gibbons, and Ms. Bertoldi. The members voting for the second case are the same except for Mrs. Stefl will be sitting in for Mr. Gibbons, and you will not be on the first case.

Mrs. Stefl: Actually, Mr. Chairman, I will be recusing myself for the first case due to my husband is a client of Mr. Goodall's law firm.

Mr. Grimes: Right, thank you very much. Obviously, the alternate members will be seated at the dais tonight. They will be hearing the case only and will not be asking questions or participating in the discussion or vote on the case otherwise directed by the Chair. The County staff is represented tonight by Denise Knighting, the Office Manager, Mrs. Stacie Stinnette, the Senior Administrative Associate, Mrs. Melody Musante, the Zoning Manager, and Mrs. Susan Blackburn, the Zoning Administrator. The hearings will be conducted in the following order: the Chair will ask the staff to read the case and the members of the Board may ask questions of staff. The Chair shall ask the applicant or their representative to come forward and state their name and address, and present their case to the Board. The presentation shall not exceed 10 minutes unless additional time is granted by the Board. Members of the Board may ask questions of the applicant to clarify or better understand the case. The Chair will then ask for any member of the public who wishes to speak in support of the application to come forward and speak. There shall be a 3 minute time limit for each individual speaker, and a 5 minute time limit for a speaker who represents a group. After hearing from those in favor of the application, the Chair will ask for any member of the public who wishes to speak in opposition to the application to come forward and speak. After all public comments have been received, the applicant shall have 3 minutes to respond. We ask that each speaker present their views directly to the Board and not to the applicant or other members of the public. After the applicant's final response, the Chair shall close the

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public hearing. After the public hearing has been closed, there shall be no further public comments. The Board shall review the evidence presented and the Chair shall seek a motion. After discussion of the motion, the Chair shall call for a vote. In order for any motion to be approved, four members of the Board must vote for approval. In order to allow the Board time for appropriate review, the applicant or applicant's representative is required to submit relevant material to the Department of Zoning and Planning 10 business days prior to this hearing to be included in the staff report. The Board may accept additional relevant material from the applicant or the applicant's representative during the hearing; however, large amounts of additional material may require a deferral, at the Board's option, on behalf of the applicant to allow the Board time to consider the additional material. Members of the public and/or staff may also submit relevant material during the hearing. The applicant should be aware tonight that we have seven voting members present, and you must have four affirmative votes to approve an application. If you do not think there are enough members present... I'll skip that part. The applicant may also withdraw his or her application at any time prior to a vote to approve or deny the application provided that the applicant has not withdrawn a substantially similar application within the previous 12 months. Any person, or persons, who do not agree with the decision of this Board shall have 30 days to petition the Stafford County Circuit Court to review our decision. Also, be aware that the Board will not hear any denied application for a Variance or Special Exception that is substantially the same request for at least one year from the date of our decision. I now ask anyone who has a cell phone, pager, or other electronic device to please silence it. Thank you. It is the custom of this Board to require that any person who wishes to speak before this Board shall be administered an oath. Therefore, I ask anyone who wishes to speak tonight to stand and raise your right hand. Do you hereby swear or affirm that all testimony before this Board shall be nothing but the truth?

Several members of the audience: Yes.

Mr. Grimes: Thank you, you may be seated. The Chair asks that when you come down to the podium to speak, please give your name and address clearly into the microphone so our recording secretary can have a record of all the speakers. Also, please sign the form at the rear of the room if you are going to be speaking tonight. Are there any changes or additions to the advertised agenda?

Mrs. Musante: There are no changes to the advertised agenda, but please let the record reflect that Denise Knighting, Office Manager, is not here tonight but Evelyn Keith, Zoning Technician, is.

Mr. Grimes: I am sorry, my apologies. Alright, I'll ask the Secretary to read the first case.

DECLARATIONS OF DISQUALIFICATION

PUBLIC HEARINGS

1. A17-01/16151568 - Yonus Attai - Per Stafford County Code, Section 28-349, "Appeals to board generally," the applicant is appealing a Zoning Administrator's determination letter dated November 7, 2016, regarding the distinction between retail and wholesale motor vehicles sales as it is permitted in the B-2, Urban Commercial Zoning District. The property is Tax Map Parcel No. 21-54F, located at 2951 Jefferson Davis Highway.

Mrs. Musante: A17-01/16151568, Yonus Attai. Per Stafford County Code, Section 28-349, "Appeals to board generally," the applicant is appealing a Zoning Administrator's determination letter dated November 7, 2016, regarding the distinction between retail and wholesale motor vehicles sales as it is permitted in the B-2, Urban Commercial Zoning District. The property is Tax Map Parcel No. 21-54F,

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located at 2951 Jefferson Davis Highway. You have the application, owner's consent form, Zoning Administrator's determination letter dated November 3, 2016, copy of approved site plan dated August of 1999, copy of Code Section 28-37. The applicant is appealing a determination that was issued by the Zoning Administrator on November 7, 2016. The applicant submitted a request for a determination as to whether the property, Tax Map Parcel No. 21-54F, allows wholesaling motor vehicle sales as a by-right use in the B-2, Urban Commercial Zoning District. Tax Map Parcel No. 21-54F was zoned to B-2, Urban Commercial in 1978. A site plan for a retail equipment facility was approved in 1999 and construction was completed by 2002. According to the county records, the current owner, Yonus Attai, became owner of record in March, 2015. In August, 2016, a complaint was received that vehicles were being sold from this location. Staff inspected the property and found vehicles for sale displayed on the site. The Stafford County Zoning Ordinance, Section 28-35, Table 3.1 "District Uses and Standards," requires an approved conditional use permit to conduct vehicle sales on a property. Staff did not find such an approval and issued a notice of violation on August 17, 2016. The applicant removed the vehicles within the 30 day time limit for compliance and the notice of violation was abated. Staff received a request for a zoning determination on August 5, 2016. The request was to make a determination that a wholesale business permitted as a by-right use in the B-2 Zoning District included the wholesaling of automobiles. The applicant submitted the vehicle sales facility as described in the zoning ordinance must necessarily embrace retail sales because it is not limited to wholesaling. According to the applicant, the difference between selling vehicles retail and wholesale is a retail business would include such items as signage or advertising, a sales manager, a sales force to negotiate sales with the public, conduct test drives, and arrange financing. The operation of this business does not include these mentioned items and therefore is not a retail business. This business is a wholesale operation that sells vehicles over the internet or at the auto auction, delivers them to the customers, and performs repairs as needed. Consequently, the business should be considered a wholesale business and permitted as a by-right use in the B-2 Zoning District. The definition, County Code Section 28-25, for "motor vehicle sales facility" in the Zoning Ordinance, on its face, is not limited to retail transactions. It is clearly and broadly written to capture all vehicle sales. The definition for "motor vehicle sales facility" is any "building, structure or land used for display, sales or lease of motor vehicles, other than boats." There is no limiting language which excludes motor vehicle sales that are wholesale or otherwise. There is no specification as to who purchases the vehicles, the displaying of vehicles, or if there is any advertising on the site or the number of employees, which the applicant states are requirements for a retail vehicle sales operation. The language of the "motor vehicle sales facility" definition is controlling over the definition for "wholesale business" because it specifically encompasses vehicle sales, rather than "merchandise," which is a broader, less specific, class of goods. In addition, the Commonwealth of Virginia does not issue a license for a wholesale auto dealer. There are only two types of motor vehicle dealer licenses issued by the Commonwealth, a franchise dealer or an independent dealer. The franchise dealer sells new vehicles from a manufacturer, such as Toyota, Volvo, or Ford. The independent dealer sells used cars by any manufacturer. The B-2, Urban Commercial Zoning District lists a motor vehicle sales facility as a specific use that requires a conditional use permit. As such use is not by-right, the activities described in the applicant's request letter cannot be conducted until a conditional use permit for such use is obtained. Additionally, to the extent motor vehicles are only being stored on the property and not sold, such storage is a non-listed use which requires a conditional use permit pursuant to County Code § 28-37 to be lawful. Therefore, to consider the use conducted at 2951 Jefferson Davis Highway, Tax Map Parcel No. 21-54F, as a wholesale business permitted as a by-right use would be in conflict with how the use of a motor vehicle sales facility is permitted in the B-2, Urban Commercial Zoning District as stated in the Zoning Ordinance.

Mr. Grimes: Thank you. Do we have any questions for staff? Yes, Dr. Ackermann.

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Dr. Ackermann: The last sentence in the second to last paragraph uses the word controlling, and I need a little help of what we mean by controlling. Could you read that sentence again and maybe use different words? The language says, The language of the...

Mrs. Musante: The language of the “motor vehicle sales facility” definition is controlling over the definition for “wholesale business...”.

Dr. Ackermann: What does that mean, controlling? Is it more specific than wholesale business, is that what we mean? Or is it (inaudible) mean when it says it’s controlling over the definition for wholesale business?

Mrs. Musante: I’ll read further, because it specifically encompasses vehicle sales rather than merchandise, which is a broader, less specific, class of goods.

Dr. Ackermann: So, (inaudible) vehicle sales facility, the code says you need a conditional use permit and that is more specific or more controlling over the definition of a wholesale business than the opinion here is that that is what takes precedence.

Mrs. Musante: Yes.

Dr. Ackermann: I didn’t want to start a big discussion about that definition but I just needed a little help with that. Thank you.

Mr. Grimes: Other questions for staff?

Mr. Apicella: I’m looking for my little microphone. Yeah, Mr. Chairman, so just for clarification, it appears to me that the core issue we’re trying to resolve is whether a motor vehicle sales in Stafford County’s B-2 Zoning District, under the certain circumstances described by the application, is either a by-right use or requires a conditional use permit. That’s the central question here, right?

Mrs. Blackburn: Yes.

Mr. Apicella: So, again, and I’m sorry to belabor the point; I know some of this may have already been covered in the staff report, but I kind of just want to walk through this issue and wrap my head around it. So, does the Stafford County Code have a definition of motor vehicle sales facilities?

Mrs. Blackburn: Yes.

Mr. Apicella: And can you read that out in full?

Mrs. Blackburn: “Motor vehicle sales facility. A building, structure or land used for display, sales or lease of motor vehicles, other than boats.”

Mr. Apicella: Okay. And does the County Code have a definition of wholesale business?

Mrs. Blackburn: Yes it does.

Mr. Apicella: And can you read that out?

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Mrs. Blackburn: “Wholesale businesses. Businesses primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users; or acting as agents or brokers and buying merchandise for or selling merchandise to, such individuals or companies. Comment: Lumber, plywood and millwork yards such as building materials establishments are generally classified as wholesale unless the primary operation is directly to the general public as opposed to builders. In such case, they are classified as retail operations.”

Mr. Apicella: Okay, so what I’m hearing is the County has a specific and separate definition of motor vehicle sales facilities and a separate and distinct definition for a wholesale business.

Mrs. Blackburn: Yes.

Mr. Apicella: And the County’s position is that the motor vehicle sales facility is controlling as it relates to motor vehicle sales.

Mrs. Blackburn: Yes.

Mr. Apicella: Okay. Does the County consider motor vehicles to be the same as merchandise under the wholesale business term and associated definition?

Mrs. Blackburn: In the context of this, because the motor vehicle sales is more controlling in the definition, it was not subject (inaudible).

Mr. Apicella: Okay. And is it fair or reasonable to expect a locality to decline every word or term it uses in its Zoning Ordinance?

Mrs. Blackburn: No.

Mr. Apicella: Can you again reiterate, what’s required under the County Code to operate a motor vehicle sales facility in the B-2 zoning district?

Mrs. Blackburn: It requires an approved (inaudible) conditional use permit.

Mr. Apicella: And does the County Code make a distinction between wholesale and retail sales of motor vehicles?

Mrs. Blackburn: No.

Mr. Apicella: Does the Commonwealth of Virginia make a distinction between wholesale and retail sales of motor vehicles?

Mrs. Blackburn: Not (inaudible) vehicle licensing, no.

Mr. Apicella: Is there anything in the County Code that comports with the applicant’s contention that to be covered under motor vehicle sales certain activities or conditions have to be met. And they specify signage, employees, frequency of customer visits, test driving, and similar activities.

Mrs. Blackburn: No.

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Mr. Apicella: Or does it say to the contrary, without any of these or all of these conditions in place, a site would not be considered a motor vehicle sales facility?

Mrs. Blackburn: No.

Mr. Apicella: Does the Commissioner of Revenue make zoning determinations or otherwise enforce zoning ordinances?

Mrs. Blackburn: No.

Mr. Apicella: Are there other sales related activities or uses in the B-2 zoning district that require a CUP?

Mrs. Blackburn: Yes there are. There are boat sales, outdoor flea markets, adult businesses (inaudible), arcades. We do have a retail photo laboratory processing which (inaudible) selling something to someone. Vehicle fuel sales (inaudible).

Mr. Apicella: So there are several sales related activities or uses that require a CUP in the B-2 zoning district?

Mrs. Blackburn: Yes.

Mr. Apicella: What's the purpose of requiring a CUP for certain uses in the B-2 zoning district versus allowing other uses by-right? Why have a CUP?

Mrs. Blackburn: Well, a conditional use permit is to allow a use that is generally compatible with the other uses in the district that are normally listed as by-right uses. But often times those uses may need additional conditions or regulations placed on them for their operational use in order to negate any kind of adverse impacts on a (inaudible). And that is decided by jurisdiction.

Mr. Apicella: And, off the top of your head, I'm sorry to ask this, but can you think of any kind of mitigation issues that would come up with a motor vehicle sales or where you have several cars parked on a location?

Mrs. Blackburn: There possibly could be traffic issues. There possibly could be noise issues; screening issues.

Mr. Apicella: I mean, vehicles also have some environmental issues too, when you sell or maintain those.

Mrs. Blackburn: Yes.

Mr. Apicella: How long has a CUP been required to operate a motor vehicle sales facility in Stafford?

Mrs. Blackburn: In 1978 the Code stated they needed a Special Use Permit to have auto sales (inaudible). A Special Use Permit at that time is now used a Conditional Use Permit. And prior to that it was a by-right use (inaudible).

Mr. Apicella: So, it's certainly been... that requirement has been in existence at least before 2015?

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Mrs. Blackburn: Yes.

Mr. Apicella: Again, can you tell me how many CUP applications have been submitted in Stafford County to operate a motor vehicle sales facility in recent years?

Mrs. Blackburn: We've had four since 2011 that have been approved, and two are pending.

Mr. Apicella: And that information was provided at the dais tonight?

Mrs. Blackburn: Yes.

Mr. Apicella: Have any of those other affected applicants claimed that a CUP was not required or that certain conditions had to be met in order to be considered a motor vehicle sales facility?

Mrs. Blackburn: Not to my knowledge, no.

Mr. Apicella: The staff report also indicates that merely leaving motor vehicles stored on a B-2 site also requires a CUP. Can you explain that?

Mrs. Blackburn: We do not... the Zoning Ordinance does not have provisions for vehicle storage. We have provisions for junkyards and we have provisions for automobile graveyards. This ordinance also provides for if a use is not listed then you can apply for a conditional use permit by the Board of Supervisors.

Mr. Apicella: So, even if somehow, some way, the applicant's contention that this was a wholesale business not covered under the motor vehicle sales facility use as we define it, it would still need to have a CUP to store vehicles there.

Mrs. Blackburn: Say that again?

Mr. Apicella: Even if their contention is correct that motor vehicle sales facilities in this specific instance, that they're talking about the special circumstances that they've referenced, even if that were considered true and accurate...

Mrs. Blackburn: That it was a wholesale business?

Mr. Apicella: That is was a wholesale business, and I'm not saying it is, they would still need a CUP to store vehicles. That's what you said; I'm just rephrasing what you said.

Mrs. Blackburn: If you only store vehicles, if it is nothing but a vehicle storage lot, and you have nothing else going on with it, that is (inaudible).

Mr. Apicella: Really? Because we just did one in North Stafford where they wanted to store extra vehicles and they needed a CUP in order to do that. They had x number of vehicles and they wanted to do y number of vehicles, and a CUP was required and it was, in that case, denied.

Mrs. Blackburn: It was denied?

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Mr. Apicella: It was denied because they were more than doubling the amount of vehicles to several hundred.

Mrs. Blackburn: And it was...

Mr. Apicella: This happened in the last six months.

Mrs. Blackburn: What did they apply for? (Inaudible).

Mr. Apicella: That's okay, we don't have to debate it. So, if the Zoning Administrator's determination is upheld tonight, what's necessary for the applicant to operate a motor vehicle sales facility as Stafford defines it?

Mrs. Blackburn: To apply for a conditional use permit to be approved by the Board of Supervisors.

Mr. Apicella: And has the applicant pursued a CUP for this site?

Mrs. Blackburn: The applicant has applied for one.

Mr. Apicella: Okay, thank you.

Mr. Grimes: Any other questions for staff? Hearing none, we'll open up the public hearing. Will the applicant or his or her representative please come forward to present their case.

Mr. Goodall: Good evening, am I on? Can you hear me? You can hear me, okay. I'm Bob Goodall, I'm counsel for Yonas Attai who's sitting here with me. There is a CUP application pending; that's for retail, that's for a retail facility. And we have to pursue that because to be honest Mr. Milde has candidly said to us he doesn't favor that at this time, because Mr. Attai has essentially honed his desires back to doing simply wholesaling. You're being asked to fill in a gap in the County Code which not defined is motor vehicle sales. There's no definition for it. There is a definition for wholesale business; Mrs. Blackburn correctly quoted it. It's also on page 7 of 24 of the stuff we sent you. And if that's what we're doing, if that's what our activity it, then it's a use permitted by-right. There are three at least automobile uses in the B-2 zone that require a conditional use permit. Two have definitions, one doesn't. The two that have definitions are automobile service -- the definition is also on page 7 of 24, it's defined as retail. This is a building or premises where gasoline, oil, grease, batteries, tires, brakes, mufflers, and vehicle accessories may be installed, supplied, or dispensed at retail... just part of the definition. And so that's your Jiffy Lube or some place that's only putting on tires and not doing something else. Members of the general public, you can go there and get your oil changed. Also, automobile repair is an auto use in the B-2 zone that requires a conditional use permit. It is also retail; it's basically service on steroids, it's things that have a bigger impact -- that's fixing your engine, repainting, welding, and so on. And so that's also a, by definition, retail. There is no definition actually of motor vehicle sales. So, we're making the simple point that if there had been, it would also be, just like these others, retail. Just like the one next to the definition of motor vehicle rental facility. When you read it, that's basically Avis, Dollar, Hertz, you know, Alamo Rental Car. The land or structures are used to display them for you to go get there and rent one there. Okay, so that's done for members of the general public. Okay, so there are two... so the interpretation Mrs. Blackburn has given and Mr. Apicella is I think advocating here is not completely impossible. We just suggest it's not the right one for two major reasons. One is that zoning ordinances are all about land use impacts. When activities impact land in different way, zoning ordinances categorize them

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differently. They clump them together by their impacts on land. That's what a whole zoning ordinance is about. So, for example, that's where we said, and land use impacts are, you know, what are you doing with the land, what kind of building do you need, what kind of infrastructure, who's coming to it to conduct the activity, how much -- that's traffic, what resources will you need, utilities, travelways, you know, what are the hours of the operation going to be, what's it going to look like from on the site or off the site, what will it's impact be on adjoining owners or farther away. And so you clump those, the zoning ordinance clumps those activities under allowed uses accord... similarly. Similar impacts get similar allowed uses in a zoning code. That's what it's all about. So there are differences between what he's proposing to do and your normal retail business. Essentially, Leckner Nissan is almost straight across the road from this thing, from this location. This is on the northbound on ramp of 95 just beyond the Valero is where it is. So, if it was retail, you drive your car there, you park it, you meet a salesman, you test drive a car, if you like it you sit with him, you negotiate a sale, maybe you trade-in, you may talk to the sales manager, if you want a loan you may be talking to a finance manager. All those things are going on at a retail facility. Cars are displayed so they're attractive to the public. Members of the general public are coming there and they want curb appeal. They'd like to be seen from off the site, to draw in by-passers to their retail location. That's what the impact of a retail motor vehicle sales place is. In this case, 90% of the cars come from the auto auction and go back there. Ten percent may come from Leckner across the road or Sheehy around the corner -- it used to be Rosner Toyota. When you traded in a car there, they need to move that car, they could send it across the street to Mr. Attai, he's going to work on it and probably take it back to the auction or call a very short list of retail dealers who have known him for 20 years and know he's going to bring them a good product. If it's the kind of a car they think they can sell, fine, bring it over. So here's the difference: zero customer traffic. No consumer comes there. No retail purchaser comes. No wholesale purchaser comes. I guess they could, but in practice they never do. So the only thing going onsite, and these are all drivable cars; they're just driven there, parked there, they're going to be minor service, change the oil, put on new brakes, change fluids, they'll be detailed. If they need any minor repair, that will also be done and then they're leaving the site. There is... so no sales person is there; there's a manger and somebody working on cars basically is the activity. Those are such hugely different activities they obviously have different impacts, and so when you make an interpretation of a zoning code, and you're being asked essentially to fill in the gap, what does motor vehicle sales mean when there's no definition in the code, we're suggesting it must mean retail in the same way, and it would not apply to what we've just described because they are so different. So, for example, when a car comes there and they are briefly servicing it, you understand that is not motor vehicle service, or automobile service in the code, because by definition that's retail. He's only doing it to his own cars. So even though he's servicing it, that's not automobile service. If he's doing a minor repair to it, that's not automobile repair because it's not done for the general public. In the same way, if he's making that wholesale sale, we're saying it's not automobile sale, which by definition, if it were defined, we're suggesting would be retail. The second huge reason I'm suggesting our interpretation is correct is that when you have a body of law, like a zoning code, that's adopted over a period of time, there are actually rules about how to give the correct meaning to each part of it. And so I've given you a couple of these... actually the very first one is you give meaning to each part by the obvious main objective of the whole code. Everything I've been saying so far is really that first rule. If the obvious main purpose of the zoning code is to clump different activities with different land use impacts in different allowed uses, then the meaning to be given to each term within it has to comport with that. The second one is, and I think I've actually quoted this for you, and I'll have to slightly apologize but it's...

Mrs. Musante: Two minutes.

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Mr. Goodall: Okay. Virginia Supreme Court of course talks like lawyers and they're saying every part of it has to fit harmoniously into the whole of it, all of it. So, from a land use impact, it would make no sense to say, in interpreting a code, here's wholesaling. It's all of one kind of activity. It's not different from cars, from anything else. No member of the general public comes. Here's retailing over here. Very different land use impact. We're going to reach over here in wholesaling and pluck out only the sale of cars from what it is like in a land use standpoint and dump it over here in what it is unlike in a retail sales land use impact. That would not be (inaudible) following the correct rules on how to give meaning to each part of the code. And then finally, let me quote one other for you -- when in doubt, construction favors the liberty of the owner. With respect to Mrs. Blackburn's license issue, I point out I'm a licensed attorney. If I wasn't, I can't practice law anywhere. But it doesn't mean I get to practice law and create an office in place where the zoning code wouldn't let me do it. So even though his license might let him sell both at wholesale and retail, that doesn't mean if he's in a place in the County where it can't be retail that he could do it. He could only do what both the zoning law and his license would let him do. And that's very easy to check because he reports to DMV every car he ever sells. You know, so as often as the Zoning Administrator wanted, she could walk over and say, show me your list. And he could pull it out and say, look at every vehicle that's been sold; they've all been sold at wholesale. That's an easy thing to do. So the fact that his license might let him do more wouldn't let him do more from this location. I've got I guess no time left. Do you have any questions you want me to answer? Any questions?

Mr. Grimes: Well thank you very much. Do we have any questions for the applicant?

Ms. Bertoldi: I have some questions. First I want to (inaudible) a little bit (inaudible) because I know we're discussing definitions and the such. Would you agree that most statutes and even case law talk about that ordinary words are given as ordinary meaning, that not everything in a statute has to be defined?

Mr. Goodall: Not everything has to be defined. When it makes a difference what the term means, that's the very issue before you.

Ms. Bertoldi: Well for you, for you, but I'm saying words that have ordinary meanings, because there's lots of case law out there in general that, you know, words that have ordinary meanings, right, don't need to be defined because they're given their common use in ordinary meanings.

Mr. Goodall: One... one good way to determine what something means is it's common ordinary meaning, that is one of the rules.

Ms. Bertoldi: Right. And there's a lot of case law that talks about ordinary meanings and words are given ordinary meanings, correct?

Mr. Goodall: That's one good way.

Ms. Bertoldi: Okay. So, we all know what a motor vehicle is; that's a ordinary meaning, correct? Like we know that motor vehicle... we know what that is, right? And selling anything, whether or not it's a good or a vehicle, is a sale, regardless of the sale, it's a barter of some sort; that's a sale, correct? And that's an ordinary meaning.

Mr. Goodall: Except...

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Ms. Bertoldi: Well, I'm just asking... we're talking about the word sale. We all know what sell means, right?

Mr. Goodall: Sell means one owner has it and for money transferred it to another owner, yes.

Ms. Bertoldi: Right, for barter or for whatever it is. Whatever it is for barter that is one or the other, right?

Mr. Goodall: That's right.

Ms. Bertoldi: Okay, so for motor vehicle sale we know there's a motor vehicle involved and there's some sort of barter, correct? I mean, that's it right? Okay. So that's my first interchange with you. So let's actually go with the definition that is in the statute 28-25, where it says motor vehicle sales facility.

Mr. Goodall: Yes.

Ms. Bertoldi: Okay. So, I'm just going to reiterate it... is a building structure or land use, which talks about facility, used for display, sale, or, okay, not and, but or lease of motor vehicles.

Mr. Goodall: Yes.

Ms. Bertoldi: So, isn't there an argument there that motor vehicle sales is actually defined within the definition of motor vehicle sales facility because they're defining a facility and what that is and what can go on there, which is the sale of a motor vehicle.

Mr. Goodall: If you're saying is there an argument, there's an argument. I don't think it's the correct argument.

Ms. Bertoldi: But I mean, it does discuss sales of motor vehicle in that definition, correct?

Mr. Goodall: One of the... yes. One of the things is if you look right next to it, the very adjoining definition somebody called motor vehicle rental facility. Almost the same word sequence. But it's manifest when you look at it, that's a retail activity. That's Alamo, Hertz, Dollar...

Ms. Bertoldi: But that doesn't discuss retail anywhere in this definition, correct?

Mr. Goodall: That's correct, that's correct, it doesn't, that's correct.

Ms. Bertoldi: Okay. And in my last question for you right now is something nothing to do with that. Has your client applied for, not independent, I want to use the right word, an independent, not a franchise... yeah, independent dealer license?

Mr. Goodall: He has an independent dealer license (inaudible).

Ms. Bertoldi: He does have an independent dealer license, okay. And actually I thought of one other question I do want to ask.

Mr. Goodall: He's had one for 20 years.

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Ms. Bertoldi: Okay. So what is his... also, what is his intended purpose?

Mr. Goodall: Wholesaling automobiles.

Ms. Bertoldi: Okay, wholesale... selling them, right?

Mr. Goodall: Wholesale.

Ms. Bertoldi: You're using the word wholesale, but he wants to sell motor vehicles to people or businesses.

Mr. Goodall: To... only to... not to the general public. I mean, the code plainly... beg your pardon?

Ms. Bertoldi: (Inaudible) internet sales. Internet sales is to sell them over the internet.

Mr. Goodall: No. No, not retail over the internet. Ninety percent come from the auction and go to the auction; 10% will come from a retail dealer and may go to a retail... 10% will leave to a retail dealer, 90% will leave to the auction. Zero will leave to members of the general public. If he were retailing, yes; loads of retail is done over the internet.

Ms. Bertoldi: Right, but I'm asking if he's doing retail at all. So, he's going to be selling motor vehicles... selling motor vehicles, correct? Yes? But to other businesses or...

Mr. Goodall: Only.

Ms. Bertoldi: Right, but he's selling motor vehicles.

Mr. Goodall: Yes.

Ms. Bertoldi: Okay. There's no dispute that he is selling motor vehicles.

Mr. Goodall: That's the whole goal.

Ms. Bertoldi: Okay, alright. And I had one more question and I forgot it, so come back to me.

Mr. Grimes: Okay. I have a couple questions. The vehicles are stored on the premises while they're waiting to be sold.

Mr. Goodall: Sure. That'd be an ancillary... I think what Mrs. Blackburn is telling you is if... if the right decision that wholesaling is a use permitted by-right and that's what it can do, then the fact that the vehicle comes there and stays there long enough for that activity to occur, is simply ancillary to the wholesale sale of the vehicle. I think what she's telling you is if the only thing you were doing was storing vehicles, that's different. And since the code simply has no provision for it, it would require a conditional use permit.

Mr. Grimes: And has, at any time, a customer, dealer or private citizen, come to that address to do a vehicle?

Mr. Goodall: Not during his ownership, no, never.

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Mr. Grimes: There were some comments in here at some point and I wish I would have highlighted it that he does promote these vehicles via an internet site.

Mr. Goodall: No, that's... he has a separate application for a conditional use permit as a retail facility. That's simply on hold because Mr. Milde has kindly told us he's not going to support it. If that had been granted, loads of sales happen over the internet and retail customers could come. That's not... that's off the table...

Mr. Grimes: Did they happen before this violation?

Mr. Goodall: No, no. No, the notice of violation... I talked to Sean, I've forgotten Sean's last name... but actually no vehicles were being sold. Somebody went over there and assumed they were and they withdrew the notice of violation and we withdrew the cars. But it was withdrawn without a determination. And if I had known that was going to be an issue, I would have brought you the emails back and forth between me and Sean on that. No vehicles have been sold from this site... during his ownership.

Mr. Grimes: So, no private citizen via the internet site bought one of those vehicles?

Mr. Goodall: Correct.

Mr. Grimes: Okay.

Mr. Goodall: No one has purchased a vehicle that has been on this site during his ownership. Now if you look incidentally in the package of stuff we gave you, the County Assessor sure thinks it looks like it's configured for, you know, a car dealership. It says half is a garage, half is a showroom and office, and actually on the Assessor's card when he says what does this look like to me for assessment purposes, he calls it auto/truck repair in one place and auto center in another place. But no, during his ownership no vehicles have been sold -- wholesale or retail -- zero.

Mr. Grimes: Okay. And he also does service on these vehicles at the site, correct?

Mr. Goodall: He will put on new brakes and change fluids, yes.

Mr. Grimes: Okay.

Mr. Goodall: And to be honest, it is configured as a garage; it's got service bays in this thing. It was apparently used as an equipment rental...

Mr. Grimes: It's what the (inaudible) documents show that it was a large equipment rental facility.

Mr. Goodall: But weirdly it's configured exactly like a small car dealership; it's half a giant service bay and half a what would be a showroom and upstairs is a bunch of offices.

Mr. Grimes: Okay. You had a follow-up?

Ms. Bertoldi: Yeah, well, just a follow-up to yours and then I remembered my question. Does your client have a website for selling cars?

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Mr. Goodall: Not for this business or location. He has other dealerships at other locations which are retail dealerships, and yes they do sales over the internet.

Ms. Bertoldi: Okay.

Mr. Goodall: Or you could walk up and buy a car there.

Ms. Bertoldi: Okay. So, my follow-up question from before regarding the definitions was, there is no definition of a wholesale motor vehicle sales, correct? Like that's not even a thing. Like it's not anywhere, right, in the statute?

Mr. Goodall: Right.

Ms. Bertoldi: As I know you've researched the living daylights out of this in case law, did you find any case law persuasive or authority in any way, shape or form in the State of Virginia that discusses that wholesale motor vehicle sales should be treated differently than motor vehicle sales?

Mr. Goodall: To be honest, I didn't look for that specific thing and no, I didn't find that. What I found were the rules I've put in here about how you give meaning to each part of the zoning code in light of the whole. And I think, for the two overarching reasons I've given you, what we're telling you is correct. When there's no definition of motor vehicle sales but there is of service defined as retail, repaired defined as retail, and those two have extremely different land use impacts, then the right conclusion about what would motor vehicle sales be would be you're going to determine it by its land use impact. There are two... so, for example, Mrs. Blackburn says we had to decide which applied. He's plainly wholesaling something, so it is a wholesale business. Is that the appropriate place allowed use to lump his activity under? But he's also, as you say, but he's selling a car. So, is that the right place to put it? Is that the... is his activity appropriately plunked under that category allowed use? And, so her conclusion about what was more specific was, (inaudible) aren't talking about cars isn't that more specific. I would have picked the reverse. I would have said but that means you could be doing wholesaling or retailing. If you say both of them are lumped under motor vehicle sales, now you've got a much broader actual opportunities for what you see going on and much different land use impacts than if you say, so wholesaling, in my mind, is more restrictive because it limits what he can do. And it limits it from a land use standpoint. Whereas, if you say, well, motor vehicle sales must mean both, isn't that in fact the less narrow definition applicable to his activity from a land use standpoint? I know there are plenty of cases on that kind of thing, but not specifically, you know, it doesn't plainly decide this specific case before you.

Ms. Bertoldi: Well, no, but I (inaudible) specific case but dealing with motor vehicle retail versus wholesale. There is nothing out there.

Mr. Goodall: Nope, nope, I didn't see it.

Ms. Bertoldi: Okay.

Mr. Kim: Can I ask some questions now?

Mr. Grimes: Yes, Mr. Kim.

Mr. Kim: Just to clarify, so what requirements do you have to obtain a dealer's license?

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Mr. Goodall: Well, that's through DMV and the Dealer Board.

Mr. Kim: No, I understand where it comes from but what are some of the requirements?

Mr. Goodall: Pass a test, show financial responsibility, you know, probably be bonded, what else do you have to do?

Mr. Attai: (Inaudible - not at microphone).

Mr. Goodall: That's a DMV issue.

Mr. Kim: I'm just asking because it says, no license shall be issued to any motor vehicle dealer unless he has an established place of business, owned or leased by him, where a substantial portion of the sales activity of the business is routinely conducted and which -- and then it has a list of 6 different other requirements.

Mr. Goodall: I'm sorry, what are you reading?

Mr. Kim: Virginia Code, Title 46.2-1510.

Mr. Goodall: And so these are requirements to get a motor vehicle dealer license, is this what you're talking about?

Mr. Kim: It says dealers are required to have an established place of business.

Mr. Goodall: Oh, okay, here's what that means. For a dealer... this is the interplay between DMV and the County. So if you say... if you started selling cars from your house, by the time you've sold about 6 in a year, DMV gives you a call and says, hey, we see that Danny Kim is signed as a seller on more than umpteen cars; you don't have a license with us, what are you doing? Are you... I mean, are you buying and selling for your own account or have you somehow become a dealer? And so you'll pass some threshold. And if you want to be a dealer, they're going to turn to the County and say, does he have... to hang your license and start selling cars, there's certain things you need, okay. So the County must report back if DMV asks yes, selling cars from this location is allowable under our zoning code for this location. There are also things like you must have at least 10 spaces for cars and more spaces for customers and this is retail... more spaces for customers and employees and 10 display spaces on the site. There's a number of things like that.

Mr. Kim: But, as I was reading this, it doesn't state wholesale or retail. That's kind of where I'm drawing a (inaudible). Yeah, I don't see... like there's no distinction between retail and wholesale here. That's why I'm trying to figure out from what your standpoint is (inaudible). I'm trying to understand this.

Mr. Goodall: Okay. If... we've been addressing the zoning code and proper interpretation of the zoning code. You're talking about something very close; the interplay between zoning and DMV, okay, and what would DMV require...

Mr. Grimes: Well, actually what I think Mr. Kim is referencing is the Virginia State Code that actually provides a definition for a motor vehicle dealer.

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Mr. Goodall: Yes.

Mr. Grimes: You would say that your client is a motor vehicle dealer.

Mr. Goodall: He absolutely is. He's a licensed dealer.

Mr. Grimes: And then you take the next step to the Zoning Ordinance which says motor vehicle sales facility. So, you have a motor vehicle dealer that's working out of a building that's a motor vehicle sales facility.

Mr. Goodall: Sure. But that doesn't... I didn't mean to...

Mr. Kim: Oh no, I'm just saying that number one, to satisfy all local zoning regulations, that's...

Mr. Goodall: Okay, well it would be satisfied if he's wholesaling only and DMV says to the County, is what he's doing consistent... from this location consistent with the zoning code? If the ruling of this Board or the Court on appeal if it happens to be that is that yes somehow that's allowed, then the answer would be yes, what he's doing is consistent with the zoning code. If he was trying to retail cars, then he would have to have a conditional use permit in a zone where that's done and then the County Zoning Administrator would report back to DMV yes, what he's doing is consistent with the zoning code. But in addition to that, then DMV may impose additional requirements like the configuration of the site. You must have a physical office building on the site. You must have the 10 display spaces. You must have...

Mr. Kim: (Inaudible) that they get equipment, desk, chairs (inaudible).

Mr. Goodall: You see those things? Yeah. Of course, this site overwhelms all of that. It plainly surpasses all of that. But her answer... if your answer is yes, okay, wholesaling will allow him to do only wholesaling, then her answer to DMV would be yes, he's consistent with the zoning code.

Dr. Larson: Mr. Chairman? Question.

Mr. Grimes: Yes Dr. Larson.

Dr. Larson: Mr. Goodall, in the... under the B-2 zoning ordinance under uses permitted by... in the B-2 ordinance, there are two retail facilities called out specifically; a retail bakery and a retail food shop. Those are specifically allowed by-right in B-2. Now, when I look under the conditional use permit section, it simply says motor vehicle sales. The implication I think is if they meant retail, they would have said retail.

Mr. Goodall: Well, but they also say automobile service, right? As a conditional use permit use, automobile service...

Dr. Larson: Yes.

Mr. Goodall: ... and automobile repair.

Dr. Larson: Yes.

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Mr. Goodall: Those things happen to have definitions, so when you go read the definition section of the code...

Dr. Larson: But how could you have a wholesale service or a wholesale repair? I mean, that doesn't make sense.

Mr. Goodall: You could be... I supposed you could be repairing eng... Well, here's one. When he repairs a vehicle or services a vehicle that's his own, you understand, by definition that's not automobile service. That may sound weird. You're servicing an automobile and by definition it is not automobile service because it's not for the general public.

Dr. Larson: I think what I'm saying is part of your argument is for us to, you know, infer the intent of the code because there, in your view, there's a lack of specificity.

Mr. Goodall: That's exactly.

Dr. Larson: And in the code that the writers of the code call out retail a couple of times because they specifically mean retail as a by use. So if they meant retail for the... only for the special use permit, why wouldn't they have called it out using the term retail as they did for the other uses?

Mr. Goodall: Well, they didn't call it out either way. By not defining it, they didn't say either way we mean only retail or we mean retail and wholesale. They didn't say; that's the problem.

Dr. Larson: Thank you.

Mr. Goodall: Okay.

Mr. Grimes: Question for...?

Mr. Apicella: Yes, Mr. Chairman. So, I'm asking several and it's with all due respect to you and the applicant so I can better understand your position. In your justification you indicated that the County was aware that this property was operated as a automotive center by virtue of the Commissioner of Revenue's assessment card. So, my question here is, does the absence of taking the action on an unapproved zoning use stop Planning and Zoning staff from taking action once they find out a property owner isn't in compliance with the County's Planning and Zoning requirements?

Mr. Goodall: If I think I...

Mr. Apicella: (Inaudible) do not seek enforcement...

Mr. Goodall: If I understood the question, I think the answer is, did you say does it prevent them? No.

Mr. Apicella: No.

Mr. Goodall: They should do their job.

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Mr. Apicella: Okay. I'm a little confused about one item that's been asked here but I'm going to ask it again. The justification that was submitted, the material that you provided on behalf of your client...

Mr. Goodall: Yes.

Mr. Apicella: ... indicates that customers do visit the site albeit rarely. So, was that a true statement or not a true statement?

Mr. Goodall: It's never happened yet. We're saying if you theorize what would happen if this were... no car has ever been sold and no customer has yet ever visited this site in a wholesale use.

Mr. Apicella: I didn't ask about wholesale; I just asked whether customers visit the site albeit rarely?

Mr. Goodall: It has never happened yet.

Mr. Apicella: But why does it say that in the application?

Mr. Goodall: I'm trying to describe what the land use impact of this activity would be.

Mr. Apicella: Okay, that's not the way I read your justification, but I'll accept what you're saying.

Mr. Goodall: But please understand, no car has ever been sold and no customer has ever come to look at one. It hadn't happened yet.

Mr. Apicella: So, when you sell to whomever...

Mr. Goodall: Right.

Mr. Apicella: ... and somebody has a problem with the vehicle that was sold to them, where do they go?

Mr. Goodall: Well, if it's bought at the auction, then the auction has its own internal rules about... he buys cars at the auction, he can sell cars at the auction. So it has its own internal rules contractually about what happens and where you have recourse. If he were selling a car to a dealer, like if he was selling one... if he gets one from Leckner and resells it to say a used car dealer that he would have a good relationship with, that's going to be a contractual issue between him and the dealer purchaser. But, you know, he's been around for a long time and...

Mr. Apicella: I gotcha, but is that customer, whatever you want to call him, public or private or dealer or, you know, a regular citizen buying a car, are they going to show up potentially or have they shown up at the site to address their issues or concerns?

Mr. Goodall: Well, I mean, it's never happened yet. Is that what you're asking? There's no car ever been sold yet in this circumstance.

Mr. Apicella: He's never sold cars at all?

Mr. Goodall: Not from this site.

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Mr. Apicella: Ever?

Mr. Goodall: Correct. He's only owned it for, what, a year, two years?

Mr. Attai: One and a half year.

Mr. Goodall: One and a half years. No sale of any car has ever yet occurred.

Mr. Apicella: I'm just going to try to make sure I understand what you mean. So, you've never sold a car to an auto dealer, to a auction lot, to... because it says you did. I mean, I'm a little confused now that you're telling me that it's never happened.

Mr. Goodall: Okay, maybe I wrote it badly; I was trying to describe what the activity would look like if allowed.

Mr. Apicella: So, there's no cars stored on the site right now.

Mr. Goodall: No.

Mr. Apicella: And there haven't been for the last year and a half?

Mr. Goodall: There were cars there briefly...

Mr. Attai: Five, six car (inaudible - not at microphone).

Mr. Goodall: ... and Sean called about those because he thought... he went out there and he said we just assumed cars were for sale. No one ever saw cars being sold, he agreed with that, and no cars have actually been sold and they withdrew the violation notice.

Mr. Apicella: Okay. You did indicate that when you're in operation, vehicles will be prepped for sale and/or stored on the subject site. Is that correct?

Mr. Goodall: Absolutely.

Mr. Apicella: And they will be sold to some kind of buyer, whether it's vehicle dealers or potentially customers via internet. That's what it said in the justification.

Mr. Goodall: Then I was... okay, understand, 90% of these cars will leave and go to an auction; 10% will go away to retail dealers. Okay, so of the 10%, that's probably telephone communication, right? So if I put internet sales, I was simply wrong. That's what you do with a retail dealership. It won't be... there's... would he be prohibited from communicating with someone by email, with a retail dealer with whom he has a relationship? No. Would he be prohibited from doing it? No. What he would be prohibited from doing is selling to, and again, there is a log of sales that he must report to DMV. It's easy to check, okay. And so it's easy to enforce. Who did you sell this car to?

Mr. Apicella: You've proffered that certain conditions must be met for the sale of motor vehicles to follow the County's definition of a motor vehicle sales facility. What is your legal source?

Mr. Goodall: I'm sorry, say that again?

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Mr. Apicella: You indicated that certain things must take place for a retail sales to occur; signage, employees, the transfer of money onsite, etcetera, etcetera. Where did you get that from? Is there some legal source that you got that from?

Mr. Goodall: No, that is a practical description that's parallel to what I was trying to describe what it would look like if he were doing wholesaling...

Mr. Apicella: Who's (inaudible) that decision?

Mr. Goodall: Mine. From yours. From life experience. When you go buy a car, what do you see happening at a retail dealership?

Mr. Apicella: So there's no real legal basis for that. Nothing, no legal source that you can (inaudible).

Mr. Goodall: That's not a legal definition, I'm trying to describe... that's a factual description of what happens at a retail car dealership.

Mr. Apicella: Okay. It's your contention that motor vehicles are merchandise?

Mr. Goodall: Before I can even... before I move onto that, do you understand the interplay between what you asked and what Mr. Kim asked? It's like, could you have a retail sale for somehow unhinged from a dealership? Okay, maybe you could somehow, but do you understand if it's being sold from a retail dealership there are some physical things that must be present for it to meet that requirement.

Mr. Apicella: Based on your interpretation or your criteria. That's what I'm trying to get at; where did this criteria come from? We can agree or disagree that that's the criteria, but if you can tell me a source, that might, you know, support what you're saying.

Mr. Goodall: He was reading to you from a portion of the code about motor vehicle dealers...

Mr. Apicella: I'm not speaking to Danny, I'm speaking to the specific (inaudible) circumstances that you said they do exist for retail sales to occur, and if they don't happen then therefore it's wholesale. That's the implication.

Mr. Goodall: The difference between ret... no. Look, the difference between retail and wholesale is that retail is to members of the general public. I was trying to describe factually what (inaudible) sales... a business that's trying to sell to the general public. It's displaying vehicles so customers will see them. It wants to be visible from offsite. Yes, it has salesmen and sales managers and finance managers, and it has hours of operation so the public can come even if they're commuters. It has all kinds of things. Are those all required to make it a sale to the general public? No; probably only if it wants to stay in business, but it's not legally required. Some of the things he was mentioning from the code as a physical plant are legally required if you want to be in a retail dealership. But only that. Could you have that configuration? I think you... does it say you have to have a person on staff, at least one person on site I guess during hours of operation? It may just be about the physical plant. But wouldn't it be bizarre to make a...

Mr. Apicella: It says it means an individual who works at the establishments of business...

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Mr. Kim: It just discussed sales, service, and (inaudible). It doesn't necessarily...

Mr. Goodall: Tell you how many people you have to have and what hours you have to keep and so on. It'd be crazy to do that and not staff it.

Mr. Apicella: So, it is your contention that motor vehicles are merchandise?

Mr. Goodall: Yes.

Mr. Apicella: Is anything and everything sold merchandise?

Mr. Goodall: No.

Mr. Apicella: What would not be merchandise?

Mr. Goodall: Bonds, stocks, intangible assets.

Mr. Apicella: But from a facility, if you're going to a facility and you're exchanging merchandise, give me some...

Mr. Goodall: Merchandise is... yeah, anything... tangible personal property. Tangible personal property; stuff you can touch.

Mr. Apicella: Okay, and is there a definition... is there a legal definition that you're using to derive at that?

Mr. Goodall: No. It wouldn't be real estate and it wouldn't be intangible assets.

Mr. Apicella: So, even if it was true that motor vehicles are merchandise, and I'm not saying it is, does the Stafford County Code not have a separate and distinct category and used car motor vehicle sales facility?

Mr. Goodall: There is a definition of motor vehicle sales facility... there's a definition that's not a permitted use... I'm sorry, I'm sorry, it's the reverse.

Mr. Apicella: What's the third word in that term?

Mr. Goodall: Sales.

Mr. Apicella: Sales. If we were to accept the notion that motor vehicles are merchandise and as such are included into the wholesale business category, even though motor vehicles are separately called out in a specific type of use in the County Code, then wouldn't it also be true that any and all other specifically identified uses requiring a CUP in the B-1/B-2 categories would also be the same?

Mr. Goodall: You've lost me completely on that one.

Mr. Apicella: Why are motor vehicles... you're arguing that motor vehicle sales are separate and distinct and wholesale, okay, because it refers to facility and then a broader term of motor vehicle

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sales facility. Okay. So, I asked staff to identify other uses in the County Code that require a CUP. It mentioned boat sales, adult business, outdoor flea market...

Mr. Goodall: But wouldn't the closest...

Mr. Apicella: (Inaudible) not be the same as the (inaudible) that you're saying?

Mr. Goodall: I think they are. Here's what I'm telling you -- we know what automobile service is because it's both a defined term and there's something about an automobile service, okay. But this sounds strange -- now, this is a definition: it is a building or premises where certain things happen. But it's plainly retail and it is appropriately in the County Code called a conditional use permit use. If you're looking at automobile activities, there's automobile service, automobile repair, motor vehicle sales. They sound a lot alike. Two of them are defined and they are defined as retail activities, and they have similar land use impacts.

Mr. Apicella: Oh, I agree that at least in terms of automobile service it's a retail. And automobile repair, it actually refers to, in the definition, an establishment, some kind of structure, okay.

Mr. Goodall: So does service. Service says it's a building or premises where these things happen.

Mr. Apicella: Right. And, in fact, most of the County Code refers to a building or a structure or something that's on the land. It's not just the activity that's happening, it's the actual facility itself or the facility that supports an activity. I'm going to give you a definition: boat sales, okay, also requires a CUP in the B-2. It doesn't say boat sales, it says boat sales facility.

Mr. Goodall: Okay.

Mr. Apicella: Building, structure, or land used for the sale, use or rental of boats or watercraft, boat motors, boat trailers. It doesn't say boat sales, nowhere else does it say boat sales. So based on your contention, all boat sales are wholesale, but only a boat sale facility is covered by a CUP.

Mr. Goodall: No, no, no, no, that's not what I'm saying.

Mr. Apicella: Why is there a distinction...

Mr. Goodall: That's not what I'm saying.

Mr. Apicella: ... between boat sales facility and auto motor vehicle sales facility?

Mr. Goodall: Here's where I think they would be parallel. If someone came before you and said I want to wholesale boats. No member of the general public will ever come to my site to buy a boat. I'm going to somehow acquire boats, put them here, and I'm going to service them and then send them onto boat retailers or to some place that, you know, gets rid of them entirely, like you see these RV places up and down 95, I guess. Then they would make the same argument I'm making. My land use impact is so different from boat sales to the general public that his argument would be, if I'm only wholesaling, never meeting the general public to do this business, it should be wholesaling and it should be a use permitted by-right. And if I want to sell to the general public, regardless of the physical plant, if I want to sell to the general public, that's retailing. It requires a conditional use permit.

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Mr. Apicella: Okay, so I'm not trying to be flippant here. Would it not also be possible for someone to operate a puppy farm and under the pet store use and sell it to other pet stores and not require a CUP based on the logic that you just said?

Mr. Goodall: If somebody is a... what do you call somebody who raises dogs and sells them only to retailers but doesn't sell them to the general public? Is there such a thing?

Mr. Apicella: Sure.

Mr. Goodall: Okay.

Mr. Apicella: They're called kennels.

Mr. Goodall: Okay, good.

Mr. Apicella: And we have those in our code. There is a definition for kennels. (Inaudible).

Mr. Goodall: Of course, dogs bark... I know, but dogs bark and they make noise and so on and the reason their land use differences I suppose between dogs and cars, and there may be legitimate reasons to categorize those things. What I'm saying is, if you're not dealing with the general public, so you don't have all of the traffic and other things that go with it, you have a different land use impact and the zoning code treats you differently.

Mr. Apicella: Where does it say that in the Stafford County Code or in the State Code?

Mr. Goodall: It says it plainly for things like automobile service, automobile repair, wholesale business. If you're selling...

Mr. Apicella: It does not say wholesale sir. I don't see the word wholesale in it. I don't see the word wholesale in any of the...

Mr. Goodall: You don't see the wholesale businesses?

Mr. Apicella: Not in the terms; I see it as a category by itself.

Mr. Goodall: Right.

Mr. Apicella: Wholesale business.

Mr. Goodall: Right.

Mr. Apicella: Automobile service. Automobile repair facility...

Mr. Goodall: Right.

Mr. Apicella: ... it doesn't say facility but. Automobile repair, it doesn't say wholesale. Okay. I'm just trying to see how you're connecting the dots because I'm having a hard time connecting those dots. And to someone who works on the Planning Commission and has done this for five years, I understand the reason for a CUP.

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Mr. Goodall: Right.

Mr. Apicella: You may think there's no impacts if someone sells five cars off of their lot, even to a commercial dealership, but (inaudible).

Mr. Goodall: I'm not saying there's no impact.

Mr. Apicella: You have cars stored there, okay.

Mr. Goodall: Yes.

Mr. Apicella: And we may disagree because I thought that you were required to have a CUP even for the storage of vehicles, but the mere fact that your using a facility for the purposes of transferring cars, whether to the general public or to the non-general public...

Mr. Goodall: Right.

Mr. Apicella: ... it's still has an impact.

Mr. Goodall: Sure it does. But aren't they different? Aren't they significantly different if you're not dealing with the general public? Wouldn't you agree with that?

Mr. Apicella: But that doesn't negate the need for a CUP. Some sort of... there may be some need for some mitigation. And maybe in your case, you're only doing five cars. But what about somebody who's selling a hundred cars to dealers? Are you saying you shouldn't have a CUP?

Mr. Goodall: I'm saying we should follow what the code says and if it...

Mr. Apicella: But I'm hoping that you can convince me, and I'm not there yet, that you're argument makes sense and therefore (inaudible) you should be allowed because a CUP is not required. And I'm not there.

Mr. Goodall: I appreciate your candor.

Mr. Apicella: I have one more question. Does the applicant's license make a distinction between retail and wholesale sales?

Mr. Goodall: No. In the same way my law license doesn't decide where; it says what I can do, I can practice law. It doesn't tell me where land use wise I could do it. So I have to pick... I have to both be licensed with the Bar to practice law, I have to pick a location from the zoning standpoint where I'm allowed to do it. That's the... so, I understand that argument but, since it's easily detectable whether he sold a car to the general public or not, then both can easily be applied. He can both be licensed through DMV and doing it at appropriate locations under a zoning code.

Mr. Apicella: Thank you.

Ms. Bertoldi: You have to verify something with me you're trying to make that that distinction with respect to your law license. You've got a law license, you're a general practitioner. You have a Virginia law license.

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Mr. Goodall: But I couldn't... I can't do what I do from my home if I have multiple employees come there, multiple clients come there, if I'm way out in an agricultural zone. There are limitations zoning wise of what I'm allowed to do.

Ms. Bertoldi: So you're saying with respect to a zoning license, but you could practice law.

Mr. Goodall: Sure.

Ms. Bertoldi: I think his argument is apples and oranges to what you are saying, but that is why I was confused with what you were just talking about with respect to the, you know, the wholesale... that doesn't matter. Okay.

Mr. Goodall: Well, here's what I meant by the comparison. He can't sell cars at all if he doesn't have a DMV license to sell cars. He can't sell them from anywhere if he's not licensed.

Ms. Bertoldi: But you see, he's talking about there's nowhere that... you either get to sell cars or you don't get to sell cars.

Mr. Goodall: But you have to comply with both. You have to have a DMV license and you have to comply with the zoning code.

Ms. Bertoldi: Right. And you know what? And you have to comply with both a conditional use permit for wholesale and retail because it doesn't make a distinction. So, really that supports, you know... You know, and I'm with him, I mean, I'm not there yet because the fact of the matter is, is that, you know, you want us to read something that isn't there because...

Mr. Goodall: We both want you to read something that isn't there, that's the whole point.

Ms. Bertoldi: I mean, like, okay, so are you familiar with the Miller v. Highland County case?

Mr. Goodall: Nope.

Ms. Bertoldi: Okay. Well, in that case the court held that it must be presumed that the governing body chose its words with deliberation and care when it adopted the ordinance at issue. Okay. So, the presumption is unless words are obscure that, you know, they're given their... you're giving the drafters who adopted the ordinance the benefit of the doubt of what they meant. And here it specifically says motor vehicle sales.

Mr. Goodall: Actually it doesn't. There is a motion for motor vehicle sales facility...

Ms. Bertoldi: I'm not talking about the definition, I'm talking about under uses, motor vehicle sales.

Mr. Goodall: Oh, CUP, yes, yes, yes.

Ms. Bertoldi: If we... if we were to define every word and how it relates to every single statute, statutes would be like impossible. They're already impossible to read, okay. But, you know, you can't do that. It would be absolutely impossible to put every word in every meaning. That's reason why there are case laws that talk about ordinary use and how you have to give ordinary meaning of a word which, and we discussed before, so we don't have to belabor that. So, I appreciate... it's a very

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intriguing argument. I mean, I appreciate, for lack of better words, the extent that you've tried to explain it to us and I'm trying to wrap, you know, I'm trying to pick up what you're selling, but it's hard because motor vehicle sales is kind of self-defined. It's self-defined. I mean...

Mr. Goodall: Would you think that motor...

Ms. Bertoldi: ... it doesn't say wholesale... (inaudible) and I'm saying hey, if nowhere in the statute or the ordinance it discusses retail or wholesale, like if they just were never, ever, ever discussed, right? But they are, because like what was pointed out earlier, in the by-right there are certain retail sales that were specific. So, if you go by what this case that I cited, you know, if you were to go by, they intended certain retail to be use, certain wholesale to be by-right, and certain things (inaudible) matter whether or not it's retail or wholesale or they would have said it. It was not a mistake to not specify between wholesale and retail. And I think that that's where, you know, I'm having, you know, the issue. Because you want us to interpret something further and really honestly we can only interpret something that is ambiguous. And I think that if you really get down to the crux of the issue, is that you have not at least convinced me, I can't speak for others, that the term, you know, motor vehicle sales is an ambiguous term.

Mr. Goodall: Gotcha. I understand your reasoning.

Mr. Kim: So, a year and a half ago you purchased this property knowing that you would have possibly obtain a CUP or a Special Exception through some kind of zoning determination, so there were no sales whatsoever for a year and a half. It's just sitting there?

Mr. Goodall: No, it's leased. It's leased to somebody who opens on weekends and sells... what's it called? Open Box or something. So, in the interim, he has leased it...

Mr. Kim: Oh, so there is a different use for it now, okay.

Mr. Goodall: It's an allowed use.

Mr. Kim: Oh, no, no... (inaudible).

Mr. Goodall: But actually it's... weirdly enough it's a retail use. But it's a, like selling overstocked stuff that comes in. What's it called?

Mr. Grimes: Price Cutter Liquidation.

Mr. Goodall: Something like that, yeah.

Mr. Kim: Okay.

Mr. Grimes: Limited hours.

Mr. Goodall: Yeah, limited days.

Mr. Grimes: Overstocked sales.

Mr. Goodall: Any other questions?

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Mr. Grimes: Do we have any other questions for the applicant? Alright.

Mr. Goodall: Thank you for hearing us.

Mr. Grimes: Thank you very much. Thank you for your patience. Are there any members of the public who wish to speak in support of the application? Seeing none, any member of the public who wish to speak in opposition of the application? Seeing none. Obviously you don't need to respond to anybody. I'll go ahead and close the public hearing on this case to bring the matter back to the Board for discussion. Please, Ms. Bertoldi.

Ms. Bertoldi: Okay, I just want to state this for the record as we have the discussion, to keep this in mind because I think it's good to have that on record is, you know, whenever you have an appeal, you have a standard of review. And we should know what our standard of review is. And pursuant to Virginia Code 15.2-2309, the BZA standard of review is whether or not the Zoning Administrator's decision was correct. So that's what we are supposed to decide, is whether or not it was correct. And in hearing an appeal, and this is a quote, "at the hearing on appeal, the administrative"... and this is, by the way, from the Virginia Code, same section... "the administrative officer shall explain the basis of his determination after which the applicant and the burden of proof to rebut the presumption of correctness by a preponderance of the evidence." Okay. So after hearing from administrative staff, and they have to convince us by (inaudible) of the evidence which is 51%. And so I just want to state that for the record as we discuss and make the decision that that is actually our standard of review in considering whether or not we should essentially overturn the administrative review's decision.

Mr. Grimes: Yes, Dr. Ackermann.

Dr. Ackermann: I would like to propose a motion that we support the Zoning Administrator's determination. In my opinion, although it was a lengthy discussion, the issues have not been convinced that the Zoning Administrator's determination was incorrect. I believe hers was correct in this case.

Mr. Kim: I second that.

Mr. Grimes: Any other discussion from the Board members?

Mr. Apicella: Mr. Chairman, based on the facts of this matter, I believe our zoning staff made the correct interpretation of the Stafford County Code and that the November 3rd zoning determination letter should be upheld. I believe a CUP is required to operate a motor vehicle sales facility in the B-2 Zoning District, that there is a clear and separate distinction between the definition of motor vehicle sales facilities and wholesale business. I believe there is no distinction between a wholesale or retail sales of motor vehicles in Stafford County. I don't believe there are any conflicts in the County Code as it pertains to this matter. I believe the definition of motor vehicle sales in the Stafford County Code is broad and includes motor vehicle activities occurring on this parcel, including the sale of motor vehicles to other dealers through auto auctions or by the internet. I believe and as the information we were provided tonight, other similarly situated applicants have pursued a CUP, again under similar circumstances. I believe that the motor vehicle sales activities occurring on this site do not fall within the definition of the by-right wholesale business. I would point out that a CUP is required under the Stafford County Code, I believe, to store motor vehicles on a B-2 parcel. And lastly, I believe the applicant has every ability to apply for a CUP to operate a motor vehicle sales facility and has already indicated that he has done so. I can't speak to whether or not it will get approved by the Planning

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Commission or a recommendation for approval by the Planning Commission and ultimately approved by the Board, but that's not really for us to really weigh in on; it's just whether or not the applicant has that ability, and they do. For those reasons, I support the motion.

Dr. Larson: Mr. Chairman?

Mr. Grimes: Yes sir.

Dr. Larson: I'm going to support the motion because although it was accurately pointed out that in cases of ambiguity this Board does have the authority to try to interpret legislative intent. As I pointed out earlier, the word retail is actually specifically called out when the code intends it to be called out in the by-right section. And therefore, it not being called out in the conditional use section means that they didn't intend to call it out, that when they said motor vehicle sales they did not intend to restrict it to retail motor vehicle sales. So, I believe that the intent is clear in the code in this case.

Mr. Grimes: I'd also like to state that I support the decision of the Zoning Administrator on this issue for many of the reasons previously cited. I think the definition for motor vehicle sales facility is pretty clear and that this falls underneath that definition, retail, wholesale, or otherwise, even in the applicant's letter they state that it's possible for customers to stop by the site. Even if they haven't it's possible. So, I think it still falls under that definition, so I'm going to support the decision of the Zoning Administrator on this. Any other comments? Okay, I have a motion made by Dr. Ackermann and seconded by Mr. Kim to support the decision of the Zoning Administrator on case A17-01/16151568. Can I have all those in favor of supporting the motion say aye?

Mr. Kim: Aye.

Dr. Larson: Aye.

Dr. Ackermann: Aye.

Mr. Apicella: Aye.

Mr. Gibbons: Aye.

Ms. Bertoldi: Aye.

Mr. Grimes: Aye. All those against, nay? None? Let the record reflect that the motion to support the decision of the Zoning Administrator is 7 to 0, that's denying the appeal.

Mr. Goodall: Thank you for hearing us.

Mr. Grimes: Thank you very much. The zoning office will be in touch with you.

Mr. Kim: Mr. Chairman, can we take a 5 minute break?

Mr. Grimes: Yes. While the public hearing is closed, let's go ahead and take a 5 minute recess. We'll come back in at 8:25.

Recess - 8:21 p.m. to 8:28 p.m.

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Mr. Grimes: Alright, we'll reopen the public hearing and I'll ask the Administrator to read the next case.

2. SE17-01/16151597 - Dale & Sharon Glasgow - Requests an amendment of conditions approved on September 27, 2016 for a Special Exception to allow a wedding and events venue as a rural home business on Tax Map Parcel Nos. 26-26A and 26-26C. The property is zoned A-1, Agricultural, located at 448 Hartwood Road.

Mrs. Musante: Case SE17-01/16151597. Applicants Dale and Sharon Glasgow request an amendment of conditions approved on September 27, 2016 for a Special Exception to allow a wedding and events venue as a rural home business on Tax Map Parcel Nos. 26-26A and 26-26C. The property is zoned A-1, Agricultural, located at 448 Hartwood Road. You have the application; application affidavit; letter dated September 13, 2016; Special Exception approval letter dated September 29, 2016; letter of notice to discontinue use dated October 20, 2016; letter regarding deadline of approved conditions dated December 16, 2016; land use permit from VDOT; code assessment letter from engineer dated December 13, 2016; and letter from the Health Department dated December 9, 2016. On September 27, 2016, the Board of Zoning Appeals granted a Special Exception for a Rural Home Business to operate a wedding and events venue, Attachment number 5. At that time, they imposed 9 conditions. The applicant is requesting an amendment to condition number 9 that states: "All suggested development conditions shall be completed by December 1, 2016." The amendment is due to noncompliance of this condition. On October 20, 2016, the Building Official issued a notice to discontinue occupancy of the barn structure for assembly use until life safety repairs were completed, inspected, and approved as required in the letter dated September 13, 2016, Attachment 6. On December 16, 2016, a letter signed by the Zoning Administrator was sent advising the applicant that the deadline stipulated in condition number 9 of the original approval had expired, Attachment number 7. Staff met with the applicant on December 21, 2016 to discuss outstanding issues and the BZA amendment process. The applicant states he has diligently worked in the last 3 months to complete the conditions requested for the venue. In the materials submitted with this application, the applicant states... "as a result of the design and approval process with their engineering firm, Stafford County building, Zoning Administration, Emergency Services, and several other agencies, they have failed to meet the deadline for completion." The building and electrical permit for phase 1 of the main barn building, which is the lower level, and the VDOT permit for the widening of the driveway have been issued. According to the applicant, phase 2 includes the bathroom permit and phase 3 includes the upper level of the barn for the mezzanine, new inside stairwell, and outside the building. The applicant states they hope to have the entire project completed by March 2017. The single-family dwelling was constructed in approximately 1920 and the Old Country Store shortly thereafter. In 1995, the Glasgows renovated the home and Old Country Store. In 2000, a permit for a home business was issued for Glasgow Painting Studio. The existing Old Country Store with red antique gas pumps is currently utilized for this business. In 2010, according to the applicant, the barn was restored (no permits were found in the County records) to host their daughter's wedding. The Glasgows began to consider their property as a possible venue for events; so in 2014, the barn was upgraded to have electricity. A permit was applied for and obtained in March 2014 but there is no record of a final inspection. While the Glasgows wish to use the property for events, they have stated they will continue to preserve their entire organic farm with green organic produce and goat products. The farm, store, and historic buildings have been in use for 150 years and per the applicant is one of the longest standing businesses in Stafford County. The Board of Zoning appeals approved a Special Exception September 27, 2016 to operate a wedding and events venue with 9 conditions, see Attachment 5. Condition number 9 states: "All suggested development conditions shall be completed by December 1, 2016." This condition was not met by the approved completion date. Application of amendment was submitted on December 27, 2016.

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Mr. Grimes: Thank you. I'll start with the questions to staff. I actually, when this first came up, expressed concern that modifications were even allowed. Can you provide some clarification on how your office determined that modifications were allowed? Because I couldn't find it in the code.

Mrs. Blackburn: We contacted legal and they provided us the information that Special Exceptions could be amended by the Glasgows.

Mr. Grimes: Okay. And you also found precedence for this inquiry in other jurisdictions, correct?

Mrs. Blackburn: Yes sir.

Mr. Grimes: And can you recall where those were? It's not important; they were in Virginia.

Mrs. Blackburn: Yes sir.

Mr. Grimes: Yes, okay. Does your office feel like the applicant, in good faith, has tried to comply with all the development conditions as stated?

Mrs. Musante: Yes we do.

Mr. Grimes: And your office met with the Building Official?

Mrs. Musante: Yes.

Mr. Grimes: Fire Marshal?

Mrs. Musante: Yes.

Mr. Grimes: And what other agency?

Mrs. Musante: I spoke with VDOT...

Mr. Grimes: VDOT.

Mrs. Musante: ... (inaudible) by phone.

Mr. Grimes: So they didn't come in.

Mrs. Musante: No they did not.

Mr. Grimes: Okay. And the position of the Fire Marshal's office and Building Official on ranking an amended application, what was their feedback to your office?

Mrs. Musante: There was an email actually sent as recent as today from the Building Official that states, because there was a question regarding temporary (inaudible) and the Building Official and the Fire Marshall are okay with the amendment as long as they can meet the safety. And then the email that you do have a copy of today from the Building Official says that, which the question was asked about a temporary CO and the use of the first floor, they would allow them a temporary CO to the first floor

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only and for all the electrical upgrades. So they do not have a problem with it as long as they have the life safety and only use the first floor.

Mr. Grimes: Is it the intention that the Building Official's office, or the Chief Building Official, to issue a letter stating that?

Mrs. Musante: I have it in email, I do not have it in a letter.

Mr. Grimes: Because we have the letter that provides him notice to discontinue occupancy.

Mrs. Musante: Right.

Mr. Grimes: All we have is an email.

Mrs. Musante: Sure.

Mr. Grimes: And I'm concerned that we don't have something more official from the Building Official stating that they are okay with the amended timeline in granting these temporary occupancy permits.

Mrs. Musante: With no disrespect to you sir, but if I had known that earlier today I probably could have gotten that.

Mr. Grimes: And we got the email today so I apologize for...

Mrs. Musante: Yep, nope, I get it. She was in the office today and I'm certain that she would put that in a letter just as she did the others.

Mr. Grimes: Well, I'd like to see clarification in the development conditions that they'll be compliant with the letter pending date.

Mrs. Musante: Okay, okay.

Mr. Grimes: We'll get to that part. So, those are my questions. Yes?

Ms. Bertoldi: My question is do they have to meet the CO for life safety before they can use the facility at all? Or do they just have to meet... can they use the facility now? I know they're closed, but I'm saying... you know what I'm trying to say, right?

Mrs. Musante: I do. If the Building Official sees that the, and from what I understand is that they want to get the first floor going so they can use that. The way I understand it, the Building Official, as long as that first floor all life safety issues have been completed...

Ms. Bertoldi: Complied with first before... they can't anybody use anything until they meet these life safe issues.

Mrs. Musante: Correct. Due to the discontinuance letter that was sent.

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Ms. Bertoldi: Okay, I just wondered, because that's different from the last time we heard this. I just wanted to make sure that these have to actually be resolved and then the public safety... they have to come in and inspect to make sure that they have met this list before the special use permit can be...

Mrs. Musante: Before (inaudible) occupancy permit.

Ms. Bertoldi: Occupancy permit, right, but then the special use would not go into effect unless they meet.

Mrs. Musante: Well, if you grant it tonight or you grant their amendment, they're special exception permit is valid. But, they cannot do or get an occupancy permit to operate until all of the life safeties, that's a part of the review process after this is approved.

Ms. Bertoldi: So, we can't make a condition that says that, you know, it is contingent upon them... it is only granted contingent upon them complying with the public safety... life safety code.

Mr. Grimes: Well, we already state that in the original development conditions.

Ms. Bertoldi: Right, but I'm saying we can say that, you know, basically that if they don't meet that, there is no special exception

Mr. Grimes: It's already stated, right? If they don't comply with... and that's why I was discussing it (inaudible) to discuss it further but incorporating a new letter. It says here's your TCO requirements.

Mrs. Musante: Number 6 says, must comply with all state and local codes to include information in the letter provided by the Building Official dated September 13, and you can go on to add the other letters that have been submitted.

Ms. Bertoldi: Okay. I only asked because you said it would go in effect tonight, so I just wanted to clarify.

Mrs. Musante: The Special Exception will be approved tonight, but you can put until all the conditions are met, yes.

Ms. Bertoldi: Okay.

Dr. Larson: Mr. Chairman?

Mr. Grimes: Yes sir.

Dr. Larson: If I may, I wasn't at the meeting when this was approved. Why was the December 1st timeframe put on the conditions in the first place? What was the driving factor there?

Mr. Grimes: I won't answer for Melody's office but I believe it was discussions with the applicant on they thought they could complete that work that was required by the Building Official letter.

Mrs. Musante: And that is in the minutes actually; that's correct.

Dr. Larson: Okay. I'm assuming it's reflected in the minutes, the discussion.

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Mrs. Musante: It is.

Dr. Larson: Okay, so, alright, well just for the record I'd like to read the email that's been referenced a couple of times and since the record is this. I sent an email to staff earlier today asking, in reading the Special Exception case the applicant mentions that they might like the ability to use the ground floor this spring, apparently their peak season. Questions: would it be reasonable to allow them to use the first floor before the second floor is ready to go? Are there any safety issues associated with that? What are the difficulties associated with approval of using the first floor, assuming satisfaction of associated requirements? And then allowing use of the second floor after its associated requirements are met. The response was from Cary Jamison of the County was "yes, we can allow the use of the first floor only, if the stairs to the second floor are removed or a wall around the stairs... wall built around the stairs with no access to the second floor." I'm assuming they're worried about safety issues there.

Mrs. Musante: Yes.

Dr. Larson: "It would be a TCO for the first floor only and all of the electrical upgrades would need to be completed for the first and second floor, too." That's what he wrote, for the record.

Dr. Ackermann: Can I ask a question, Mr. Chairman?

Mr. Grimes: Yes.

Dr. Ackermann: So, initially we put... I guess I'm wondering why we have a date for a deadline on this? (Inaudible) for discussion, but if this can't be... they can't have weddings there until they comply with all the requirements, safety regulations and so on. What do we care?

Mrs. Musante: Well, we're putting a deadline on this due to prior applicants and having issues of them completing certain requirements... actually never meeting the requirements. And we still have, unfortunately, businesses out there that do not have (inaudible) permits.

Dr. Ackermann: So, putting a deadline on there enables the zoning office to issue a statement... issue a letter (inaudible) not in compliance (inaudible).

Mrs. Musante: I'm sorry (inaudible)?

Dr. Ackermann: There's a (inaudible) reason there's a deadline on there and so they can get a letter from the Zoning Administrator. If things are not done right, they get a letter from the Zoning Administrator saying that they're not in compliance and the Special Exception is no longer valid (inaudible).

Mrs. Musante: That is correct.

Dr. Ackermann: So, and then we get there, I guess I'd like to find out if we think this is realistic?

Mrs. Musante: I only went off of what the applicant had submitted as a deadline.

Dr. Ackermann: (Inaudible).

Mr. Kim: And I would like to discuss that issue also (inaudible).

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Mr. Grimes: Any other questions for staff?

Mrs. Stefl: I guess I am a little bit confused because my fear is that if we do grant this this evening, there could be a possibility of another request for another amendment. I thought applicants could not come back to us within I thought the year? They have a year one way or the other? So I'm a little bit concerned because there's definitely been a flagrant disregard for our requirements last time, that they're now trying to get around again another loophole, and so what would prevent another request in a few months to, you know, another (inaudible)?

Mr. Apicella: I think we'll let staff ask the question...

Mrs. Stefl: Because I'm getting really frustrated here.

Mr. Apicella: I think, again, putting on my Planning Commissioner's hat, there's a difference between the BZA saying no to the Special Exception request and an applicant coming back in 6 months and asking for the same thing. This was approved. And just like under conditional use permits that come to us, or other... a rezoning. Somebody can come in within months and ask for a modification because things change, new information comes up that they wanted to do x and now y is more feasible. And that's kind of what I see in this situation.

Dr. Larson: Yeah, I also wanted to point out that it appears to me that the applicant has gone to pretty large lengths to try to meet the schedule. They gave us an accounting of dates and actions and I count roughly 40 actions that have taken place since the approval.

Mrs. Musante: That's correct.

Dr. Larson: So that indicates to me that they have been trying to get this thing going.

Mrs. Musante: That is true, and I think they... and I'm probably speaking out of turn here and speaking for them, but I think there were some hurdles that they didn't foresee when they first came to you all.

Mr. Grimes: To speak to Heather's question... I mean Mrs. Stefl's question directly, I think that the timeframe is set on denied applications.

Mrs. Stefl: Okay.

Mr. Grimes: Or trying to reapply for a similar application that was previously denied. So again, and this is where the original question came from, are we even allowed to amend, and the answer from legal was yes we can.

Mrs. Stefl: Right. Well, I guess we didn't put in the development conditions but there was a verbal agreement by the applicant to not utilize say the second floor. And they've clearly violated that on a number of occasions after our approval. So, this is what concerns me is that we put these conditions in and there's still a flagrant disregard for these conditions.

Mr. Grimes: Well, I think when we bring it back to the Board for discussion, we discuss those in more detail.

Mrs. Stefl: Okay.

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Dr. Larson: I'm confused. I don't understand. Where do you get the flagrant violation from? I didn't see that in the documentation.

Mrs. Stefl: Well, there was a, and if you look in our minutes, they agreed to not utilize the second floor due to safety concerns. And within days and... or in October and November, they had weddings that utilized the second floor.

Dr. Larson: Oh, I didn't see that but I'll certainly ask about it.

Mrs. Stefl: Correct. So that's what concerns me. And this was communication that was given to staff and I know that I sent it to the rest of the Board for the record.

Mr. Kim: Can I ask, was that given out by the Building Inspector of the condition of not using the second floor? I can't remember.

Mrs. Stefl: Well, that's... it was a...

Mr. Grimes: Yes, they were not allowed to use it...

Mrs. Stefl: Correct. They were not allowed to utilize the second floor.

Mr. Kim: Not through us, but through the Building Inspector.

Mr. Grimes: Through the Building office, yes.

Mrs. Stefl: Correct, correct.

Mr. Apicella: I wasn't here the last time either and I just kind of want to echo what I heard from Mr. Kim and Dr. Ackermann that it'd be smart to on one hand not leave this open-ended, on the other hand to give them a reasonable amount of time so that we're not doing this at the end of March because they're not there yet. And it's apparently an old building and you don't know what you don't know until you start working on it. And so I think we just need to be fair and strike a balance in whatever that (inaudible) is and maybe the applicant has a better sense as they move forward. But it seems to me March 31st is another short window and probably not sufficient.

Mr. Grimes: Well, again, I think we can discuss those more after we hear the applicant's case. Are there any more questions for staff?

Dr. Larson: Yes. Was there a violation other than the timeframe? I did not see that in the documentation. If it was sent out in email, I did not (inaudible).

Mr. Grimes: Yes, the violation was issued on October 20th from the Chief Building Official.

Dr. Larson: Yeah, could you show me where that is?

Mr. Grimes: It is Attachment 5, page 1 of 2.

Dr. Larson: Thank you.

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Mr. Grimes: So however type... I guess we could ask staff that... how did this come to the attention of the Building Official to issue the notice to discontinue? Do we know that?

Mrs. Musante: I do not.

Mr. Grimes: Okay. Any other questions for staff? Alright. Will the applicant or his or her representative please come forward and present your case.

Mrs. Glasgow: First off I wanted to say thank you all; we didn't realize... I didn't realize last time that you're all volunteering, that you don't get paid for this. And last time we were so nervous coming we didn't know anything, but now we do know that and I want to say thank you on behalf of all of Stafford County that you put this much time in. Alright, and then secondly, we want to say we apologize that we didn't meet the number 9 for our deadline and we truly apologize. When we left, I was hip-hooraying. I literally believed that we could make our deadline. I saw no reason why we couldn't make the December 1st deadline, and I saw no reason why we couldn't have the electric out, all of the things on that short list that they talked about, I saw no reason why we couldn't have that done. Even in a week, I thought we can have all the electric pulled out, we'll have the crash bars put on, we'll put the ADA railings up. Well, because those were the short list. And so we went to our architect and said, you know, these are the short list and this is the big list, let's get it going. I said Dale, let's order all the equipment that we need for the ADA rails and the crash bars and the architect said no, you do not order one thing when you have not got your permit passed. She said you don't even know if you'll get a permit. You have to have a permit in your hand before you order anything. So I said okay, hurry up and work. And so she came out and the architect and structural engineer worked on things. You know, we have all of the dates here. We don't even have all the dates. I mean, we have more dates that the architect was coming out and trying to figure. And then they would talk to Cary Jamison, the Building Official. They had ongoing conversations and they kept saying do not do anything until you have your permit in your hand. So we continued to wait for everything. All along we were getting really nervous because, yes, we did have weddings in our barn and we continued that because we thought that we were able to continue as long as we were working on our list, yes. This is all new to us. We don't come to these kind of things. This is the first time we've ever done this, so it's brand new to all of us. It did terrify us that all of this is going on. And so we talked to every single wedding that was at our house and said we are not allowed, we're not even zoned to be able to do this until December 1st unless we're taking care of this list. We gave all of our couples and both sides of the family and we said make sure everybody knows, these are the things that the County says that are not safe in this building. And so we have been sick over this not getting done by December 1st. So anyway, it has taken a long time because it is an old building, because there are so many things that the architect, you know, she doesn't go around doing barns all the time either, and the structural engineer. So anyway, it's taken a long time. While they were doing all of that, we did pursue the soils specialist for our new septic system. We contacted several septic system people. Finally we got M&M Septic, and then they came out and you have a letter. And they're stating what they're suggesting that we do. VDOT, we contacted them the first week after we left this meeting on September 27th, and VDOT made an appointment with us and came out and told us everything we needed to do. We did everything that they told us to do except we could not complete everything because there were trees left on the front of the property that had a power line. So we had to contact Dominion and we had to wait for Dominion to come out to take the power line down. It is now officially down and we can take down the rest of those trees. So VDOT, we should be clear to go on having that signed off and have done everything in the next week. We have one more tree to take down because we widened it and done everything. On Christmas week is when the phase 1 for permit... we got our permit Christmas week. Our first permit was passed on Christmas week. That's way past December 1st. There wasn't anything we could do to make that permit go any faster.

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We made calls, we begged our structural engineer to work faster. They went on vacation, then they had Thanksgiving and in October they actually said you're not even going to be putting your first hammer in this building until January. And we're like, that's horrible. So anyway, but that was actually what happened. So now where we're at today, they gave us the permit for phase 1. Phase 1 is doing all of the life safety, take all the electric out, all the things that they say that we can occupy the downstairs and be a safe building. We have that permit and we can get that done quickly. The only reason why it's not done today is we have to dig footers underneath the main little landing when you first walk in. Well, digging a footer under the building is actually in phase 2 that hasn't been passed yet. And so... but they wouldn't give us phase 2 or phase 3 permits until this hearing tonight. After this is approved then they can give us phase 2 and phase 3 and then we can dig the footer underneath the little landing when you first go in the door. So anyway, we have worked really hard trying to get these things done. But again, they didn't let us... they said we weren't allowed to buy anything or do anything until we had the permit. Dale?

Mr. Glasgow: The bathroom is the phase 2 and we have been feverishly working with the soil and also the Health Department, and also the plans, plumbers, electricians, and vendors, so forth and so on, and wise counsel. So, the bathroom information didn't show up to us until probably November that what we needed to have based on what the Building Department was requiring for the amount of occupants in our building. And the building occupancy was not given to us until December. So we didn't know what our bathrooms were going to be actually until December. So we couldn't actually do anything, nor could we design it because we didn't know how many people were going to be using the bathrooms. So, we now have that record and then we have two per sex handicap per each, and we also have lavatories. And we have a plan to finish all the bathrooms. And that plan is now in review in the County, so we're waiting for that information to come back this week, whether we have the permit or not, or whether we have any comments coming back from the Building Department. In terms of phase 3, there's a considerable amount of work being done to prepare for that eventual permit that we hope will be this week. The engineering and architect have been working our behalf and the conversations that go before both the Building Department and through us...

Mrs. Musante: Two minutes.

Mr. Glasgow: ... there's so many interchanges between those things that we have been diligent about making sure that all communications are done as quickly as possible.

Mrs. Glasgow: Another thing was the electric. Our electrical engineer couldn't even do the electric plans for us until the structural engineer was done. And so, even that, you have to wait for those people to finish their plans. Each person has to wait for the next person to finish their set of plans and each thing took a really long time.

Mr. Glasgow: Yeah, if we had known in advance what the timeframe would be, we wouldn't have agreed to December 1st. But obviously December 1st is what we thought we could achieve based on what we knew, and we didn't know anything. So I turned to Stafford County; we understand now. Would we have taken on the project to go forth if we had known? Yes we would have. We're interested in Stafford County. We're interested in bringing brides and also revenue to Stafford County. And we are interested in being law abiding citizens. So we want to satisfy everyone on everybody's list. We have 4.9 stars out of 5 for every single bride that we've had. And in terms of trying to meet the public's demands on being a service organization, we exceed the most highest standard that we could possibly put out, even though we're a barn in a farm.

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Mrs. Glasgow: And we want to have that standard with you guys, too. I mean, when we see you out in public, we don't want you to think that we are bad Stafford citizens. We did not ever come in here and say, yay, we're going to make that deadline, and then not make it on purpose. We worked really hard to get to that deadline. So please extend it, the date for us. We really beg of you of that. And to please forgive us for our ignorance and for having weddings when we shouldn't have been having them.

Mr. Grimes: Great. Do we have questions for the applicant?

Mrs. Stefl: I do.

Mr. Grimes: Yes.

Mrs. Stefl: Do you recall a conversation... I'm looking at the minutes here... that you had with Ms. Bertoldi and the short list and long list, and your utilization of the barn? Do you recall what you said?

Mrs. Glasgow: Ms. Who?

Mrs. Stefl: Bertoldi.

Mrs. Glasgow: Oh, I'm sorry. Tell me what you're asking really?

Mrs. Stefl: Well, that you were not going to utilize the second floor of the barn. Do you remember agreeing to that condition?

Mrs. Glasgow: I do and then for some reason I kind of thought that it was okay as long as we were doing our list. And I just... we just continued to use the barn.

Mrs. Stefl: Okay, your exact words in the minute were, "Oh, we are not going to use the upstairs of the barn. We are only going to use the downstairs of the barn because we can't get the upstairs finished fast enough. So we are just going to block it off so nobody can use the whole upstairs of the barn."

Mrs. Glasgow: And we didn't do that.

Mrs. Stefl: And this was an exchange that you were going back and forth between the short list and the long list, and that the long list was a very cumbersome list and that you were hoping that the short list, which was the fire safety and, you know, structural concerns, you know, with ADA and all that stuff. But then you did violate that on a number of occasions, correct?

Mrs. Glasgow: We did violate that on a number of occasions.

Mrs. Stefl: And why?

Mrs. Glasgow: Well, we told all the families that it was not... that the County said that this is not what you should be on. And we told all of our people, you should have... like the... I think it was you that asked how did the County know that we even had weddings or that... the October 20th letter. That's because one of the people from Cary Jamison's office was at a wedding. That's the Building Official's office; she was at a wedding. At that wedding, nobody was upstairs. We told all of our brides we're asking that you can do everything downstairs, outside, you know, it was all nice weather. But yes, some

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people chose not to listen to what we asked. That wedding they didn't use the upstairs though, but they... we did have people use...

Mrs. Stefl: You're saying that the brides and grooms violated that and you, as the owners of the property, were not onsite during this wedding...

Mrs. Glasgow: We were onsite.

Mrs. Stefl: ... and observed what your brides were and were not doing while on your property.

Mrs. Glasgow: No, we were onsite and we did what they were doing and we were at fault for letting them do that. And I do... and I do understand your concern and I am...

Mrs. Stefl: Did you communicate with staff that you have attempted to try to stay within the compliance, but that you had brides and grooms who violated that agreement that you had with us?

Mrs. Glasgow: Did I say that to staff?

Mrs. Stefl: Yes. In your numerous discussions with...

Mrs. Glasgow: Oh, I did. Well, I only talked to Doug Barnes and Gary Snellings; we had a meeting with them.

Mrs. Stefl: Okay.

Mrs. Glasgow: I mean, we didn't go over every detail with them but they knew...

Mr. Glasgow: They knew Cary's information; any complaints that there might be, they knew all those things. We exchanged information when we talked to them about that.

Mrs. Glasgow: So, after the October 20th ... I guess before that or I don't know, we had a meeting with Doug Barnes and Gary Snellings and we said we have a few brides that are like, we're telling them what they can't do and they're like, well you know this is all wrong and...

Mrs. Stefl: When a bride comes to your facility, does she... the bride and groom, do they set up the night before? You know, they decorate the barn. So decorations, is it done the day of the wedding or is it done say during the rehearsal dinner or...?

Mrs. Glasgow: I would say 90% of them are on the day of. I mean, some people are allowed to do it the day before if they were to pay for that. Not all people do that.

Mrs. Stefl: Okay, so you do not see the violation until probably within hours before the ceremony (inaudible).

Mrs. Glasgow: No, I see it the whole day. I mean, I would have plenty of time to see it.

Mrs. Stefl: To correct that measure prior to a ceremony or a reception, is that correct?

Mrs. Glasgow: Yeah.

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Mrs. Stefl: You could have and you chose not to.

Mrs. Glasgow: I told them what I had said to you.

Mrs. Stefl: Okay. So you did follow through?

Mrs. Glasgow: We did do... right.

Mrs. Stefl: It's like a parent who threatens the punishment but doesn't follow through with that punishment, correct?

Mr. Glasgow: Well, that's when we went to the parent, Doug Barnes, and said this is where we are.

Mrs. Stefl: But this is your property.

Mrs. Glasgow: It is our...

Mrs. Stefl: And you're saying you can't control your brides and grooms on your property.

Mrs. Glasgow: And you are... I mean, I definitely see where you are going and we did wrong.

Mr. Glasgow: Faced with all of the pressures from 150 people at a wedding, we had to decide to do what was expedient for what would be the best thing for everybody, all parties.

Mrs. Stefl: Right, but your clients are the bride and groom, not the 150 guests who are in attendance.

Mr. Grimes: Do you have another question that pertains to this?

Dr. Ackermann: I have a question.

Mr. Grimes: Dr. Ackermann.

Dr. Ackermann: Do you have a new schedule for April?

Mrs. Glasgow: Yes.

Dr. Ackermann: Where, what, when?

Mrs. Glasgow: Do we have a wedding scheduled?

Dr. Ackermann: Yes.

Mrs. Glasgow: We have one April 7th.

Dr. Ackermann: So that's why you want the March 31st?

Mrs. Glasgow: We have one March 31st.

Dr. Ackermann: You have one March 31st?

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Mrs. Glasgow: Yes, one on that weekend. That's our first. So, if we are given the extension on our date, then we will have that wedding. But our desire is... I mean, with having our permit for phase number 1 given to us, we've already got all of the electric pulled out of the barn. I mean, everything should be done really this time. There shouldn't be any hang-ups because now we have a permit in our hand. So all we have now is we have to dig a footer underneath the landing and then we can finish phase 1. So we would be able to have the occupancy for the downstairs.

Ms. Bertoldi: Just a couple questions. First, just to piggyback on Mrs. Stefl, did you block off access to the second stair... I mean, I know you told the bride and groom but I know that when I had the discussion with you, you said you were going to block it. Did you block it off?

Mrs. Glasgow: The only thing that we ever did was put a rope. We put a rope. That was all.

Ms. Bertoldi: Was the rope always there no matter what or did you put the rope... did you put the rope there after you came to the BZA before? Did you put the rope up because we asked you guys...

Mrs. Glasgow: Yes.

Ms. Bertoldi: ... or after the last (inaudible)?

Mrs. Glasgow: But I would say the rope...

Ms. Bertoldi: Was it up?

Mrs. Glasgow: We never had a rope before.

Ms. Bertoldi: Okay, so you put the rope up after. But you didn't put like a Do Not Enter sign?

Mrs. Glasgow: Now. Well, I mean, it's very clear that I've said that we did wrong.

Ms. Bertoldi: No, I'm just asking for... I'm not trying to (inaudible), I promise. I'm just trying to understand how you blocked the access for it.

Mrs. Glasgow: It was just a rope.

Ms. Bertoldi: Okay.

Mrs. Glasgow: But then that was taken down.

Ms. Bertoldi: Okay. So, you have a wedding... you're first wedding's on March 31st. Are you testifying that you would be able to have the short list or the long done by that time period?

Mrs. Glasgow: Well, it would be a guarantee since we have the permit in our hand for phase 1, which is the whole downstairs, we would have that done.

Ms. Bertoldi: Okay. What are you willing to do to make sure that no one has access to the second floor? Because a rope is not sufficient and I understand you don't want to make guests mad by saying you've got to leave. I know, I'm getting there. Are you willing to rip the stairs up?

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Mrs. Glasgow: We are. Now in phase 1, the plan...

Ms. Bertoldi: Or the wall built around the stairs.

Mrs. Glasgow: Right. The plans that have been approved, the plans that she approved for Cary Jamison and Dave Weaver, at this moment what they have approved is we have a screwed in whole wall that has been... is screwed in where no bride can unscrew it. It's permanently blocked off so that nobody can get up those steps.

Ms. Bertoldi: And that's already in place?

Mrs. Glasgow: Well, we haven't finished that part because we have to pour footers right now.

Ms. Bertoldi: Okay.

Mrs. Glasgow: So we're waiting for that tomorrow to get the permit so we can do that. And yes, with a permit, you can do... you can finish a phase 1. And yes we will have that totally walled off. It won't be rope or it won't be a thing where a bride can come in and say, I want to do this, because she won't be able to.

Ms. Bertoldi: One last question for clarification on the short list of the conditional building use requirements. So, because this will be a perk for us. The corrections to the stairs leading to the second floor, that's not really applicable because you're going to block the wall, right? That's related to the second floor. Secondary exit from the second floor also is not related to the first floor, right?

Mrs. Glasgow: Right.

Ms. Bertoldi: Stairs from interior landing, that is also...

Mrs. Glasgow: Right.

Ms. Bertoldi: But (inaudible) guardrails, that has to be done on the first floor because that's pertinent first of all right? And all handrails pertinent to the first floor?

Mrs. Glasgow: Yeah.

Ms. Bertoldi: Okay, and same with the structural (inaudible) for the second floor, that's not going to be pertinent, right? And it will require the entire building will be done and then a conditional approval by the Fire Marshal's Office obviously, which is separate.

Mrs. Glasgow: Right.

Ms. Bertoldi: Okay. Thank you, I have no further questions.

Mr. Grimes: Mr. Kim?

Mr. Kim: Yeah, I was just going to say, you kind of asked the question if you could put a little wall sign saying upstairs closed by order of Stafford County or whatever.

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Mrs. Glasgow: Yes.

Mr. Kim: But the other suggestion (inaudible) have a permit and (inaudible), I'm not trying to scare you but I would, if this is okay with you, I would suggest (inaudible). Because I've had a couple of build-outs where the permit (inaudible) so we're not here in April (inaudible).

Mrs. Glasgow: Yeah, that would be good.

Dr. Larson: I have a question. So, you have a wedding scheduled for the 31st of March. Do you have any weddings scheduled between now and the 31st of March?

Mrs. Glasgow: We cancelled the ones that we had.

Dr. Larson: Okay. So, if you went ahead with just the first floor, it sounds like that's what you're suggesting, and wall off the stairway to the second floor, and then you started conducting weddings on the first floor, what is your plan for finishing the second floor?

Mrs. Glasgow: Well, our plan would be that we are working on that. Like we are ready to work... we have a contractor that is at our house actually right now ready to start the second phase of the second floor. So we are like ready to start working on that immediately because phase 1 is just about done. So we're ready to do that and we pray that it is done by March... but if it's not, it's walled off. Nobody can go up the steps and we would use a tent for the overflow of people.

Dr. Larson: Okay, I'm confused. How is your contractor getting upstairs if it's already walled off and you can't get up there?

Mrs. Glasgow: It would be walled up if we have a wedding.

Dr. Larson: Okay, so it's... is it walled off now or not?

Mrs. Glasgow: It's not walled off right now because we are waiting to pour this footer underneath the landing.

Dr. Larson: Okay.

Mr. Glasgow: The contractor is going up and down the stairs.

Dr. Larson: So, you think that you can have the whole venue finished by March 31st, is that what you're saying?

Mrs. Glasgow: That's what we, yeah... I mean, if we get the permit which Cary, the Building Official said that we're supposed to have it like immediately, and...

Mr. Glasgow: It's in review.

Mrs. Glasgow: Yeah, I mean, it's supposed to be almost done. So yeah, with that in our hand, but just like you said, lots of things can happen. If anything happens, then the whole upstairs gets walled off in wedding season, and no one can get upstairs for any reason. It's not like having a rope. It's...

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Dr. Larson: Well then, what would be the plan after that? Eventually you're going to want the upstairs.

Mrs. Glasgow: Right.

Dr. Larson: What would be the plan after that?

Mrs. Glasgow: Our next plan is we have July off and we purposely don't have any weddings. Every year we don't want to have weddings in July so that if we have things that we need to do, then we'll have the whole month of July and we'll get open that whole stairway back up and get up there and work.

Dr. Larson: Thank you.

Mr. Grimes: I'm going to build on a couple of the comments that were made on the request for modification or extended date. I do think you're being aggressive with the March 31st. I want to discuss entertaining moving that date out further. It doesn't prevent you from operating if you actually take care of the temporary conditions points. So, if our date in this request is saying that you must complete all conditions by the timeframe. It doesn't mean you can't complete part of them, occupy the first floor, wall the second floor stair while guests are there, take the drywall down when they're not there so the contractor can get up there and do his work. I don't care about any of that. So, I'm kind of leaning towards some of the other comments that we really want to be successful and get you open sooner than later, and using the first floor only is probably going to be the only way to do it. But, I don't want you to have to come in here and spend more money asking for another extension at the end of March when it doesn't happen. Because that contractor hasn't pulled up that floor to look where that footing is going. Next thing you know he's going to be wanting to drive pilings down there, you're going to need a month to do it, and now you've missed it. Because he's got to get another permit to do that pile work. So, I would just offer that maybe when we get to a point, that you might reconsider the timeframe in there in the request.

Mrs. Glasgow: Okay.

Mr. Grimes: And again, right, not saying it's going to be approved or not, but from my perspective I'd be more comfortable putting June 30th on there, because it doesn't stop you from opening if you meet the conditions put on by the Building Official. I mean it just doesn't... it doesn't have anything to do with us. We're simply saying that everything in all these lists are going to be done by this date for this exception to be valid.

Mrs. Glasgow: Okay.

Mr. Grimes: So why not give yourself the... we're not saying you can't do it before. And I believe staff should correct me that if this is granted, you have up until then to do all of it. If the Building Official is saying you can use the first floor if you take all these steps, it's none of our business. They're the ones that are dictating code and life safety. So, I just want to put that out there. Is there any questions for the applicant?

Mrs. Musante: Mr. Chairman, I need to bring something up real quick I think we need to discuss. There's a discrepancy in the square footages in two pages of the application. One is Attachment 1, page 2 of 10, and Attachment 1, page 5 of 10. So I think we need clarification from the applicant on exactly how large the buildings are. Page 2 of 10 says the barn is 2,646 square feet.

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Mr. Grimes: Right.

Mrs. Musante: Page 5 of the attachment says the house is. So, I think we need some clarification on those numbers because we don't want to get ourselves into another bind and they don't meet the size requirements. Two of 10 and 5 of 10, Attachment 1.

Ms. Bertoldi: Where is it in 5 of 10?

Mrs. Musante: Five of 10, it says the primary dwelling is 2,646 square feet. They're allowed up to a 4,000 square-foot non-residential building, but they're only allowed 25% of the primary dwelling for the wedding. So I think... we did review the September 27th meeting minutes and they are not... the sizes were not discussed in there, so I want to make sure we have those clear so we don't get into that issue as well.

Mr. Grimes: I think in the original application there was square footage for the building and the barn noted on the original application.

Mrs. Musante: It was.

Mr. Grimes: Do we have that?

Mrs. Musante: I can go get it real quick.

Mr. Grimes: I think that we'll seek clarification from the applicant while they check the document.

Mr. Glasgow: Right. The barn is...

Mr. Grimes: What is the square footage of your home?

Mrs. Glasgow: We're not using the home though.

Mr. Glasgow: It's 2,600.

Mr. Grimes: It all relates to each other in terms of these uses.

Mrs. Glasgow: Oh.

Mr. Glasgow: Yeah, 2,600 but we originally were using the home for business. Now we have used the painting studio as the primary course of business for all the weddings.

Mrs. Musante: See, this says it was utilized for dressing.

Mr. Glasgow: Yes.

Mrs. Glasgow: We're not using it (inaudible).

Mrs. Musante: You're not doing that.

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Mr. Glasgow: No, we've had those discussions with Dave Weaver about that. So, he now understands. I've given a letter and I've also talked to him in person about it.

Mrs. Musante: Okay, can you run down the square footages for us on exactly what you're using so we know which parts, whether the house or the store, whatever you're using (inaudible)?

Mr. Glasgow: Yeah. So the house is not being used for weddings. I just want to make that clear. That's about 2,600 square feet. That's the primary dwelling where we live. And the store is two country stores put together, built in 1870 and 1900; so it's two buildings kind of parked together. And one of them is my studio where I paint and the other portion is the place where the brides get ready, which is the older portion of the store. So, the initial... the painting studio is 20 by 40, so 2 times 4... it's 800 square feet. The bathrooms are attached to the back of that building and that's approximately 300 square feet. And then the other part of the building, which is the old store, is where the brides get ready, and that is approximately a thousand square feet.

Mr. Grimes: How big is the barn?

Mr. Glasgow: The barn is approximately 3,500 square feet. Sorry about that.

Mr. Grimes: So, 1,100 square total for the studio.

Mr. Glasgow: Right.

Mr. Grimes: Open area and bathrooms. I can understand why you moved the dressing area, because the second floor was no longer... wasn't ADA accessible in the house.

Mrs. Glasgow: That's right.

Mr. Glasgow: We were educated quickly.

Mr. Grimes: Yes. Does that help, Melody?

Mrs. Musante: So, the barn is 3,500 and that's both floors?

Mr. Glasgow: Yes.

Mrs. Musante: First and second. Okay, and then you're adding a deck to the outside of that. How large is the deck that's going to be going up to the second floor?

Mr. Glasgow: It's 12 by 15. Is that square footage?

Mrs. Musante: So you'll still get under 4,000 square feet. So he'll be fine for the barn.

Mr. Grimes: Okay. So, any other questions for the applicant?

Dr. Larson: Well, I guess only one comment, and I'm not sure when to make it -- maybe now. If we do a longer period of time, maybe to the end of July since they said that they might be doing the work in July, or even August, but still you're going to have to have this place inspected before you use it for a wedding, because there's a lot of things going on here that need to be checked. Okay?

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Mr. Grimes: Alright, when we bring it back to the Board I'll make a comment to follow-up on that. Any other questions for the applicant? Alright, thank you very much.

Mrs. Glasgow: Thank you.

Mr. Grimes: Any member of the public who wishes to speak in support of the application please come forward.

Mr. Guyer: Hello, my name is Jeff Guyer. I live next door to the Glasgows; I have for the last 5 years and they've been amazing neighbors. Three reasons why we're asking you to extend this: number one, Stafford County has over 6,000 businesses and most of those are small businesses. From what I hear from the last meeting before this, y'all want this. I mean, y'all want businesses and citizens of Stafford want this. The community has rallied around because they believe in the Glasgows. There's churches, there's non-profits, there's businesses that have done everything they could to help with this process. And the final reason is this -- it's... I built a house. I was the owner, general contract, and it takes forever. I understand that. So we're just asking for some leniency. They're honest. And so I'm just going to leave you, as a citizen to another citizen, believe the best then inspect the rest. Thanks.

Mr. Grimes: Thank you. Any other members of the public wish to speak in support? Any member of the public... oh, sorry. I thought you were hesitating there.

Mr. Smith: Good evening. My name is Josh Smith; I'm the son-in-law of the Glasgows. And my wife and I had been staying with them since a week before Christmas. And I just want to say, if the question here is whether or not they can be trusted to put everything they have into making these changes happen on time and whether or not they're just sitting there and taking advantage of the situation, beyond a shadow of a doubt there hasn't been a day that's gone by since we've been here, including Christmas day, where this hasn't been at the center of everybody's mind. With everybody's energy, what we're worried about it's all focused on getting this done. So, we're just trying to work within the law and... and that's it. Thank you.

Mr. Grimes: Thank you very much. Any other members of the public wish to speak in support of the case? Any member of the public who wishes to speak in opposition to the applicant? Would you like to add anything since both are in support? Okay. We'll close the public hearing for this application and bring the matter back to the Board for discussion. Comments?

Mr. Kim: If you don't mind, Mr. Chairman, I would really like to see a September or August date if we have to put it in by staff. Just opening a couple businesses myself, anything could happen with the inspectors. So, I mean this is just a suggestion. If we can, and I think the Board's on board, if we approve this to extend the date past March 31st.

Mr. Grimes: Well, and I look at the documentation that the applicants' have provided. I think... personally I think they've demonstrated a determined effort to comply. (Inaudible) and you could have done something more. It's not for us to decide that. That was a liability and risk that you took on (inaudible). So, I hope that you take everything that's been given to you from those County officials and (inaudible) to all their requirements if we move forward. And again, talking about extending the date; it doesn't allow them to open something that's not code compliant. It allows them more time to get this work done and do it properly. And, as Mr. Kim's noted, and I'm in a business myself, nothing goes to plan. No matter how fast you think you're going to get it done, when it comes to contractors and permits it always takes longer. And it always takes more money than you think it's going to take. So,

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going to the development conditions, I have some suggestions that I would like put out there for the Board to consider. Number 6 I think needs to be modified and updated. After Melody gets over the pain of...

Mrs. Musante: Yeah, sorry.

Mr. Grimes: There is a letter already in here. I'm suggesting that we get a new letter. But the letter that is dated October 20th, which is the notice of violation, I think it served the purpose that if we reference that, must comply with all state and local codes to include the information in the letter provided by the Building Official dated September 13, 2016, and the email from the Fire Marshal dated 9/14/2016, see Attachment 5, and the notice of violation issued October 20, 2016, and the email from the Building Official dated January 24, 2017. We've documented all these requirements. We've got them incorporated into the suggested development conditions. Also note that this email would be an attachment, so Attachment 6 I guess. That email specifically states from the Building Official, yes we can allow the use of the first floor only if the stairs to the second floor are removed or a wall built around the stairs with no access to the second floor. It would be a TCO, temporary conditional occupancy, I believe that's what it stands for, for the floor only, and all electrical upgrades would need to be completed for the first and second floor, too. So, again, you're getting very specific requirements.

Mr. Kim: Mr. Chairman, can we just... I don't know if this makes a difference or not, but can we... (inaudible) a wall around the stairs, could you block off (inaudible), maybe add some verbiage where it's during the wedding ceremonies? Like, I'm just afraid that someone...

Mr. Grimes: I think that... in my opinion, the contractor takes it down when he needs to get up there and he puts it back when he's done. I mean, it's kind of means and methods. It needs to be blocked off. If somebody needs to get up they could take a ladder and go up through the door on the second floor.

Ms. Bertoldi: Right, and, you know, there are other people living in the house. You have... and so, if you have kids that come by or whatever, and get a little wandering and go up there, if it's not blocked off and they get up to the second floor, it's not during a wedding, you're just protecting...

Mr. Grimes: Or somebody taking a farm tour and wanders away.

Ms. Bertoldi: Right, right. So, you know, I think that it's better that this (inaudible) unless a contract needs to be there.

Dr. Larson: Mr. Chairman, I agree with your assertion to put the requirements and the October 20th violation letter in the conditions. I would also add that before any wedding activity takes place that there must be an inspection by an appropriate County official to verify that the conditions have been met.

Mr. Grimes: You know, when we say comply with state and local codes, you have to have an inspection before you get occupancy. Do we want to go down that road again of repeating...?

Dr. Larson: I'm just pointing out that there was a misunderstanding before and weddings were taking place...

Ms. Bertoldi: I agree.

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Dr. Larson: ... and it wasn't written down. So now, if it's written down, there is no misunderstanding.

Ms. Bertoldi: I agree. I mean, it might be redundant but I think that it's better to make sure everybody's on the same page too.

Mr. Grimes: And again, I'm not opposed to it, especially in this particular case, but we would just add something to number 6. You know, must comply with all local and state codes and receive inspections relating to those...

Dr. Larson: Which I normally oppose doing, but not in this case.

Mr. Grimes: Right.

Mr. Apicella: So, could we get the language that you're... the actual language that you're proposing?

Dr. Larson: Sure. Whatever the language is that references the October 20th letter, and that before any wedding activity takes place a County official comes and verifies that the requirements in that letter have been satisfied.

Mr. Grimes: Is that the second floor (inaudible)?

Dr. Larson: Did they specify that in the letter?

Mr. Grimes: Well, I mean, you're saying any wedding activities; that would include anywhere.

Dr. Larson: Yes.

Mr. Grimes: So, therefore, the Building Official's made that very clear. You're not going to get an occupancy which means you can't have weddings until you do these things (inaudible). Again, I would shoot to simplify it. If we're going to include the statement weddings activities, I think we should make a separate line for it.

Dr. Larson: Okay, a separate line.

Mrs. Musante: Mr. Chairman, what about going back and putting in what you had originally said, must comply with all state and local codes, which includes inspections, blah blah blah. That seems to be pretty straightforward.

Mr. Grimes: Well, I like that but there are some concerns being expressed about the compliance of the application... or the applicant still holding events without inspections.

Ms. Bertoldi: Well, just put in front of that sentence, just put, you know, no weddings in the barn, right.

Mrs. Stefl: No events...

Ms. Bertoldi: No invents in the barn...

Mr. Grimes: Right, because they could still use a tent.

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Ms. Bertoldi: Right, so no events in the barn until, and then what you just said I think would...

Mr. Grimes: This is why I try to... we start doing this and just we go down (inaudible).

Ms. Bertoldi: But I think in this particular instance just to make sure we're on the same page.

Dr. Larson: Every case is different. You can't put a mold on each case and just turn it out; every case is different. That's why we're here.

Mr. Apicella: So, again, I'm just trying to get to the final...

Ms. Bertoldi: Right. Which I said, you know, no events in the barn until all state and local codes, including... what did you say Melody?

Mrs. Musante: The way he had it was abide all state and local codes which includes inspections related to.

Ms. Bertoldi: There.

Mrs. Musante: But, Susan came up with no events in the barn prior to inspections for compliance.

Mr. Kim: I like that.

Mr. Grimes: That's good.

Dr. Larson: That's actually what I'm after.

Mr. Apicella: I thought that's what you said?

Dr. Larson: That's what I said.

Mrs. Musante: Are we renumbering?

Mr. Grimes: I'd like to make that one number 7. Make number 7 number 8.

Mrs. Musante: Okay, just so I'm clear, number 6 we're adding, and notice of violation October and the email of the Building Official is number 6. Then we're adding number 7, no events in the barn prior to inspections for compliance.

Mr. Grimes: Yes.

Mrs. Musante: Okay.

Ms. Bertoldi: Can we correct Fire Marshal, two l's? Doesn't Fire Marshal have two l's? No, it's only one?

Mr. Grimes: I thought it was two.

Ms. Bertoldi: So did I.

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Mr. Grimes: Alright, so number 7 becomes number 8, approval of this Special Exception will expire when this applicant vacates the property and is non-transferable. Number 8 becomes number 9, this approval may be revoked for willful noncompliance of the conditions imposed by the Board. And number 9 becomes number 10, and we had several discussions of suggested dates. I really like the idea that the applicant has stated that they're closed in July. I know it's pushing it way out there but, you know, August 1 gives them all of July to do everything they need to do.

Mr. Apicella: I would say the end of August.

Mr. Kim: I would say end of August, too.

Mr. Grimes: I don't have any heartburn over it.

Mr. Kim: August 31st?

Mrs. Glasgow: That sounds good.

Mr. Grimes: August 31st. Alright, so, can you read back the suggested development conditions please Mrs. Musante?

Mrs. Musante: Number 1, Days and hours of operation: Monday through Thursday: 9:00 AM to 7:00 PM; Friday through Sunday: 9:00 AM to 11:00 PM. All scheduled events and customers by appointment only. Number 2, Provide off-street parking. Parking along Hartwood road will not be permitted. Number 3, Applicant shall construct entrance shown as "the barn entrance" on the plan in compliance with VDOT standards to ensure safety and comply with site distance. Number 4, Per the Fire Marshal, open flames and smoking materials shall not be utilized inside or within 10 feet of the structure. Number 5, No more than 195 guests. Number 6, Must comply with all State and local codes to include the information in the letter provided by the Building official dated September 13, 2016 and the email from the Fire Marshal dated September 14, 2016, and the Notice of Violation dated October 20, 2016, and the email from the Building Official dated January 24, 2017, which is going to be Attachment number 7. Outside vendors and sanitary facilities must be approved by the Health Department. Number 7, No events in the barn prior to inspection for compliance. Number 8, Approval of this Special Exception will expire when this applicant vacates the property and is non-transferable. Number 9, This approval may be revoked for willful noncompliance of the conditions imposed by the Board of Zoning Appeals. And number 10, All suggested development conditions shall be completed by August 31, 2017.

Mr. Grimes: Thank you very much.

Mr. Apicella: Mr. Chairman, so on number 6, we referenced two attachments now. The Building Official's letter dated 9/13; is that not also an attachment?

Mrs. Musante: It's Attachment number 3.

Mr. Apicella: So, could we just add that afterwards? So, after it says 9/13/16 and in parenthesis see Attachment 3, just for consistency sake.

Mrs. Blackburn: And I have a question. You all have been referring to a Notice of Violation and that they have to be compliant. It's actually a Notice to Discontinue Occupancy.

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Mr. Grimes: Sorry, you're correct.

Mrs. Glasgow: Is there any way that we can change the time of our opening on Friday, Saturday, and Sunday to 8 o'clock in the morning instead of 9? Is that something I can change, or I can't?

Ms. Bertoldi: What's the reason why you want the extra hour?

Mrs. Glasgow: Because a lot of people show up early.

Mrs. Stefl: Mr. Chairman, this is what I'm referring to, the little nitpicks.

Mrs. Glasgow: I mean, we can keep it 9 o'clock.

Mr. Grimes: Well, I don't think we discussed that as part of the amendment; you didn't file it as part of your (inaudible) so I would say no.

Mrs. Glasgow: Okay.

Mr. Grimes: Because it wasn't submitted for it. We didn't have time to discuss it or review it. Any other questions, comments, discussion? Do I have any motion on this case? Well, I will make a motion to approve the amended conditions... oop, sorry.

Dr. Ackermann: (Inaudible).

Mr. Apicella: Yeah, I mean, just from a Planning Commission perspective, the Chair can make a motion.

Mr. Grimes: I'm fine to have somebody else make a motion.

Mr. Apicella: I'll make a motion. Mr. Chairman, I move for approval of SE17-01/16151597 with the amended conditions as recently read.

Ms. Bertoldi: I'll second.

Mr. Grimes: Would you like to provide us some insight on why you'd like to approve this motion?

Mr. Apicella: I'm not as familiar with this case as others are. It seems to me that the applicant has diligently pursued the improvements necessary to fully operate this business enterprise, but conditions, some within their control and some without their control... outside of their control, have caused them to reconsider the deadline. I didn't see any adverse reasons why the deadline can't be extended. I think this is a good business enterprise. We should support it. And I don't think this changes (inaudible) of those reasons. So, Mr. Chairman, I move for approval.

Mr. Grimes: Thank you.

Ms. Bertoldi: And I seconded because unlike the last time, I did have some concerns with them having weddings during the time of dealing with the issues of the building. This go round, there is a difference in that no weddings will be able to be performed until there are appropriate inspections by the appropriate officials. And I think that that satisfies certain public health and safety concerns that I think

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the Board had before. I also seconded because the access to the second floor is going to be completely and utterly shut down, which I know is a issue for the Board. And those have satisfied by issues with respect to whether or not to grant or deny my vote. So, for those reasons, I have seconded.

Mr. Grimes: Further comments?

Dr. Larson: Yeah, just one thing I'll add. It's my understanding that the stairway will not be completely and utterly shut down until they have decided they can't make their deadline.

Ms. Bertoldi: Well, it will be to anybody other than a contractor with the appropriate tools to unhinge it is my understanding.

Dr. Larson: Okay, because I understood that they were still in the process of trying to make... I agree with that. I think that's what I understood, too. But I understand that they're still trying to make the second floor available for use up until...

Ms. Bertoldi: But they can't have any... right, they are going to, but until it's compliant for the short term, there's no access to it. So, until the appropriate officials make the appropriate determination that there is full compliance, which has nothing to do with us and it's not our business, then there's not going to be any access, which was a big bone of contention at the last hearing.

Mr. Grimes: Well, I'm going to support the approval of this amendment of this Special Exception for reasons that we discussed previously, again, a demonstrated effort to comply. I believe that the applicant is truly trying to bring this into compliance. I think it's a great business for Stafford as I said before, I think it's great for the County; it's a great business, it brings people here. You see it on the tourism websites; I think that's fantastic for everyone. So, that's why I'm supporting this amendment and I think that the applicant is now going into this with eyes wide open as to what it's going to take to actually finish this. Any other comments? So, I have a motion from Mr. Apicella to approve the amended Special Exception, seconded by Ms. Bertoldi for case number SE17-01/16151597. All those in favor of the motion signify by saying aye.

Mr. Kim: Aye.

Dr. Ackermann: Aye.

Dr. Larson: Aye.

Mr. Apicella: Aye.

Ms. Bertoldi: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye. Those opposed signify by saying nay. Let the record reflect that the motion is approved. I didn't hear a vote down there.

Mrs. Stefl: No sir, I voted in the affirmative.

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Mr. Grimes: Ah, okay. Let the record reflect the motion is approved for amending the Special Exception 7-0. Thank you very much. The zoning office will be in touch with you. Melody, do we have any unfinished business?

UNFINISHED BUSINESS

Continuing Education

Mrs. Musante: We do. (Inaudible) continuing education. We would like to discuss what topics since we have been approved to move forward with that.

Mr. Grimes: Right.

Mrs. Musante: Unless you want to continue it to February.

Mr. Grimes: Well, I was going to offer to the Board that defer this discussion to February...

Dr. Larson: Agreed.

Mr. Grimes: ... mainly for the reason that Ms. Brown was very adamant about getting this started sooner than later, so I think she has some strong opinions on it, so I'd like to wait for her to be here for that discussion. Zoning Administrator's Report? Oh, does anybody disagree with pushing that off to February? I don't like to be a dictator on this. No objections? Okay, we'll move that to February. Zoning Administrator's Report?

ZONING ADMINISTRATOR'S REPORT

Mrs. Blackburn: I have nothing at this time.

ADOPTION OF MINUTES

November 29, 2016

Mr. Grimes: Okay, adoption of minutes, November 29, 2016. I'll start; line 242, I may have said "yea, Ms. Brown" but I think it's "yes." I may have been a pirate that day. And that was the only correction that I have. Any others?

Mr. Apicella: With that change, Mr. Chairman, I move for approval.

Dr. Larson: Second.

Mr. Grimes: All in approval of the meeting minutes?

Mr. Kim: Aye.

Dr. Ackermann: Aye.

Dr. Larson: Aye.

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Mr. Apicella: Aye.

Ms. Bertoldi: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye. Nay? Alright, the meeting minutes are approved for November 29, 2016. Any other business?

OTHER BUSINESS

Discussion of 2017 Board of Zoning Appeals Meeting Schedule

Mr. Apicella: Mr. Chairman? The calendar, I'm not sure what Mr. Kim was going to say, but at a minimum, December 26 might be problematic. My suggestion would be to move that back a week.

Mr. Grimes: I would agree. December 26 none of us would be in the (inaudible).

Mrs. Musante: We normally cancel the December meeting prior. If you would like to just cancel, we can.

Mr. Apicella: I'm good with that.

Dr. Larson: Well, given that we're meeting November 28, which is a little later than we normally meet, then that sort of makes up for cancelling the December.

Mr. Grimes: Let's cancel December. Has anyone looked at November? Is the 28th, if we're going to... what day is Thanksgiving?

Mrs. Musante: It's the week before.

Mr. Grimes: Any objections to that? Good. One other item before we close. Ms. Bertoldi has something to bring up.

Ms. Bertoldi: This is a personal thing. Has anyone heard of St. Baldrick's? St. Baldrick's is a foundation that raises money for childhood cancer. Childhood cancer is extremely underfunded and it has to be treated very, very, very differently than adult cancer. And a very small percentage of cancer research (inaudible). So, this foundation... yeah, it's like 4%, yeah. And about 400,000 children are diagnosed a year with childhood cancer. And 1 in 5 kids are actually diagnosed with it. It really is an epidemic; it's not something you like to talk about. And they have an event every year around St. Patrick's Day, it's called St. Baldrick's. And what people do is they shave their head in order to raise money for childhood cancer. So, I am shaving my head to raise money.

Mr. Grimes: Fantastic!

Ms. Bertoldi: And so I will be bald as of March 12th and if anybody is want me to send them information, I also have stuff here to support me, donate money, come watch me get my head shaved on March 12th, I would love it. So I have it here. I'll let you approach me; I don't want to bombard anybody.

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Mr. Apicella: And is that going to be your official picture on the website?

Ms. Bertoldi: Yes. I mean, I'm going bald.

Mr. Grimes: That's fantastic. Alright, do we have a motion to adjourn? Second? Thank you staff.

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 9:50 p.m.