

**STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES**  
**September 27, 2011**

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, September 27, 2011, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Robert C. Gibbons in the Board of Supervisors Chambers. Mr. Gibbons introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Mr. Gibbons stated the Bylaws of this Board state the applicant would be allowed up to ten minutes to state their case, the other speakers would be allowed three minutes to testify, and the applicant would be allowed three minutes for rebuttal.

**Members Present:** Robert Gibbons, Dean Larson, Ray Davis, Steven Apicella and Heather Stefl

**Members Absent:** Ernest Ackermann, Larry Ingalls and Marty Hudson

**Staff Present:** Melody Musante, Zoning Manager  
Andrea Hornung, Interim Zoning Administrator  
Aisha Medina, Recording Secretary

Mr. Gibbons: Are there any changes or additions to the advertised agenda?

Mrs. Musante: There are no changes. But Mr. Chair, we have another member of our staff tonight in the audience. It is our Interim Zoning Administrator, her name is Andrea Hornung. She is actually wearing two hats in our office right now, she is the manager of the Development Review team as well and if you have any questions regarding site plan or the require pedestrian circulation, which is what this application is about, she can answer those questions.

Mr. Gibbons: Thank you. Thank you for coming. I guess you used to wear a lot of hats in Spotsylvania, right?

Mrs. Hornung: Yes.

**DECLARATIONS AND DISQUALIFICATIONS**

Mr. Gibbons: Before we hear the first case, does any board member wish to make a declaration or statement concerning any case to be heard before the Board? Okay, thank you, hearing none I will ask the secretary to read the first case.

**PUBLIC HEARINGS**

- 1. V11-05/1100290 - RAPPAHANNOCK AREA AGENCY ON AGING** - Requests Variances from Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standards", B-2, Urban Commercial and Section 28-273, "Nonconforming Structures", further reducing the front yard requirement to allow dedication of right-of-way on Lendall Lane for required pedestrian circulation within the Highway Corridor Overlay District. The applicant is requesting a thirty-two (32) foot front yard variance of the required forty (40) feet on Lendall Lane. In addition, the applicant is requesting a twenty-one (21) foot front yard variance of the

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required forty (40) feet on Warrenton Road to allow for the existing non-conforming structure to comply with current zoning regulations. The property is Zoned B-2, Urban Commercial, located at 450 Lendall Lane.

Mrs. Musante: Case V11-05/1100290, Rappahannock Area Agency on Aging, requests Variances from Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standards", B-2, Urban Commercial and Section 28-273, "Nonconforming Structures", further reducing the front yard requirement to allow dedication of right-of-way on Lendall Lane for required pedestrian circulation within the Highway Corridor Overlay District (HCOD). The applicant is requesting a thirty-two (32) foot front yard variance of the required forty (40) feet on Lendall Lane. In addition, the applicant is requesting a twenty-one (21) foot front yard variance of the required forty (40) feet on Warrenton Road to allow for the existing non-conforming structure to comply with current zoning regulations. The property is Zoned B-2, Urban Commercial, located at 450 Lendall Lane. You have the application, application affidavit, owner's consent form, variance site plan dated August 17, 2011, copy of Code Section 28-35, Table 3.1, "District Uses and Standards", Code Section 28-59, Highway Corridor Overlay District, Code Section 28-273, Non-conforming Structures. The applicant is requesting a thirty-two (32) feet Variance of the front yard setback, fronting Lendall Lane and a Variance of twenty-one (21) feet of the front yard setback fronting Warrenton Road to allow dedication of right-of-way (ROW) for a required pedestrian circulation within the HCOD to further develop the property. The applicant has submitted a major site plan for an addition of 5,000 square foot building with an expansion of an existing parking lot on parcel 53-6F, comprising of two acres and zoned B-2, Urban Commercial, at the southeast quadrant of the Lendall Lane and Warrenton Road intersection in the George Washington Election District. This parcel was subdivided from tax map 53 parcel 6 and was a part of the comprehensive rezoning in 1978.

Mr. Gibbons: Melody, I would like you to repeat what Dr. Larson had asked you in the beginning when we were talking tonight?

Dr. Larson: Mr. Chairman, let me just repeat the question for the record. So Melody, it's my understanding then that the new constructed building is in accordance with the zoning?

Mrs. Musante: Correct. The proposed building, the proposed 5,000 square foot building will meet the current setback requirements.

Dr. Larson: Okay, so what we are considering tonight are variances to allow the sidewalks to go in, which are required because of this addition to the property, is that correct?

Mrs. Musante: That's correct. We currently have an existing non-conforming building, we are required to make that building conforming by this Variance process because of the major site plan application that they have submitted kicks in additional requirements, which is the HCOD requirements, the Highway Corridor Overlay District requirements. That in turn kicks in the sidewalk requirements to the pedestrian circulation. In order to be able to put in the sidewalk, they are having to dedicate additional ROW, which is making the existing building more non-conforming.

Dr. Larson: Okay. Thank you.

Mr. Gibbons: Anybody have any further questions?

Mr. Apicella: I do.

Mr. Gibbons: Go ahead.

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Mr. Apicella: Ummm, you have answered this question but I am going to ask it one more time. The sidewalk is required by the HCOD?

Mrs. Musante: Correct.

Mr. Apicella: The sidewalk itself is not a structure?

Mrs. Musante: Correct.

Mr. Apicella: When I read the HCOD, it has a caviot that says, the HC shall apply provided however, that when regulations applicable to the HC conflict with regulations of the underlying district, the more restrictive regulations shall apply.

Mrs. Musante: Okay, I am going to have to refer to Andrea. Mr. Apicella, can you turn your mic on?

Mr. Apicella: Sure.

Mrs. Hornung: Good evening Mr. Chairman, members of the Board. Andrea Hornung, your Interim Zoning Administrator. Repeat your question again please.

Mr. Apicella: Okay. So under section 28-59, Highway Corridor Overlay District, part B, at the end of the paragraph it says, "The regulations and requirements of the both the underlying districts and the HC shall apply, provided however that when regulations applicable to the HC conflict with regulations of the underlying district, the more restrictive regulations shall apply". So the sidewalk is a requirement of the HCOD but there are other regulations, ordinances, that conflict with this requirement and it says, by my reading, that the more restrictive regulations shall apply and take precedence?

Mrs. Hornung: Right, and because the HCOD is an overlay and more restrictions are placed on the development, it is required that any dedication... any sidewalk that is constructed has to be dedicated to the County which VDOT will maintain. So, by doing that, they have to build the sidewalk in an HCOD overlay district and so that make it more restrictive. Having that requirement to build the sidewalk and dedicating that area to ROW, that will increase their non-conformity and take the area away from their setback giving them a lesser setback.

Mr. Apicella: I guess what I am asking is, in my view the variance regulations would be more restrictive than the HCOD regulations. So which would take precedence?

Mrs. Hornung: Well when you phrase it like that, I would think it would be... The variance is for you to decide if what they are required by the site plan process, to add on to their use and having to dedicate the ROW, which is a restriction of their development, that the variance to be granted can be granted only if it is a hardship on them.

Mr. Apicella: Okay, we've dealt with the variance. So let's go to Section 28-273, Non-conforming Structures, so the way I... I am not going to paraphrase it, well I am not going to read it verbatim, you probably know it better than I do. But basically, the way I read it is, you can't take a situation that is non-conforming and make it more non-conforming.

Mrs. Hornung: That is correct.

Mr. Apicella: So again, why would that not take precedence over the HCOD regulations?

Mrs. Hornung: The way you phrase it, that is a very good question. I know the common practice,

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whenever there is an overlay district, that has been viewed as more restrictive from all the other regulations that are already in place, so the non-conforming structures are going to... That part of it is already in the ordinance but the HCOD is on top of all of that. I think I am saying that correctly.

Mr. Apicella: So your despite the caviot in the HCOD that says whatever is more restrictive shall take precedence. In this particular case, the non-conforming regulations would not take precedence?

Mrs. Hornung: Well...

Mr. Apicella: I'm just trying to figured out...

Mrs. Hornung: Right.

Mr. Apicella: Which would prevail in this given circumstance because ultimately this is a situation that they didn't necessarily put themselves in but they are in because the rules of the game have changed over time and now they are changing again to require a sidewalk to make the situation even non more conforming. So...

Mrs. Hornung: Right.

Mr. Gibbons: I think part of the greater restriction has to be the dedication of ROW to VDOT of the road and I think that is the major point.

Mr. Apicella: Well, not the road, it is the sidewalk that would make it more non-conforming, not necessarily the road.

Mrs. Hornung: Well, right, all of that. With having to dedicate ROW anyway.

Mr. Gibbons: Right.

Mrs. Hornung: And within the ROW, the sidewalk has to be in the ROW and the sidewalk is a requirement of non-residential development for pedestrian circulation.

Mr. Apicella: Is that a County requirement or is it a state requirement for the purposes of the road?

Mrs. Hornung: It is County. Right here, specifically in the HCOD. If they weren't in the HCOD regulations, we could let them not have to not build the sidewalk.

Mrs. Musante: And they wouldn't be required this variance either because their building is not attached to the existing non-conforming. What's causing all of this, is because of that sidewalk requirement and them being required to...

Mr. Apicella: And that's my point. We've got two...

Mrs. Musante: We do.

Mr. Apicella: We have two regulations that are in conflict with each other and so I am just trying to understand which one takes precedence.

Mrs. Hornung: Right and we've had a determination from the County Attorney that when you are developing, as long as... for example, a building, as long as you are not increasing the non-conformity at that point for the building then you can further increase your development. So, if it is a front setback, you can't increase that non-conformity on the front setback but you could build to the rear.

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Mr. Apicella: Right.

Mrs. Hornung: So the building itself meets your requirements but the variance is for the purposes of the setback that is being taken away by the requirement of including the sidewalk in the ROW dedication and that's as a result of the HCOD regulations, which is an overlay that is on top. It would be the same as if we were talking Chesapeake Bay regulations. That is added to those other regulations that are underlying.

Mr. Apicella: Okay, I understand but... And I would say many of the members of this panel and the staff have far more experience and knowledge than I do. But it seems to me that when I understand the purposes of a variance, because of the unique nature of the property, would the absence of a variance preclude the applicant from being able to utilize that property? Well, the applicant is utilizing that property for some given purpose today. So my next question is, is a variance the right vehicle to potentially give relief to the applicant to comply with an additional County requirement, to be able to do what he or she is being asked to do? For example, would a... I am just throwing this out, would a special exception be another vehicle or a more appropriate vehicle than a variance? Given the confines of what a variance requires to be able to grant it.

Mr. Gibbons: I don't think that is applicable in a major site plan. I think that's the key.

Mrs. Hornung: Correct, plus the HCOD requirements does not give you the option of going the Special Exception route. It either is stated by Conditional Use Permit (CUP) as it is exemplified in that section of the ordinance or by variance because this variance is for the setback only, which is a result of the requirement of how they are to develop their property, which is because of being in the HCOD, which is on top of those other regulations.

Mr. Apicella: But my problem, my quandary is I don't see a variance being a mechanism to provide an applicant relief between two conflicting county requirements. And especially because of the criteria you have to go through in order to be able to give somebody a variance. This doesn't even seem to have applicability here because there is nothing unique and it hasn't been suggested that there is something unique about the property that causes some hardship that could be overcome by granting their variance. So that...

Mrs. Hornung: Maybe another...

Mr. Apicella: Am I off the deep end or on a tangent here?

Dr. Larson: No, in fact I would like to hear more.

Mrs. Hornung: No, I follow you. The other thing that may also help to understand how it is impacted is that in the Comprehensive Plan it is recommended that the ultimate ROW is dedicated on all developments. And for the roads and the sidewalks that are required to be developed when your developing any non-residential or residential project, you have to dedicate ultimate ROW and if it is required to build sidewalks, you have to construct the sidewalks. The sidewalks are always dedicated to the County for public use. The County has an agreement with VDOT that they are to be maintained. We do not... Stafford County does not have the resources or the program to maintain sidewalks and be responsible for the construction or maintenance of sidewalks. That is why they are dedicated to the County and maintained by VDOT.

Mr. Gibbons: Steven is saying he understands that but what you are down to is you have a conflict between two ordinances. Alright, and then what is more restrictive? That is what it says, whatever the more restrictive one is, is the one you go by. The more restrictive one is the HCOD.

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Mr. Apicella: Well, I don't necessarily believe that. I think again, I could read the non-conforming structures to be more prevalent in this case. I guess this might be a situation where the Board might have to reconsider its overall ground rules and as you say, this could keep coming up over and over again. That they might have to find another way to fix this problem outside of the variance process because a variance, again, from my limited knowledge and training that I had, it's not applicable, this given set of circumstances.

Mr. Gibbons: Why isn't it applicable? Tell me that.

Mr. Apicella: Because if you go back to the premise of why somebody comes in to get a variance and this panel's ability to grant that variance and it says we only grant a variance when those criteria are met. It is because there is something peculiar about the property, something unique, topographical soils, steep slopes, what have you, that would otherwise in the absence of being given a variance, preclude that owner from being able to utilize his or her property. In this case, it is just like if somebody wanted to put a bathroom... an additional bathroom on the side of their house. They've already got the house and this panel has voted not to give them the bathroom because they were being able to utilize that property. It wasn't an absolute necessity. I see this as somewhat similar, that they are able to use the property for a purpose that, you know, that's appropriate for this given circumstance. Now they are being asked to do something, to dedicate ROW and I don't know whether they are building the sidewalk or VDOT's building the sidewalk or the county is building the sidewalk.

Mrs. Hornung: The owner.

Mr. Gibbons: The owner builds the sidewalk.

Mr. Apicella: But, that... it's because the County placed additional conditions in order to build the structure, and I understand that, but that does not seem to invoke the whole variance process to be able to give the applicant relief. I am trying to find a more appropriate way to do it.

Mrs. Hornung: Sure.

Mr. Apicella: Because I don't think the variance process is the right way to do it. It may require...

Mr. Gibbons: A hardship, okay start from the beginning. I know where you are coming from, it's like the chicken or the egg.

Mrs. Hornung: Right.

Mr. Gibbons: It depends what comes first. When he comes into this, what triggered this action is the major site plan. And when the major site plans comes into play then HCOD kicks in. so his hardship is, he has to provide a sidewalk, curb and gutter and dedicate that to the highway department.

Mr. Apicella: There is nothing about the particular nature of the property that precludes that from happening. I think it's a county requirement that invokes a sidewalk revision. That's the difference. It is again, going back to why we grant variances. I mean, you can read it from the application itself, it talks about when do we grant a variance and here are the standards that have to be met. None of that seems to be...

Mr. Gibbons: I understand, it goes back to the statement that you just said in the beginning. What is more restrictive?

Mr. Apicella: That is one question but my second thought is, again, maybe this isn't the right mechanism, maybe we ought to go back to the Board and say this has happened before and it's going

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to happen again. Maybe we ought to think about a more universal mechanism to provide relief to people who are similarly situated.

Dr. Larson: Mr. Chairman, maybe we should allow the proceeding to go forward and see what the applicant has for a hardship and see what his justifications are and maybe some of these questions will be answered as we go forward. We can always do as you suggest, at the end, if we are not satisfied with what we hear.

Mr. Apicella: I'm good with that.

Mrs. Hornung: Could I add a few more items? In reading the section (b) of 28-59, it says how "the HCOD shall be designated by the Board by separate ordinance and will overlay all other zoning districts where it is applied so that any parcel of land lying in an HC shall also lie within one or more other land use districts provided for this chapter". And then the statement that you read Mr. Apicella, "that the regulations and requirements of both the underlying districts and the HCOD shall apply provided that the more restrictive shall apply". Now when you are looking at section (f) of the same section, there are development standards, which we have that all throughout the Zoning Ordinance for site plan requirements and also for the HCOD requirements. And it does state that "all non-residential uses shall be subject to the to the use limitations and development standards set forth in the underlying zoning districts and, in addition, shall be subject to the following HC". So the HCOD overlay are additional requirements on top of all those others. And because these are requirements in the Zoning Ordinance, any deviation from that is where you are required to come in for a variance. So, because these are required and they are in addition to what's already required, the non-conformity and the uses for the district are required but this HCOD is another layer on top of that. So it is additional requirements, while they may or may not conflict, we're finding throughout the ordinance that there may be some items that conflict and we are trying to address those as they come up. But this particular instance, the requirement for the site plan section 28-259 in the ordinance requires them to develop there standard, there use, there development a certain way according to the standards. Then we go back and there is not only the, B-2 if I remember correctly, the B-2 regulations, that's the first layer, sort of speak. Then we move up any of the other layers or requirements in the ordinance and would be the non-conformities but then, for the hierarchy, the HCOD are another layer on top of it. So it is additional requirements. So, while they have to meet B-2, they have to meet the non-conforming, they have to meet the setbacks, they have to meet open space, all those other requirements. The HCOD are the additional requirements that are on top of all those.

Dr. Larson: Mr. Chairman, I'm sorry.

Mrs. Hornung: I'm sorry, so they all will have to find a happy medium somewhere. And in this particular case, the variance is as determined by the staff, the variance would be the way to go to bring this development into compliance with all the regulations of the ordinance.

Mr. Gibbons: So, you're saying as Zoning Administrator, you are acting as Zoning Administrator tonight. You're saying, it is your opinion that this is a proper procedure that he followed?

Mrs. Hornung: Yes sir.

Mr. Gibbons: Okay.

Dr. Larson: Mr. Chairman, I wanted to point out there is something in the package that I wanted to quote. Per section 28-350 (c), I am going to skip to the one that applies, "no variance shall be authorized by the Board of Zoning Appeals unless it finds", conditions 4, "that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make a reasonably practicable the formulation of a general regulation to be adopted as an

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amendment to this chapter". So, I think what this is trying to tell us is that if we have a situation where it looks like this is going to occur, it is not up to us to go a variance, it is up to the Board of Supervisors to pass an ordinance to address that and I think that is where Mr. Apicella is going.

Mr. Gibbons: Okay. So we start now, she has issued her determination that he has followed in the proper manner. We might not agree with that but that is what has been determined. Okay, thank you.

Mrs. Hornung: Thank you.

Mr. Gibbons: Now, will the applicant come forward please.

Jim Shafer: Okay, my name is Jim Shafer, I am the Executive Director of the Rappahannock Area Agency on Aging and we are a non-profit corporation. We were founded in 1977, created by the five local governments in Planning District 16. We are one of twenty-five (25) area agencies on aging that provide services throughout the state of Virginia and parenthetically, there are about 650 area agencies on aging across the United States providing services. We are a creation of not only the local governments here in Planning District 16 but the Federal Older Americans Act, which authorized the creation of triple A's as they are called back in the 1970's. We have been at the current location, 171 Warrenton Road since 2002, the structure that we are housed in right now at one time was a model home and was converted to office space, which was the configuration that it was in when we purchased it about nine years ago. Our situation is now that we have outgrown this relatively small building as the entire society is faced with the impending retirement of the baby boomers. We have to find ways to provide additional services, create additional programs so that we can provide services and information and whatever else is needed by the older population of this Planning District. So, we are out of space, we have got people working in hallways and sharing very very small offices. So that was the reason we came up with this building project. This project has been under consideration and development for about four years now. We did considerable research as to where we could get the funding for this and we're utilizing, if the project is permitted to go forward, we are utilizing made that will be made available by the United States Department of Agriculture Rural Development Program, which is a very wonderful thing as far as we are concerned. It is a forty (40) year loan at very favorable rates. As was mentioned here earlier, we will be putting up a 5,000 square foot building, in addition to the current structure. It is not going to be attached to the current structure; it will be on a different part of the property. We will retain the current building, which will be turned into a transportation center among other things and the rest of the people currently housed... employees that are currently housed in the existing structure will go over to the new structure. There will be a much larger parking lot. We have a fleet of vehicles that we use to provide transportation in Stafford County and throughout the Planning District. Our transportation program is growing considerably. We have been fortunate enough to acquire several federal grants, New Freedom Grants, they are called, that allow us to provide transportation to not only the sixty (60) plus population but to people of any age who have some sort of disability. So, we are constantly looking for other sources of revenue and other programs that we can take on to provide additional services of Stafford County and the Planning District. From our standpoint, this building project is an absolute necessity. We think that it will be a significant improvement over what we currently have and will provide much improved services in Stafford and throughout the Planning District. As I understand it, unless we are able to get a variance or some sort of relief from this requirement concerning the sidewalks, the building project will not be able to move forward and from our perspective, that would just be a disaster; it certainly constitutes a hardship. The only other alternative for us in that case would be to look elsewhere for space and I am not certain that we could afford to do that. So, that is really the crux of our hardship right there; that we do have these two acres and we think that the project will certainly enhance that part of Stafford County. I, sort of, look forward to the sidewalks, I think they will be a big improvement in that area. As was mentioned earlier, the question that was asked by the Chairman as to FRED service on the property. We would hope that that would be a possibility as well. We work very closely with FRED, as a matter of fact, to attempt to encourage ridership on the FRED bus system. We have a travel trainer program that is also

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grant funded that we use to utilize and train people on how to ride the bus. So, we are hopeful that this project will go forward and we will be able to enhance our service to the Planning District.

Mr. Gibbons: Thank you. Any questions of the applicant?

Mrs. Stefl: If the Board should deny your variance, would your services be affected by not being able to expand? Or will you continue to on?

Mr. Shafer: Well, one impact that it would have is that part of the plan for the building project is for the Rappahannock Area Community Services Board to co-locate with us in terms of their transportation program. That is why we want to turn the old building into a transportation center. Some of their vans would come over there, some of their drivers would be there, some of their administrative personnel related to their transportation activities would be there. And the reason that is so important, in terms of these federal and state grants, when you can show that you're coordinating and cooperating with other human service providers in the area, you have a much greater chance of getting additional funding. So, if the variance were to be denied and we could not continue with the expansion project, that transportation expansion plan could not happen so there would be a direct impact on that aspect of what we do and have been doing more of over the past couple of years. In terms of our other services, probably no direct impact. It certainly has... It would certainly have an impact on our employees. They really do not have, some of them, do not have adequate space to do their jobs. We have some employees who are working in hallways, we have tables set up and computer stations set up in hallways for them to work. It would definitely have an impact on our employees and their ability to do their jobs properly. We also...

Mrs. Stefl: The issues moral versus actual, they're still employed, they're still working, this would be a creature of comfort for them rather than a necessity, correct?

Mr. Shafer: Well you could put it that way. I would say that it more than a creature of comfort, I think that some of them are working in, if you want to call them, sub-standard working conditions but definitely not optimal working conditions. We also have a problem with confidentiality. We have a number of programs that require counseling with senior citizens. One of them and other people, under of the age of sixty (60). One of these programs is our long term care ombudsman program, which deals with people who live in long term care facilities and we counsel them in our office about very sensitive situations that arise in these long term care facilities. We really don't have any place where that kind of discussion can go on in complete confidentiality. Another program that is affected by this is our Virginia Insurance Counseling and Assistance Program, which is another program that requires confidential space to be able to talk about insurance issues that people come to us with. Whether that be Medicare, Medicaid, Medicare part D, drug benefit issues, these things are limiting our ability to provide services. The other thing is we want to try to expand that activity through the use of volunteers and the more people you have doing the counseling, the more space you are going to have to have to allow them to do the counseling in and we don't have that right now.

Mrs. Stefl: So you are basically saying your hardship is you are not able to utilize your building for your services? Because that is what you are saying you can't...

Mr. Shafer: In those instances yes.

Mrs. Stefl: Thank you.

Mr. Davis: You also indicated that not having the extra space would curtail any change or increased activity with your client?

Mr. Shafer: Yes.

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Mr. Davis: Extended programs?

Mr. Shafer: Yes, in some cases. I mean, we do have a fair number of clients who come to our office to talk to various members of our staff and presently there are only two offices that offer complete confidentiality in the entire building. One of them is mine and the other one is our finance officer. Everybody else is doubled up, at least doubled up.

Mr. Gibbons: Doctor? Steven? Okay, we have no further questions. I will again ask you, you know that you only have five members tonight that will vote and if you feel like you have any doubt of which way the vote will go, one way or the other, you can withdraw your application and ask it to be scheduled at a later time when there are more members here or you can continue to go on.

Mr. Shafer: I am willing to continue.

Mr. Gibbons: Okay, thank you very much. I just wanted to give you the option.

Mr. Shafer: Thank you.

Dr. Larson: Mr. Chairman, I have some more questions for our staff if I could get some clarifications. Please, I forgot your name, I'm sorry.

Mrs. Hornung: Andrea.

Dr. Larson: Andrea.

Mrs. Hornung: Yes sir.

Dr. Larson: Andrea, when I look at the code, when it talks about non-conforming structures, it is pretty clear it is talking about a building. It's not talking about a piece of land, it is talking about a building, so when I alter a... when I change a structure, that is when I am changing the non-conforming structure. Is a sidewalk considered part of the structure?

Mrs. Hornung: No. It is a public improvement as would be a road, right-of-way or left turn lane.

Dr. Larson: Okay so... when... When we dedicate more ROW, the setbacks change?

Mrs. Musante: Correct.

Dr. Larson: So now, does the non-conforming structure then become more, more parts of the structure become more non-conforming? Is that the issue?

Mrs. Musante: It is and we have a determination from our County Attorney's Office from a few years back that that is considered increasing the non-conformity.

Dr. Larson: Thank you.

Mrs. Hornung: You're welcome.

Mr. Gibbons: That is an outstanding point and I will say that because he's got a good question now. You are talking the difference between land and a structure. And the sidewalk, you are saying, is not an attachment to the structure?

Mrs. Hornung: That is correct.

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Mr. Gibbons: It is an attachment to the property as a whole?

Mrs. Hornung: The site development.

Mr. Gibbons: The site as a whole.

Mrs. Hornung: Correct.

Mr. Gibbons: What's submitted under the Master Site Plan is an entity?

Mrs. Hornung: Right, which is also part of the requirements in Section 28-259 for site plan development, which we also have landscaping...

Mr. Gibbons: No, I understand.

Mrs. Hornung: You know, all those things.

Mr. Gibbons: There are many many restrictions. Well go back to what the Doctor saying though, the building is the building and the building hasn't changed. It's non-conforming and it's because of what... when it was originally zoned, it was zoned B-2. So at that time, did the building meet the County Code? I assume it had to.

Mrs. Hornung: I presume it would and probably through time as the road had been improved, Route 17 had been improved and widened and if there are left turn lanes or anything like that.

Mr. Gibbons: Right.

Mrs. Hornung: Or improvements to any to Lendall Lane, the existing roads, that would start taking away from the setbacks and causing the non-conformity, not by choice.

Mr. Gibbons: So, you're saying that the structure requires certain setbacks?

Mrs. Hornung: That is correct.

Mr. Gibbons: Okay, to be conformed?

Mrs. Hornung: Yes.

Mr. Gibbons: In essence, it does tie to the structure is what you are saying? You can't have a structure unless you have proper setbacks, property line and ROW.

Mrs. Hornung: Correct.

Mr. Gibbons: So, in some... It is a play on words.

Mrs. Hornung: And now as a result of the development to expand and the requirements not only in the underlying zoning district, the requirements under the section of site plan development, the restrictions or requirements under the non-conforming requirements and then you have the HCOD requirements.

Mr. Gibbons: Now both parcels are contiguous, right?

Mrs. Hornung: Yes.

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Mr. Gibbons: Okay, so why would the... when you said that the back building is conformed, it is only the front building that is non-conforming?

Mr. Hornung: Right, as a result of the...

Mr. Gibbons: And the setbacks are applied to the property as a whole? So, in other words, every building on it must meet the required setbacks but the back building does meet it?

Mrs. Hornung: It is only the addition that is causing this variance requirement or request.

Mr. Gibbons: Okay. You got any questions?

Dr. Larson: I actually would like to have a little more discussion on this. So, if the law changed so that the law required a greater setback in this particular area, then the building would be more non-conforming then it is now?

Mrs. Hornung: That is correct. The law changed after it was there.

Dr. Larson: It would have been because of an application of the law after the building had already been in place.

Mrs. Hornung: That is correct.

Dr. Larson: A change that nothing to do with the structure, it's just the law changed, now the building is more non-conforming. Don't we have a similar situation here where, granted, it is because of something the applicant wants to do but now it's under a different set of laws which causes the setback to change. The structure hasn't changed; the structure is still there and hasn't done anything to the structure that was offending in the first place. But the law just changed that applies to that structure. Isn't that sort of the same thing?

Mr. Apicella: Help me understand where you are going with that?

Dr. Larson: Well, I mean I'm sort of circling around is the variance the right thing to do here? I'm puzzled and I am not sure that the variance is the right... I'm not sure we need a variance if the law changed. Clearly, we wouldn't need a variance because the building would just be more non-conforming.

Mr. Apicella: If I may, again gaining clarification on looking at, and I don't know if it is appropriate, but it certainly the guiding principles for the code that applies for granting a variance. You started reading form it 28-350 and I hate to belabor the point but I think it useful for the record. It is on page 5 of the Draft Variance Application, which is currently being used today so I am not saying anything that is not currently applicable. I am reading the County Code (a) The Board of Zoning Appeals may authorize, upon appeal in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship; provided that the spirit of the chapter shall be observed and substantial justice done. (b) The Board of Zoning Appeals may authorize a variance under this section when a property owner can show that his property was acquired in good faith and where, by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at time of the effective date of the ordinance from which this chapter derives, or where, by reason of exceptional topographic conditions or other extraordinary situation or condition of such a piece of property, or the use of development of property immediately adjacent thereto, the

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strict application of the terms of this chapter would effectively prohibit or unreasonably restrict the use of the property, or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship, as distinguished for a special privilege or convenience sought by the applicant; provided, that the variances shall be in harmony with the intended spirit and purpose of this chapter. And you read the other specific conditions. Again, I am having a difficult time seeing where this specific situations applies to the variance process because it's not about the specific conditions of the property, it is about the specific conditions required by the county. Two completely different issues and we are trying to solve one problem potentially with the wrong mechanism.

Mr. Gibbons: But go back on page 4 and paragraph under evaluation criteria.

Mr. Apicella: Where are you looking at?

Mr. Gibbons: Page 4, Evaluation Criteria. The Doctor quoted it.

Mr. Apicella: It is the same thing here, it is under (c), "no variance shall be authorized by the Board of Zoning Appeals, unless it finds".

Mr. Gibbons: No, the paragraph 4 says "the condition or situations of property concerned, or the intended use", it is a play on words, "use of the property is not of such a general recurring nature". In other words, this is not such a recurring.

Mr. Apicella: I think it is recurring because the county has changed the ground rules and this is going to apply over and over and over again when, because of a new rule, they have to be more in non-conformance because they have to abide by that new rule.

Mr. Gibbons: But, I mean if you pull case... if you went back and the County Attorney pulls case history, you will find as a recurring because there is not this many non-conforming uses on 17. It is few and far between, so it is not recurring.

Mr. Apicella: But, even if you step back from there recurring issue, the variance process is about the property.

Mr. Gibbons: Wait a minute, it is saying right here, recurring nature to make a responsible practical the formulation of a general regulation to be adopted as an amendment to...

Mr. Apicella: And I see that, again it's all about the property, so it would be the recurring nature of similarly situated properties. Like, they all have steep slopes for example. Okay, in this particular instance, it's not about the nature of the property, it's about the nature of the rules and how the applicant desires to be in compliance with those rules would put him into non-conformity.

Mrs. Hornung: Also, I think another way is something that we have staff researching is that throughout, for example, Route 17 will be improved, there's project and plans to improve Route 17. As Route 17, as well as any other public dedicate ROW, maintained by VDOT or even dedicat4ed to the Commonwealth of Virginia, which our primary roads are. As those roads are improved and widened,

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for whether they are turn lanes or shoulder improvements, that in itself could take property away from the existing properties that are there by having, either by having eminent domain or requesting dedication, volunteer dedication, that those roadways will be a larger size of dedication to take away from existing properties. Then, causing those properties for their structure to be non-conforming on the setback issue. And if they were to ever develop in any way, staff would require them to bring them into conformity with the ordinance. And if they couldn't do that, then you would see them as well to say that we are under a hardship because the state took our land, we want to further develop our property and there may be other restrictions. There's parking requirements, HCOD does not allow parking in the front, there has to be a berm, there are certain requirements that if you are going to develop under those conditions, whether it is an HCOD or regular development, you have certain conditions that are imposed by the development itself, Zoning Ordinance. So you will probably see more non-conformities as the roads are being improved and dedication is being... the road is being dedicated and taking that additional land away from that property. So in at least both my hats as a reviewer of plans and as a Zoning Administrator, I have seen that before and staff is looking at Route 17 and how the improvement to Route 17 will affect the properties and what non-conformities will be based on that.

Mr. Gibbons: We are getting back to the basic question. The applicant went to staff, the applicant filed what he was requested to file and your determination as Zoning Administrator, you are saying tonight, you felt that he or the entity filed the proper thing of the variance to the HCOD?

Mrs. Hornung: That is correct.

Mr. Gibbons: And that is what you are basing your opinion on?

Mrs. Hornung: Yes, the variance for the setback because of the requirement to develop the property.

Mr. Gibbons: Okay, but again Steven, I think you're on to something that I think is more serious down the road, I think that what you've uncovered is debatable, it could go either way. If you're developing an HCOD or a new plan for 17 widened and you are required to same setbacks and you are saying the properties there are non-conforming because you changed the ground rules and yet you didn't change the setback requirements, shame on you all. I mean, to make somebody have to go through a process of a variance where you by eminent domain or whatever, you should change the code as you are going along. In other words, if it's forty (40) feet now and you are widening 17 and he is only going to have twenty (20), the requirement to meet the forty (40) feet without changing the code to say that is it now twenty (20) feet, to me is where the problem is.

Dr. Larson: Yeah, I think as a question of fairness, you know, if the applicant didn't do anything and the County did something to increase the ROW. So, okay, now the structure is more non-conforming but it's okay because we did it. Now he could have said, oh, by the way now we want to add this building and there wouldn't be any problem because it would have already been more non-conforming based on something the County did rather than what something the applicant initiated. It doesn't seem fair.

Mrs. Hornung: If he didn't develop at all, it would still be designated as non-conforming but there would be no requirement to bring it up to standards.

Dr. Larson: That's correct, he could... if the County did something to increase the ROW and therefore increase the non-conformity of his building to exactly the same amount as he is asking for three months ago and then he came in with this idea for the building, he wouldn't even be here because the building would already have the increased non-conformity due to the action of the County. It's not fair that... It doesn't strike me... It is a question of fairness, I think too.

Mr. Gibbons: I am not doubting that. But I mean, we've gone through this Steven, over fifteen (15) or

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twenty (20) years of VDOT going in eminent domain and then a person who had three acres only has an acre and three quarters now and it's a hardship.

Mr. Apicella: It is a hardship in a different context. I agree with you. I am troubled... I am having trouble seeing the hardship within the context of a variance, that is where I am seeing a disconnect, unfortunately. Because I think what the applicant is asking for has a lot of merit and has been pushed into this situation because of the ground rules have changed. And I think we need to, irrespective of how we decide on this particular case, need to go back to the County and say this is a problem, it's only going to exacerbate as we go forward and it needs to be fixed in fairness to the people who are similarly situated, who by no act of their own or by complying with the rules are being put further into a non-conformity.

Mr. Gibbons: I couldn't agree with you more and the sooner they address this before they widen 17, the better off...

Mr. Apicella: Or any other. There are lots of roads that are going to be widened in Stafford County. So a lot of people could be negatively impacted by that action.

Mr. Gibbons: Go ahead Ray.

Mr. Davis: I think we have to decide this case on the merits of this case, not what's going to happen down the road and I think that we have the rules and regulations by the County as allowed by the state. So there may not be any other way to do this other than with a variance and that is what you've said, right?

Mrs. Hornung: Yes sir.

**MOTION:**

Mr. Davis: And I think it is a hardship and I think the County has caused it and if they didn't have this other building there, they could build a new building. So I am going to vote for this variance.

Mr. Gibbons: We have a motion for approval. Do we have a second?

Dr. Larson: Mr. Chairman, I will second the motion but I would like to make clear what I think we are talking about. We are talking about a variance for a sidewalk and we are talking about not increasing the non-conformity of the building in a physical sense. It's only this catch 22 we find ourselves in with the laws that is patently unfair, I believe, that I am seconding this motion. I agree with my colleague, it's tough to justify this based on a geography or topography type argument but I will second the motion.

Mr. Gibbons: Any comments?

Mr. Apicella: I think it's a stretch but I think it's an unfortunate situation that we're put in because the county has put us in this position. That in absence of granting the variance the applicant will not be able to do what he needs to do to be in compliance and I think there is probably a public good involved in creating that sidewalk. So with those issues being brought forward, I will support the motion.

Mrs. Musante: Excuse me Mr. Davis, can you repeat the motion?

Mr. Davis: I motioned to approve the variance 11-05/1100290.

Mrs. Musante: Thank you.

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Mrs. Stefl: I will probably support this motion but I, like my colleague says, I think we are opening up Pandora's box here because as I look around the county, there is a lot of possible non-conforming because just like this applicant, it was previously a home that is now being used as a building. Maybe fifty or sixty years ago, I can't remember, but I think we have a lot of those situations here in Stafford and I think we are just going to begin this snowballing effect. So as long as we bring this back to legal counsel or the Board of Supervisors, we've got to grasp this before it gets out of hand.

Mr. Gibbons: I'm with you. Okay, I will call for the question, all in favor say aye?

Mr. Apicella: Aye.

Dr. Larson: Aye.

Mr. Davis: Aye.

Mrs. Stefl: Aye.

Mr. Gibbons: Aye. All opposed? The motion carries and we wish you good luck sir.

Mr. Shafer: Thank you very much. It is much appreciated.

Mr. Gibbons: Steven, I want to thank you and Dr. Larson, you made a good point. We have to go back and I will write this up and I will bring it back to the Board meeting. We will write it up, the problem that you're confronted with because just like Dr. Larson said, if you are going to do this, you have to have some fairness or some rules to live by and maybe there shouldn't be a variance application. Maybe it should be some other ordinance or part of the zoning ordinance that could be amended to do it. It's a worrisome thing but our job is to go back to the Board on an annual basis and point out what we think are mistakes, not mistakes but the way to enhance something so I will take this on and next month we will come back with a recommendation.

Mr. Apicella: Mr. Chairman, the only thing that I would ask is that we not wait until the annual meeting.

Mr. Gibbons: No, I am going to do next month.

Mr. Apicella: Move this forward as quickly as possible.

Mr. Gibbons: We will bring it back at next month's meeting. Okay, and thank you very much for coming tonight too.

Mr. Shafer: Thank you.

**VOTE:**

The motion to approve the Variance passed 5-0.

Mr. Ackermann – Absent

Mr. Apicella – Yes

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Hudson – Absent

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Mr. Ingalls – Absent  
Dr. Larson – Yes  
Mrs. Stefl – Yes

UNFINISHED BUSINESS

**2. Draft Variance Application**

Mr. Gibbons: The draft variance application, you all got this in your package and I want to bring you up to date with something that doesn't pertain to the draft but it's... The Board of Supervisors authorized the payment of bringing up the good Doctor from Richmond to meet with us at an offsite. I didn't hold it this month as requested because Larry was out of town on a cruise and when Mr. Ingalls takes a cruise I am very concerned because he hadn't taken one in thirty some years. But since the experience is there and there are no Saturdays available in October, we will get a Saturday in November but I want to see if, what is the holiday in October, is it Veterans Day?

Mr. Apicella: I thought it was Columbus Day.

Mr. Gibbons: Columbus Day, it's a holiday. If he could come up on a holiday and we all could meet and I will ask you if that is amenable to all of you and bring him up on Columbus Day and hold a retreat then.

Dr. Larson: Would this be an afternoon?

Mr. Gibbons: It's three to four hours. And then we could discuss this and get what his view points are and then we will all be together and write it.

Dr. Larson: This is a real problem here.

Mr. Apicella: I think Bob is talking about the variance application.

Mr. Gibbons: No, I am talking about...

Mr. Apicella: And it would be a good opportunity for us to mull it over in the presence of yet another expert and see if anything...

Mr. Gibbons: So, I am going to go back to him tonight. I am going to go home and ask him if...

Mrs. Stefl: When is Columbus Day this year? Is it a Monday?

Mr. Apicella: I think it is the 10<sup>th</sup> or the 11<sup>th</sup>.

Mr. Gibbons: It is usually a Monday because of federal and I will ask him and if he can then we will set up a three hour and if not then we will get a Saturday in November.

Mr. Davis: Can we get this to him before hand?

Mr. Gibbons: I am going to send it down to him tomorrow with your permission. And then we will bring back to the next meeting this problem we have here. We will write it up and if you tell the County Attorney the problems we have. You know, it's not being... I guess you can sense that this I not going away. Okay.

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**OTHER BUSINESS**

None

**ADOPTION OF MINUTES**

**3. June 28, 2011**

Mr. Gibbons: Adoption of the minutes of 28 June, any corrections? Then I need a motion for approval.

**MOTION:**

Mr. Apicella: So moved.

Mr. Davis: Second.

Mr. Gibbons: We have a motion and a second. All in favor say aye.

Mr. Apicella: Aye.

Dr. Larson: Abstained.

Mr. Davis: Aye.

Mrs. Stefl: Aye.

Mr. Gibbons: Aye. All opposed? And we have one abstention.

**VOTE:**

The motion to approve the June 28, 2011 meeting minutes passed 4-0-1.

Mr. Ackermann – Absent

Mr. Apicella – Yes

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Hudson – Absent

Mr. Ingalls – Absent

Dr. Larson – Abstained

Mrs. Stefl – Yes

**ZONING ADMINISTRATOR REPORT**

Mr. Gibbons: The next is the Zoning Administrator's report. Do you have anything? Melody, the zoning?

Mrs. Musante: We have a case coming up for November, a tentative case. It is for a new hotel on Route 1, they are having some floodplain issues. So, Rishi Baral is actually working with Clark

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Leming's office right now on trying to get a map amendment or something like that. If that's the case then we won't have anything.

Mr. Gibbons: Is that next to the Marriott?

Mrs. Musante: I'm sorry, say that again?

Mr. Gibbons: Is that the one next to Courtyard?

Mrs. Musante: It is. So, I should know something in the next week or so as to whether we are going to have it. If we do not, we do not have any new cases for November and its pending.

Mrs. Stefl: You mean October?

Mrs. Musante: Am I a month ahead, October, sorry. Yes.

Mr. Gibbons: But if we get this ordinance, I still would like to take a half an hour or maybe an hour.

Mrs. Musante: Okay.

Mr. Gibbons: Because what we've discussed tonight is important and in fact I'm like Ray. In the eminent domain law, we've got to pull that out to make sure the state doesn't have the enabling legislature that answers some of these problems. When you are going to take something away from somebody, you know, what is the avenue for he or she?

Mr. Apicella: Well again, it's not just when you take something away, it's when you are imposing rules that, again, create a more non-conforming situation that they have to otherwise abide by. So, it is not just a taking, in this particular case, there was no taking, they've got to put in a sidewalk because that's what the rules say.

Mr. Gibbons: No, no he had to dedicate part of his property back to VDOT. It was a taking in this case.

Mrs. Musante: He did.

Dr. Larson: It would be argues that it was a taking.

Mr. Apicella: Okay, I understand but there may be other situations, where again, in order to comply with county rules you may be put in a situation where you may be further into non-compliance with the rules.

Dr. Larson: I think it is an ordinance problem that can be solved by an ordinance.

Mr. Gibbons: Or if there is something in the state coed that is enabling, then we ought to adopt that, whatever it is. But I'm like Ray. I would like to follow... we are not the only county that has this problem.

Mr. Davis: Sometimes, the setbacks also change.

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Mr. Gibbons: That's correct.

Mr. Davis: There should be a grandfather clause in there somewhere.

Mr. Gibbons: We have one on 610 now, where the carwash is to widen because of BRAC, they have to widen the intersection there. So, they have to take away so many, I forget, so many parking spaces so now this whole back building is not in conformance. So he loses eight or ten things because they took property away from him.

Dr. Larson: But that is an eminent domain issue.

Mr. Gibbons: Yeah. Well this thing here could be an eminent domain issue if VDOT came in and said we'll take it.

Mr. Apicella: I'm with you, I'm just saying don't restrict it to just eminent domain issues, I think it is broader than that.

Mr. Gibbons: No, no.

Dr. Larson: What I find particularly galling in this case if things had been slightly different, he wouldn't have had to be here.

Mr. Gibbons: Amen.

Mr. Apicella: And spent the money to.

Mr. Davis: Or a separate piece of property.

Mr. Gibbons: If he would have broke it away and filed it.

Mrs. Musante: That's true.

Mr. Gibbons: He could have come in and subdivided, but I don't know if he could do that in B-2.

Mrs. Musante: Well than you... actually he would still be back here because we do not allow the subdivision of the property and that again would be considering increasing the non-conformity, regardless of if it's on that side or not. So we would still be back here for the same situation.

Mr. Gibbons: Okay, well Steven I want to thank you for doing your homework. Good comments. So we need a motion for adjournment.

ADJOURNMENT

Dr. Larson: Done.

Mr. Gibbons: Okay. With no further business the meeting adjourned at 8:10 pm.