

January 26, 2010 BZA Minutes

***STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
January 26, 2010***

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, January 26, 2010, was called to order with the determination of a quorum at 7:02 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.

Present: Ernest Ackermann, Ray Davis, Robert Gibbons, Karl D. Larson, and Marty Hudson, Paul Ortiz

Members Absent: Larry Ingalls

Staff Present: Gail Roberts, Deputy County Attorney
Rachel Hudson, Zoning Administrator
Melody Musante, Senior Zoning Technician
Stacie Stinnette, Recording Secretary

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

Mrs. Musante: There are no changes.

Mr. Gibbons: Before we hear the first case, does any Board Member wish to make any declaration or statement concerning any cases heard before the Board tonight? Okay, thank you. Now I ask the Secretary to read the first case.

DECLARATIONS OF DISQUALIFICATIONS

None

PUBLIC HEARINGS

1. **SE09-06/2900295 - REBECCA LEE ADAMSON** - Request a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards", A-1, Agricultural, to allow a non-profit

internet service as a Rural Home Business on Assessor's Parcel 47-9G. The property is zoned A-1, Agricultural, located at 857 Leeland Road.

Mrs. Musante: Case SE09-06/2900295, Rebecca Lee Adamson requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards", A-1, Agricultural, to allow a non-profit internet service as a Rural Home Business on Assessor's Parcel 47-9G. The property is zoned A-1, Agricultural, located at 857 Leeland Road. You have the application, the application affidavit, plat of the property, interior layout, violation notice, website information, photo of the property, the tax map and the vicinity map. The applicant is requesting a Special Exception to operate a non-profit internet service with days and hours of operation, Monday through Friday, 8:30 AM to 5:00 PM. There are three (3) additional employee's who do not reside on the premises. Applicant has indicated no clients will be coming to the home. All work is conducted on the computer or phone as their clientele are in very remote locations. There is an existing detached garage where filing cabinets will be stored. The current single-family dwelling is 1,932 square feet per the Commissioner of Revenue. The applicant has indicated the area designated for the home business is 470 ½ square feet, which does not exceed the maximum allowed of twenty-five (25) percent. The single-family dwelling was built in 1978. Home occupation permit was applied for August 20, 2009. This application was denied because applicant stated she would have employees. Message was left for applicant August 21, 2009. Received complaint October 2, 2009 concerning business. Notice of violation was issued October 7, 2009. Applicant contacted our office concerning violation and was given the application for a Special Exception. Violation has been placed on hold pending approval of this Special Exception. You also have an additional handout that was given to you tonight.

Mr. Gibbons: Any questions of staff?

Mr. Ackermann: One question.

Mr. Gibbons: Go ahead doctor.

Mr. Ackermann: If it's appropriate, the violation was noted by someone in the area, I guess? Is that how the violation was received?

Mrs. Musante: Normally, violations will come in from an adjacent property owner.

Mr. Ackermann: Okay, thank you.

Mr. Gibbons: Okay, now we will open up the public hearing for item number one (1). Is that applicant present? Yes ma'am, you have to come up please and you state your name and your address for the record.

Rebecca Adamson: My name is Rebecca Adamson.

Mr. Gibbons: Okay.

Neva Adamson: My name is Neva Adamson.

Mr. Gibbons: Okay, do you want to speak on behalf of your case.

Ms. Rebecca Adamson: Sure, I run a very small non-profit business, we work with indigenous peoples around the world. Indigenous peoples in the United States would be the American Indians and in Australia it would be the aboriginals, in Thailand it is the Karens people. We work directly in their communities so we have no customer traffic in this area. Any kind of work that we would be doing is going to be on a remote location. Everything that we do in my home is really computer and phone work. Our consultants live around the world but we tend to live and track and manage consultants through the computer and phone. I have a list of all of the neighbors except for two (2), I'm sorry, except for three (3). One woman lives way down at the one end of the road and I just never could catch her. The other people that have not signed actually, he cuts our grass and mows and plows the drive when it snows, so I think he would sign, I just could not find him. Otherwise, everybody in the neighborhood has signed a sheet saying that they have no problem with our having a business there. The one exception is the fellow that lodges the complaints, who is on my right here, Mr. Horton and we are in a dispute because he shot and killed my dog. Prosecutor Peterson is investigating up to eight (8) dog killings in our area that they allegedly think that Mr. Horton may be doing. He is under investigation for harassing me, trying to run me over and yelling obscenities at me. It has gone before the grand jury in November and it is, I heard, scheduled for another grand jury hearing this month. It is more of personal issue than anything to do with the neighborhood zoning. We keep a very neat appearance, we have small traffic, we have three (3) cars that are staff cars. We did have more cars when we were moving in because we had to have the computer people and the phone people, so we have had at different times the setup of the office. Other than that there has been no real disruptive traffic.

Mr. Gibbons: Any questions to the applicant?

Mr. Ackermann: I am just curious, how do you, what do you do for internet service? Do you run your own servers there or do you rent out rack space some place or how does that work?

Ms. Neva Adamson: I can actually answer that. We actually have a server on location there. We have a 2007 outlook exchange server that is housed and figured into the square footage of the office space.

Mr. Ackermann: So who services that?

Ms. Neva Adamson: Actually, it is someone who works for BizNets. His name is Anthony Scott, who services it right now.

Mr. Ackermann: So that is not one of your employees?

Ms. Neva Adamson: No, he is actually not an employee, he is a consultant.

Mr. Ackermann: Thank you.

Ms. Rebecca Adamson: On the internet service stuff, I am very low tech. I will admit that right up front but he maybe comes out a couple times a month.

Ms. Neva Adamson: He generally logs in remotely to do all of our stuff.

Mr. Ackermann: Sure. I was just curious.

Dr. Larson: Just a quick question, where do your employees park when they are at work?

Ms. Rebecca Adamson: The property is about seven (7) acres and we have kind of a turn around in front of the garage and it could hold probably about five (5) cars and we have three (3) cars right there and sometimes I put my car in the middle.

Dr. Larson: Thank you.

Mr. Ackermann: About how far are you from your closest neighbor?

Ms. Rebecca Adamson: Well, I am not good at distance. It is seven (7) acres and we are sort of in the middle, so we are probably like one and half acres from this guy and maybe one and a half acres from that guy.

Mr. Ackermann: And there are no houses behind the property, right?

Ms. Rebecca Adamson: Brooke Road is behind us so you have to go all the way in the back.

Mr. Ackermann: Far behind, you're familiar with VRE.

Ms. Rebecca Adamson: Yeah, it is pretty far behind us. We actually have more parking than we need, even as a house we have way more than I would ever use.

Mr. Ortiz: Based on some of the traffic reports that we have just taken a notice on, how much traffic do you have that is business related, personal related or other?

Ms. Rebecca Adamson: Well, we had a lot of traffic recently with the holidays, I had a lot of people down visiting, I had cousins from all over. It was unusual but during the Christmas season we probably had six (6) to seven (7) cars there. Normally, Jess comes in and Jack he comes in and Neva comes in. Like on a Monday through Friday, I am trying to think, on Saturdays and Sundays I have had people over. Neva will come over on the weekend with the boys and we will hot wheel down the drive. Um, maybe three cars on average on the weekends. I don't want to be held to the that.

Ms. Neva Adamson: We didn't track it. Someone else tracked it for us.

Mr. Davis: In your square footage you use for the business, you show copier and servers in different parts of the house but you only use space for that piece of equipment as your office space that you are using. Is that correct?

Ms. Rebecca Adamson: Yes, the copiers sit out in a great big room and they are way over in the corner so all you do in step down, move over and copy and go back up into the entrance to go to your office area.

Mr. Davis: How much space do you actually use for your own personal use?

Ms. Rebecca Adamson: I use the big master bedroom and the master bath, I use the kitchen, the dining room and probably about a big portion of the living room when you walk in and I use the family room in the back although I don't watch much TV though. I read, so I don't run around a lot but I have a reading couch and light and everything in the family room. I have a big screen TV but I rarely watch that.

Mr. Davis: When did you move into this location?

Ms. Rebecca Adamson: Was it August?

Ms. Neva Adamson: October.

Ms. Rebecca Adamson: October, sorry, I was going to say November.

Mr. Davis: Thank you.

Mr. Gibbons: We will be through with it for now and we will come right back to you.

Ms. Rebecca Adamson: Okay.

Mr. Gibbons: Is there anyone who would like to speak for the application right now? Anybody in the room like to speak for the applicant? Anybody want to speak against the application? State your name and your address please sir.

Mr. Richard Horton: Yeah, I'm Richard Horton and I am directly across the road from Rebecca Adamson. Okay, this business was well established on Bourbon Street, it is flushed with money. There was absolutely no legitimate reason to move it down in a neighborhood. A number of vehicles, at least five (5) a day with employees who are regular come and work at the house and I am considering two individuals who live there, one lives in the house and one lives, I believe upstairs in the garage. I am considering them employees, they have not been identified otherwise. The application in my view has no merit whatsoever, there is no family member living in the house and never has been. As I said, an individual identified as a cousin from Florida, he sleeps in there every night and leaves before the first employees get to work. The traffic situation, we live on a private road and contributes nothing to it. For the bulk of thirty-six (36) years, I maintained most of it with buying gravel and grading it, hundreds of hours and thousands of dollars. The burden on it as a result of this business being located there is noticeable as you can see from the pictures that I have given you. It is substantial impact. Additionally, I have been blocked in the road, I have had to pull over, there is a lot of traffic for a one way road without passing. And finally, I would have to say the entire house is used for the business, well over twenty-five (25) percent indicated. That is briefly what I have to say and again, I don't think it should have been allowed in the first place.

Mr. Gibbons: Okay, Mr. Horton, thank you very much. Anybody else who wishes to speak against.

Mr. Ackermann: Can I ask a question?

Mr. Gibbons: You certainly can.

Mr. Ackermann: You said this was, you made a reference to Bourbon Street to start with?

Mr. Horton: It was in the old Bowman distillery off of Route 2, very nice commercial structure over there that they vacated in lieu of moving into the house.

Mr. Ackermann: Thank you.

Mr. Gibbons: Anybody else that would like to speak against the applicant? I will go back to the applicant now, do you have any rebuttal to what Mr. Horton has said?

Ms. Neva Adamson: It is Neva Adamson and I would like to make one rebuttal as to why we actually did move from Bourbon Street, which was located in the Bowman center. We are a non-profit and we actually got hit with a fund raising issue, we had some trouble making money,

raising our funding for our non-profit. So we needed to find a location that was going to be less expensive than the location that we were currently in and that is what facilitated the actual move was lack of funding. We were funded by the Ford Foundation, the McArthur Foundation or the Rockefeller Carnegie Foundation, they got severally hit in the markets and when their endowments went down, their grant making went down.. We were able to save way over fifty (50) percent of our rent in this move. I actually don't know anything about what Mr. Horton is saying about the two people, there is only one person that lives with me right now and that is my cousin, Gene Hendricks. He lost his job in South Carolina and he came up here to look for employment so he is staying with me now. He does marble tops, there is no way he is employed at the organization, he is just up here looking for a job so that would be the only other traffic that would be in the area and most of the time I ask him to keep his truck, I either keep his truck or my car up at the other property just so we don't have it down at the office property. I recognize, Mr. Horton will often stand on his four wheel drive and stare at us when we come and go and he has made the office, it is two young woman, pretty nervous about it. They do not go anywhere up and down the road except straight to our drive and our office.

Mr. Gibbons: But this is your primary residence, right?

Ms. Rebecca Adamson: Yes.

Mr. Gibbons: And you are legally...

Ms. Rebecca Adamson: I have my drivers license.

Mr. Gibbons: No, you're under oath.

Ms. Rebecca Adamson: I own both properties but I own this. She owns them all with me, my daughter.

Mr. Gibbons: Any other questions? What about the condition?

Ms. Rebecca Adamson: It is kept in immaculate conditions.

Mr. Gibbons: No, no, I want to go over the hours.

Ms. Rebecca Adamson: The house, we open, Jackie gets there at about a quarter to eight and puts on the coffee, I get there at about 8:30 and Jess gets there about nine and Neva comes at about ten. That's it. Once a week we might have a consultant show up.

Mr. Gibbons: So your hours are going to be eight to what?

Ms. Rebecca Adamson: We get done by five and on Friday, we are out by three.

Mr. Gibbons: So, it is Monday through Friday and we'll say eight to five.

Ms. Rebecca Adamson: Yes.

Mr. Gibbons: Is that what you agree to?

Ms. Rebecca Adamson: Yes.

Mr. Gibbons: And you have off street parking for how many? Just the three of you? Three plus yourself?

Ms. Rebecca Adamson: Yes. We could probably park eight cars up there but we just really have three that are there from the employees.

Mr. Hudson: I have a question and maybe I misunderstood, when you were talking about the coffee and when the first person gets there. You said you get there are 8:15, I thought you lived there?

Ms. Rebecca Adamson: I'm sorry, that is right I do live there but I get up and go walk my dogs. I get up at about 5:30 or 6:00 in the morning and I take them for a two hour walk and then I get back every morning. My dogs are kept in a fence, they are not on this property, my dogs are on the next door property and I go up there every morning and I think he would even admit to that, I walk my dogs every morning on a leash because the other one got killed.

Mr. Hudson: Okay, I just wanted to make sure.

Ms. Rebecca Adamson: Yes, I get back and she has the coffee going.

Ms. Gibbons: He brought up a good point about the driveway, are you going to help maintain that? Private Street?

Ms. Rebecca Adamson: We have a neighbor that we pay to do our plowing, graveling and grading. It is absolutely all locally maintained, the state doesn't maintain any of that.

Mr. Gibbons: No but I mean you put your contributions into the maintenance of that road? He says you don't.

Ms. Rebecca Adamson: No, we don't, no one pays on the maintenance of the road. None of the neighbors pay, everybody has there own tracker and they go out and do the front part of their frontage so I pay my neighbor to do mine. He does his but he happens to be across the road from

me so he does some of mine too actually but the other neighbor on our side of the road does his, the office and the other property.

Mr. Gibbons: How many live on the private access now?

Ms. Rebecca Adamson: There is about twelve (12) house down there I think.

Mr. Gibbons: Okay.

Ms. Neva Adamson: There is probably ten (10) to twelve (12).

Mr. Ackermann: And all the lots are about the same size?

Ms. Rebecca Adamson: You have to have at least six (6) and a half acres to be down there, I think. Or seven (7) acres maybe, so there is not a lot of people down there and we are all required to do our own maintenance. Some people do more than they are required, absolutely. We have two (2) neighbors that are real good about it, we have two (2) single woman up there that maybe don't do theirs, I don't really know because the road does get done.

Mr. Gibbons: But you bring in more than normal traffic, absolutely, yes.

Mr. Gibbons: Tonight when you leave, will you ensure that you keep it up to the right standards.

Ms. Rebecca Adamson: Absolutely, we will even put a load of gravel on that one area then if you want us to.

Mr. Ortiz: One of the comments made, there was a question about the utilization of the square footage. Can you comment on using more or less than twenty-five (25) percent of square footage for your business?

Ms. Rebecca Adamson: The office itself takes up a little less than twenty five (25) percent. Neva did the map.

Ms. Neva Adamson: Yeah, I would say that the drawing I did, the diagram that I submitted is very accurate as to the percentage of square footage that we are using, there are one (1), two (2), three (3) offices and then there is the reception area. I did the square footage of the reception ladies desk and so that is pretty much what we use as the office and granted, we do definitely use the kitchen and the dining room as well but that is more like common space.

Ms. Rebecca Adamson: Like if someone comes into the kitchen to get coffee, they can sit down at the kitchen table. We do not make them get up but people don't usually do that actually.

Mr. Ortiz: Thank you.

Mr. Gibbons: So you don't know really how much you do use? I mean, you know you have a limit?

Ms. Rebecca Adamson: Yes.

Mr. Gibbons: And you are going to live within the limit, correct?

Ms. Rebecca Adamson: Absolutely.

Mr. Gibbons: Okay, any other questions? Doctor?

Dr. Larson: You say you have a receptionist? Did I hear that right?

Ms. Rebecca Adamson: But no customers ever come to the house?

Ms. Neva Adamson: When we originally hired her, we call her a receptionist but we have since changed her job title because she does answer the phone but if DHL or UPS shows up with a delivery but she is not greeting really anybody. In fact, DHL and UPS still knock on our door. So it is not a receptionist to actually greet people, her main job is office admin and grants coordinator.

Ms. Rebecca Adamson: We make grants, like \$2,000 or \$5,000 grants to our indigenous communities that we are working with. So she sits in that desk but she does all the grants management for us.

Dr. Larson: Is she one of the three (3) employees?

Ms. Rebecca Adamson: Yes.

Dr. Larson: Okay, just bare with me with one thing, I just want to hear one more time. How many nights a week would you say that you spend the night there? You live in the house, what do you mean by that? You live there every night?

Ms. Rebecca Adamson: Yes, except I travel a lot. I live in the house but I am gone a lot. I have my cousin, my cousin now stays down there when I am not there and he goes up to the other house and stays while looking for a job. If you want me to go over the staff again, it is Jackie Tiller, she is our full time grants and receptionist role; Jessica is what we call our field person, who works with the actual communities and then Neva is the Admin and Human Resource Development fund raising position. We have other consultants but they are not there, they don't even show up once a week but they do show up once in a while.

Mr. Gibbons: Any other questions? Okay, I will close the public hearing and bring this back to the Board. The Board wishes?

Motion:

Mr. Ackermann: Mr. Chair, I would like to make a motion that we approve the request for a Special Exception in case SE09-06/2900295. Of course provided with the conditions that this business follows that Zoning Ordinance, which is as we have heard no more than three employees outside the family, have the business within the twenty-five (25) percent of the total area and from what I think you were hinting at was be sure to limit the business hours to eight (8) to five (5), five (5) days a week.

Mr. Gibbons: And that they would maintain that property.

Mr. Ackermann: And that they would maintain the property in front as well.

Mr. Davis: And the applicant must reside there.

Mr. Ackermann: It is home.

Mr. Gibbons: You actually must reside there.

Mr. Ackermann: We have in the recent past been putting time limits on these of five (5) years and they would have to reapply in five (5) years.

Mr. Gibbons: Right. Do we have a second?

Mr. Hudson: Second.

Mr. Gibbons: Mr. Hudson seconded the motion. Any discussion? All in favor say aye.

Mr. Ackermann: Aye

Mr. Davis: Aye

Dr. Larson: Aye

Mr. Hudson: Aye

Mr. Ortiz: Aye.

Mr. Gibbons: Aye. All opposed? Any abstentions? Good luck to you and make sure you stay in compliance with what has been placed upon you now because you work very hard and you don't want to lose it because you violated the code.

Vote:

The motion to approve the Special Exception with Conditions passed 6-0.

Mr. Ackermann – Yes

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Hudson – Yes

Mr. Ingalls – Absent

Dr. Larson – Yes

Mr. Ortiz – Yes

Ms. Rebecca Adamson: Thank you.

Mr. Gibbons: We have a request from the attorney Mr. Clark Leming that item number four (4) and item number five (5) be deferred to the next board meeting for the lack of seven members tonight. Is everybody okay with this?

Mr. Ackermann: Those are the CRPA issues and the duck blind issues?

Mr. Gibbons: That is correct. Next item on the table is item number two (2)

1. **SE09-7/2900325 - SERGIO ORELLANA** - Request a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses and Standards, A-1, Agricultural," to allow parking and storage of commercial vehicles on a parcel less than three (3) acres on Assessor's Parcel 19-26F. The property is zoned A-1, Agricultural, located at 40 Deshields Lane.

Mrs. Musante: Case SE09-7/2900325, applicant, Sergio Orellana request a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses and Standards, A-1, Agricultural," to allow parking and storage of commercial vehicles on a parcel less than three (3) acres on Assessor's Parcel 19-26F. The property is zoned A-1, Agricultural, located at 40 Deshields Lane. You have the application, the application affidavit, plat of the property, notice of violation, copy of Section 15-120, photo's of the property, tax map and vicinity map. Applicant is requesting a special exception to park and store commercial vehicles on a parcel less than three (3) acres. Currently, the property consists of two (2) parcels only combined for tax purposes. A lot consolidation plat was submitted November 10, 2009 to combine two (2) parcels. After approval of the lot consolidation, the parcel will consist of 1.86 acres. The fifty (50) foot Right of Way (ROW) shown on the house location survey dated November 24, 2002 was abandoned in 1977 by deed. Single-family dwelling built in 1972. Permit applied for July 16, 2009 for a shed

under construction. Permit placed on hold pending submittal and approval of lot consolidation. Complaint filed August 25, 2009 for the parking and storage of commercial vehicles. Notice of violation sent September 14, 2009 for inoperable vehicles and the parking and storage of commercial vehicles, second notice of violation sent October 20, 2009 and final notice sent November 18, 2009. These parcels are nonconforming and were designated A-1, Agricultural in 1978. The violation has been stayed pending the Board of Zoning Appeals action of this request.

Mr. Gibbons: Any questions of staff? My understanding is that this is A-1, correct?

Mrs. Musante: Yes.

Mr. Gibbons: And an adjacent parcel is B-2?

Mrs. Musante: Correct.

Sergio Ramirez, Jr.: I am Sergio Ramirez, Jr. and I am twenty-four (24) years old and I will be translating for my dad.

Mr. Gibbons: Yes sir, thank you very much for doing that.

Ramirez: My dad got this notice in the mail saying that he has been violating the parcel where we live at and he has been doing this for a living. He has three (3) trucks in there because he is a truck driver and he has his company. One of them is a dump truck and the other is a tractor trailer and the dump truck only works half season because of construction. You know in the winter it goes down and the other time of the season he drives the tractor trailer and goes out on the road. That is the main reason why one of the trucks just parks there.

Mr. Gibbons: So you are saying you have two (2) trucks? One is a dump truck?

Mr. Ramirez: One is a dump truck and the other one is a trailer and there is another he has there that has sentimental value for him because that is the truck he started his company with. He has three (3) trucks.

Mr. Gibbons: Melody, one of the problems was vehicles stored on the property?

Mrs. Musante: Right.

Mr. Gibbons: Can you explain that to the family?

Mrs. Musante: One of the conditions, if the Board chooses to approve this Special Exception for you to park these vehicles. The inoperable vehicles also located on the property have to be removed. That was also part of the Notice of Violation that was sent to him.

Mr. Gibbons: So you are asking for three vehicles.

Mr. Ramirez: Yes sir.

Mr. Gibbons: All will be operative?

Mr. Ramirez: Yes, all will be operative.

Mr. Gibbons: All are operative and properly licensed?

Mr. Ramirez: Yes, all are licensed.

Mr. Davis: When you received the notice of violations, why didn't you correct the problem at that time?

Mr. Ramirez: I work nationwide and I am not home most of the time and I will be leaving again for Texas on Friday for two weeks. That is the reason why he has not come over because he did not have somebody to translate for him.

Mr. Davis: The photograph we have of the property show at least four (4) trucks and probably three (3) or four (4) maybe five (5) cars. Some of them have no tags on them, they are not operable. What are you going to do about that?

Mr. Ramirez: All the cars that are at the house have tags, the only one that doesn't have a tag right now is a 1971 Dodson and he is getting the paperwork for an antique.

Mr. Davis: This is a tan ford pickup truck that has no tags on it.

Mr. Ramirez: That is the one that is getting removed.

Mrs. Musante: Mr. Gibbons, the inoperable vehicles issues is something we can handle through the court system after this hearing. You can include it as a condition that they be removed but we can also take court action on those inoperable vehicles. So that is not something that you all need to worry about. Just so you know.

Mr. Gibbons: Well, when you are presenting your case, it affects your thought process of what is going to happen on the property. Any question of the applicant? Dr. Larson?

Dr. Larson: How many inoperable vehicles are we talking about on your property?

Mr. Ramirez: Right now, there is one truck and the 1971 Dodson, that is two (2). The truck that is in the back, that truck is going to be disassembled for parts.

Dr. Larson: Okay, so if I understood right, there are two (2) vehicles that are inoperable?

Mr. Ramirez: Yes.

Dr. Larson: Thank you.

Mr. Gibbons: Any other questions?

Mr. Ortiz: I happened to notice a tractor trailer, is that one of your vehicles as well?

Mr. Ramirez: Yes.

Mr. Ortiz: This is the yellow vehicle.

Mr. Ramirez: That is the one he uses with the dump truck during bad times for summer and stuff like that. That is what he uses to build roads.

Mr. Gibbons: Okay, if there are no further questions, I will open the public hearing now. Anybody that would like to speak for the applicant, please come forward. Anybody that is opposing this application, would they please come forward. If you would all just stand in a line.

Barbara Edwards: I am Barbara Edwards, I reside directly across Deshields Lane from the property in question. All of the storage that is done at the rear and side yard of 40 Deshields Lane is clearly visible from my property. There is no vegetative screening and there is storage facility. The condition in which the property at 44 Deshields Lane is maintained has decreased the value of my property. Had I known that the property would be converted from residential to commercial/ industrial storage, I would not have bought my property and suffered the loss of value that I have. I am grateful for the neighbors that launched the complaints and to my neighbor at 40 Deshields for filing the application so I can voice my objection. I was prevented from making the initial complaint because my husband works for the county and any filing of a complaint by us was deemed to be conflict of interest. After my neighbor moved into the premises, there was two commercial vehicles on the property, a semi truck and red dump truck. At one time, an acquaintance of my neighbor parked his dump truck also on the property bringing the total to three commercial vehicles. After we complained to the neighbor, the dump truck was moved within a year, two additional dump trucks, inoperable semi's used for parts were added to the property and remain there today. You will see on photo one that I have, you will see four trucks that are currently on the property. The picture was taken this past Sunday. In addition to the commercial trucks, there are tires stored on the property which are leftovers from the dump trucks. Photograph two shows the tires as well as a mound of refuse that came from the dump truck. That is not the only pile on the property. The trucks are not the only commercial equipment on the property as you mentioned earlier. There is earth moving

equipment and a roller and you had that on one of your photographs and is also in photograph three of what I gave you. In the rear of the property, there is a flatbed trailer and a camper type truck storage shell that is stored and they have been there for some time. Photograph four shows those as well as another mound of refuse that was left there. While I object to the application, I realize that you can approve it and if you approve it, I do hope that you would put a sunset clause on it. I realize that it is his livelihood but my house is also part of my livelihood. I have put my savings in it and I put my life in my house.

Mr. Gibbons: I am a little disturbed by a statement that you said tonight. You said you could not file a complaint because your husband is an employee of the county and that would be considered a conflict of interest?

Mrs. Edwards: Yes.

Mr. Gibbons: Andrew, can you sometime look into that? That is hard to believe.

Mr. McRoberts: Well I think that is probably within the purview of the county attorney and I do not want to step on his toes.

Mrs. Edwards: My husband works in the Zoning area.

Mr. McRoberts: This is an employee that believe he has a conflict of interest and I don't advise that employee so I think I will take a pass.

Mr. Gibbons: Okay. Thank you ma'am and thank you for coming.

Mrs. Edwards: Thank you very much.

Mr. Gibbons: Yes sir.

David Johnson: Good evening ladies and gentlemen, my name is David Johnson and I reside at 52 Deshields Lane. I also am opposed to this request for an exception to this policy. I like to reiterate what Mrs. Edwards has said. The trucks along with the vehicles along with the trash, sometimes the truck brings stuff from work sites, dumpster residual in the area; everything from mulch, gravel, rocks and it just sits there. It creates an unsightly issue, some of the pictures that Mrs. Edwards has presented to you reveals that but not in detail. As Mrs. Edwards has mentioned, this situation has also adversely affected my personal property value. As I anticipate recalling to the military, I also anticipate selling my home. I have bore witness to the impact this has had on the sale of a home. In fact, one home was on the market for nearly eighteen months. That house is adjacent to this property and from that house you have a very clear view of what is there from the front porch. Ladies and gentlemen, what you see from that front porch is all the residuals from these vehicles. Now they mentioned that there was only two vehicles or

three vehicles. There is actually four trucks, not three trucks and out of the four trucks, only one that I have seen actually moved from that location and of the four trucks only one is registered. They allege that one of the vehicles is used to move a tractor, I have never seen that tractor move by use of any vehicle or truck on that site. Yes, there is a trailer to accommodate that activity but no such activity has ever occurred. There are over seventeen truck tires in that back, these truck tires serve as a nursery for mosquito's. There is also a bunch of other eyesores. Everything from water heater, toilet, used to be a refrigerator and washer and dryer. All of these collectively not only present the site of a unauthorized or illegal junk yard, you have the dumping of the residual work material and in the very front yard, there are all these disabled vehicles assembled, creating the appearance of an illegal junk yard. Now the house adjacent to, I don't know if I mentioned it early, eighteen months on the market. That family had to move and that house just went into foreclosure.

Mr. Gibbons: How many residents on Deshields?

Mr. Johnson: I don't know. They said eleven. As I indicated, one of my biggest concerns is that I anticipate being recalled to the military, I strongly feel that this eyesore along with the activities going on there is in total disregard or consideration for the neighbors and I am very concerned about it adversely affecting the sale of my home. That is the end of my statement.

Mr. Gibbons: Thank you very much for coming tonight too. Yes ma'am.

Cathy Patterson: Hello, my name is Cathy Patterson and I live at 48 Deshields Lane and I actually filed a couple of complaints back in August. The reason I did so is because...

Mr. Gibbons: Did you hear, what did they say, how many residents?

Ms. Patterson: I think they said eleven. Eleven or twelve.

Mr. Gibbons: Okay ma'am.

Ms. Patterson: They had a discarded washer and dryer out in the yard along with a water heater and tub. My concern was, they have a young child and there is another child from across the street that comes over and plays with them and they are out there playing around these appliances. They were not sealed or closed or anything. That is why I filed a complaint because I thought it was a hazard and then with the tires and all of the water that is collected there, so I thought it might be some kind of environmental hazard, definitely a hazard for children.

Mr. Gibbons: Thank you ma'am.

Fred Patterson: Good Evening, my name is Fred Patterson, I reside at 48 Deshields Lane and I reiterate what my previous neighbors said regarding the trucks. Three tractor trailers and one

dump truck and I can honestly say that I have not seen those tractors move in over a year. I do not know if they are registered or not. I know there is mechanical work being done out there and as my wife stated earlier, there are tires and mosquito's. A bulldozer has been sitting in the yard for over a year. The stuff that is left over from the jobs, they are not dumped back in the yard, it is actually dumped on the side of the road. So everyday you drive by it and sometimes little bricks tumble out into the road, it is a hazard and it drives down the value of the properties back there. Like my neighbor stated, the house was on the market for eighteen months, real estate person said that one of the problems selling the house was that prospective buyers drive by and the first thing they see is four trucks. Three trucks are inoperable and there is a yard full of junk cars. We did not buy there to have to see this everyday. If I had young kids, I would really be upset because it is a hazard for kids also. I strongly oppose anything, if this was a housing association, the housing association would not go for it. You could not park your tractor trailer in a subdivision and leave it there for three or four days or three or four weeks. I strongly oppose it. Thank you.

Mr. Gibbons: Yes sir, thank you for coming. Yes ma'am.

Elise Simpson: Good Evening, my name is Elise Simpson and I live at 31 Deshields Lane along with my mother Ida Simpson. I won't reiterate what my neighbors have already told you. I have a unique point of view on this, I live in one of the front houses so I do not see what my neighbors are discussing. I don't doubt it, I have seen the pictures along with everyone else. What I would like to point out, I think on the fourth page from the back of your packet of pictures, the top picture of trucks, you can see that the front of the house is in the corner of that picture so the trucks are along the side of the front, which faces my back yard. So although I don't see the amount of piles of things and the water heaters and those kinds of things mentioned previously. The trucks that are broken down on the side of the house look directly into my yard and that does affect me greatly. I do have great compassion for Mr. Orellana's situation, the fact that he has a dump truck because it is his business and I would hate for that to impede his business. At the same time, we live on a deeded Right of Way (ROW) on a gravel road. There is a lot of wear and tear and my concern that I really want to express is that several complaints have been made yet there seems to be a failure to clean up the yard. Although that is a separate issue and I understand from what you said earlier that it can be addressed through the legal system, that's terrific. My concern is because those things have not been addressed. How do I know as a neighbor that the limit of two or three vehicles, whether it is a dump truck or trailer whatever is going to be held up as well. And really that is what my concern is, like I said I am in the front so I sympathize with my neighbors who have to see that. We also have young children, nieces and nephews who come by and they play in the yard. It is a concern if there is going to be big trucks going up and down that road. It is a one-way road and you have to yield if someone is coming and it does concern me to have those vehicles coming in and out. Thank you for your time.

Mr. Gibbons: Thank you ma'am.

Linda Alvilhiera: My name is Linda Alvilhiera and I live at 24 Deshields Lane. My backyard runs to Mr. Orellana front yard. The only problem I have is his front yard and his side yard because there is rusted bulldozer up there, there is a hot water heater laying up there in his yard. I don't go by the back of his house that often but the people that do live behind there have very expensive homes and I understand their problem with his property. I have lived at my home for thirty-nine years and I have never had to look at such trash and I don't want to live there another thirty-nine years and look at it. I think he needs to clean up his yard. I don't have a problem with his one dump truck, it is his business, he is very respectful coming in and out of the road with his dump truck. I have a problem with all the other eighteen-wheeler cabs sitting up there and if he plans on running them up and down the road, we live on a dirt road, it is not meant for a lot of heavy equipment up and down that road. As far as his son speaking for him, he can speak English just like I can so his son coming in to speak for him is not going to get it. Thank you.

Mr. Gibbons: Thank you ma'am.

Debby Logan: My name is Debby Logan and I live at 1021 Garrisonville Road. My back yard backs up to his front yard. My concern is besides all the stuff that is up there. Environmentally, if he should have a leak of diesel fuel, all that is going to run right down the hill into my well. I live far enough off of 610 that it would be very expensive for me to hook up into city water. There are places where you can park commercial vehicles. You pay a price but it is not at a home. One of my grave concerns is if there is a diesel fuel leak it would run right into my well. Thank you.

Mr. Gibbons: Thank you ma'am. Anybody else? Okay. Son, did you want to get up and address any of the questions that the people rose?

Mr. Ramirez: First of all, she said something about my dad speaking English, he does speak English but he does not comprehend that well which is why I am here.

Mr. Gibbons: This Board understands.

Mr. Orellana: I understand most of what the neighbors say. I know the boiler looks ugly but I am starting to build a shed behind my house for keep it orderly. You know the tires they are talking about, I want to put them inside the shed but in the past I had a problem with my survey. The shed that I want to build, it is not correct because I need to vacate the line on the ROW. I am starting to build my shed but they stopped me from building my shed. I am waiting for a permit to finish right there to put the all the things they say looks like trash, I want to put inside the shed.

Mr. Gibbons: Is there an active permit on record?

Mrs. Musante: The permit has been put on hold because he has to do a Boundary Line Adjustment (BLA), a lot consolidation plat.

Mr. Gibbons: Okay, and you have already stated that to him, correct?

Mrs. Musante: Yes.

Mr. Ramirez: He keeps the dirt on the property to fill the holes on Deshields Lane because it bothers us. When you drive by there are bumps in the road, and that is what is used for. The mulch is for the yard.

Mr. Orellana: I have projects in my mind. I keep the mulch for the garden to make it look beautiful. My truck has been sitting for a year, I know that but it was because I did not have contracts. In the next couple of weeks I have the permits for hauling on the interstate because it is my job. I am a truck driver. The other dump truck I have, I work seasonally. I use it for cleaning around the house too. Another thing, the equipment that is parked near the main road but I know sometime for example, when it was snowing, it was a lot and that is what I keep that equipment for. For cleaning out in case of emergency. I don't do that because I don't know who needs help. I have a contract on my house to pay sixty dollars a year for maintenance. They never refund that money and I need to do something for that, I don't have authorization for that.

Mr. Gibbons: Okay, any questions from the Board?

Mr. Davis: Where is your company located?

Mr. Orellana: It is 40 Deshields Lane.

Mr. Davis: You run your business out of your home?

Mr. Orellana: Yes.

Mr. Davis: Do you have a permit for that?

Mr. Orellana: Yes, I have my insurance.

Mr. Ramirez: He has the FDC, he has all the permits for that.

Mr. Davis: Do you have a permit from the County?

Mr. Ramirez: That is the one he submitted today.

Mr. Davis: Is that the application?

Mrs. Musante: I am not aware of a home occupation or home business permit that has been applied for by him. I did not check the computer today.

Mr. Gibbons: Paul, did you have any questions?

Mr. Ortiz: I have a complication from a legal perspective. Although I have read all of the material, can you expound on the quantity of vehicles inoperative and operative. I realize there is a limit of two inoperative based on the acreage but what is the limit of operative vehicles and or trucks? Do they quantify the type of vehicles?

Mrs. Musante: We cannot limit the amount of operable regular vehicles, cars or trucks. Inoperable, there is no more than two in the zone that Mr. Orellana is in, the A-1. The commercial vehicles, it does not place a limit on how many vehicles he can park there. The reason he is actually before you all is because he has less than three acres. If he had more than three acres, he would not even be here.

Mr. Ortiz: As for the comments made by his neighbors, those are separate issues and I understand that but how many of those issues have been identified from complaints and what on record and what is going to be done or what is happening with them?

Mrs. Musante: The first complaint came in back in August and that complaint to my knowledge was just on inoperable vehicles and the parking of commercial vehicles. I do not have the violation file with me, I can check into that for you. There is a process and since Mr. Orellana did apply for the Special Exception, once he applies, it holds off all violations until after the hearing.

Mr. Gibbons: Any other questions?

Dr. Larson: I have a question Mr. Chairman. Mr. Orellana, is there some place else that you could park your vehicles, still on your property, but so the neighbors would not see them somehow? Trees blocking the vision?

Mr. Ramirez: He said he has this space in the back of the house, they would be parked nicely. Where else could he park his trucks at?

Dr. Larson: So you are saying there really is no option to park them somewhere else?

Mr. Ramirez: No.

Mr. Hudson: Does your father understand that the lot is not large enough by the County Code to have this number of vehicles on it? The lot itself is not large enough.

Mr. Ramirez: He did not know that.

Mr. Hudson: And to have a business out of your home you have to have a special permit from the County, whether you had a truck or whether your wife was a hair dresser. In order to operate a business out of your house, you have to a special approval from the County?

Mr. Ramirez: That is the thing that he is applying for. With all this hearing we got in the mail, as a matter of fact, I went with him today to check out with the insurance and all those people. That is why we are here today.

Mr. Hudson: This has nothing to do with the Commercial CDC License or anything like that. It is just a county requirement.

Mr. Ramirez: So what is it that he can do to fix this issue?

Mr. Gibbons: It is a very delicate issue because if you're applying, you have a lot of activity going on. You have a consolidation of lots pending, you have a building permit being held until you get the consolidation. If the lot consolidation went through, how many acres, how many acres would have then?

Mrs. Musante: Still less than two, 1.86 acres.

Mr. Gibbons: Okay, so what can he do with less than two? He has to have three acres.

Mrs. Musante: He has to have this Special Exception in order to park the vehicles there.

Mr. Gibbons: You have to have three acres in the A-1 or more.

Mrs. Musante: For by-right, yes.

Mr. Gibbons: So even with the consolidation...

Mrs. Musante: He would still be in the same situation.

Mr. Hudson: I had a question for our counsel, would it be proper to make a motion to table this until such time as the gentleman here, and we can put a time period on it, had an opportunity to sit down with an attorney or someone that could advise him on his legal rights or what he has to go through. I have seen us approve trucks but not when your neighbors come in and talk about your not taking care of your property. Hot water tank and stuff like that, you have a lot of problems.

Mr. McRoberts: As a legislative body, which you are when you are determining whether to grant a special exception, you have the same ability that the Board of Supervisors does in considering zoning applications and if you wish to defer it to allow the applicant to consider the application further or to get counsel or for whatever reason, then certainly to defer is appropriate. I do not know if there is a specific limitation of time in the Zoning Ordinance in Stafford but certainly, some reasonably short period of time would be permissible, I would imagine.

MOTION:

Mr. Hudson: Well I put a motion on the table and whether it gets a second or not is another thing. The case number...

Mr. Gibbons: SE09-7/2900325.

Mr. Hudson: Be temporarily tabled until the next meeting to give the applicant time to, if nothing else, to make sure he understands exactly what is going to happen if this Board does not pass it or what he needs to do to get an application approved. I am not convinced sitting here that the applicant knows that right now. I could easily vote no but I certainly think he should have the opportunity to seek people to... Well I made the motion.

Mr. Ortiz: I will second the motion.

Mr. Gibbons: We have a motion, duly seconded. Any comments?

Mr. Ackermann: So it is his responsibility to find out what the situation was?

Mr. Hudson: Yes.

Mr. Ortiz: So when it comes back collectively we will have a better understanding of not only his position but all of the other extraneous issues as well based on the other violations that you may not be able to see now. There are other violations, in terms of trash and things of that nature that I heard were submitted to the County. Would we have a better idea of how he resolved those issues?

Mrs. Musante: Yes.

Mr. Gibbons: Ray, do you have any comments?

Mr. Davis: I would offer a substitute or an addition to your motion to defer this for thirty days. Give him an opportunity to clean up the property, get rid of the vehicles and apply for a Home Business Permit.

Mr. Gibbons: Do you have a problem with that?

Mr. Ortiz: No, I agree.

Dr. Larson: Mr. Chairman, I would be in favor of postponing, I am not sure I would be in favor of telling him what to do during the postponement but I think it is clear that he is at a disadvantage because of the language problem for one. I am not sure he understands everything that we are talking about here and I think a lawyer could help him. As it stands now, it sounds like what he wants to do would change the character of the neighborhood and that is why I think people are having some discomfort in addressing it further right now. So I would support that motion.

Mr. Gibbons: Okay, all in favor say Aye.

Mr. Davis: Aye.

Mr. Hudson: Aye.

Dr. Larson: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: Aye. All opposed? Any abstentions?

Mr. Ackermann: Opposed. This first violation was in September and this guy has had lots of time already but I don't want to cause an argument or anything. I think for myself there has been enough time here and if the groups thinks a month more is appropriate, that is fine with me. I just would not vote in favor.

Mr. Gibbons: I would always like your comments and your feelings. Son, do you understand what the Board did? We have postponed this for thirty days and we feel, we cannot tell you, but we feel you should get legal representation so you know what is being expected. If you can get that then I would get in touch with the County staff so you both know what you have to do so when you come back in thirty days you know what is expected of you.

Mr. Ramirez: Okay.

Mr. Gibbons: I would certainly hope that in the next thirty days son that you get that yard cleaned up. That would be the best thing you could right now. Okay?

Mr. Ramirez: Okay.

Mr. Gibbons: Thank you very much.

Mr. Ramirez: Thank you.

VOTE:

The motion to defer action on this case for thirty days passed 5-1.

Mr. Ackermann – No

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Hudson – Yes

Mr. Ingalls – Absent

Dr. Larson – Yes

Mr. Ortiz – Yes

1. **V09-3/2900343 - PARTNERSHIP 20, L.P** - Request a variance from Stafford County Code, Section 28-108, "Restricted access entrances", to eliminate a required barrier arm gate on Assessor's Parcel 20T-3-A1. The property is zoned R-3, Residential High Density, located at 20 Stonegate Place, Liberty Place Apartments.

Mrs. Musante: V09-3/2900343, applicant, Partnership 20, L.P., request a variance from Stafford County Code, Section 28-108, "Restricted access entrances", to eliminate a required barrier arm gate on Assessor's Parcel 20T-3-A1. The property is zoned R-3, Residential High Density, located at 20 Stonegate Place, Liberty Place Apartments. You have the application, the application affidavit, owners consent form, notice to comply dated November 20, 2009, copy of site plan, copy of code section 28-108, reclassification dated March 1, 1988, the tax map and vicinity map. The applicant is requesting a Variance to eliminate a required barrier arm gate within the Liberty Place Apartments. Tax map 20T-3-A1 was subdivided from tax map 20-126, which was rezoned, with proffers, from R-2, Medium Density to R-3, High Density Residential in March 1988. A major sit plan for Liberty Place, Section 3 was approved in March 1998. A revision for the gate relocation was approved in June 1999. Cash securities in the amount of \$30,000 was posted November 24, 1999 for the gate. Keith Dayton, Director of Public Works sent a notice to comply to Partnership 20, L.P. requesting the necessary work be completed by December 1, 2009 or the County would draw funds to complete the required security gate. All action by the County is on hold pending the decision of the Board of Zoning Appeals.

Mr. Gibbons: Let me ask for clarification, in 1998 the gate was put in by the zoning action of the Board, correct? That was a condition of the Zoning?

Mrs. Musante: There is an actual ordinance that requires this gate. There was a rezoning that took place in March, 1988. The rezoning did not require the gate, when the site plan came in

1997, the ordinance, which you have a copy of, was approved in November 1997 requiring this restricted access.

Mr. Gibbons: When it came into zoning, it was not a request?

Mrs. Musante: Correct.

Mr. Gibbons: But at the time that he filed the plat it had become an ordinance?

Mrs. Musante: That is correct. When he submitted the site plan. Yes.

Mr. Gibbons: Thank you very much. Is the applicant here? And for the Board, Mr. Dayton will represent the staff tonight on this case.

Eric Nielsen: Good evening ladies and gentleman, my name is Eric Nielson and I am the authorized representative of Partnership 20, LP at 448 Viking Drive, Suite 245, Virginia Beach, VA. A quick and brief explanation as you already heard this property was rezoned. Then a site plan was put in for the development of 180 apartment units. As part of the zoning requirements this particular location, the access gate was indicated on the original plans. It was the belief and still is the belief of the owners that the access gate is problematic and a nuisance both to the residents and the daily operation of the property. They have requested me to bring that to your attention initially and they consider that a hardship. As I began to look into this a little bit, a couple more things came to light. You have in front of a smaller view of the entrance way and the property itself and then an exploded view. If you would please, look at the exploded view and go to the zoning ordinance. The larger view, you will see the access gate location right here. This is not exactly the scale, if you look down here you will see a thirty-eight foot dimension across High Pointe Boulevard and if you take that dimension and carry it up here, you will realize that the control arm on this gate is within thirty feet of High Pointe Boulevard itself. This is right off the site plan as approved by Stafford County as designed by the engineers and the actual location has been built. The concrete pork chop is there, the conduit to the location is there, pull strings were there at one point in time. So it just really needs the gate to be put in place but the problem with this location is, number one, the ordinance calls for it to be a minimum of 100 feet from that intersection. We do not know how that has escaped initial review during the site plan process or in the design process by the engineers but if this gate goes in, it will be non-conformant in its location as indicated on the site plan. It would actually need to make the 100 feet, to be approximately in the middle of this intersection so to move, actually you would have to tear up the intersection, you would have to rebuild the whole entry to the property to do that. To do that, I would consider to be a hardship as well. Additionally, the ordinance calls for a turn around, so if you have vehicles that are pulling up to use the gate that can't get access to the property, that they can turn around without blocking access. The problem if this gate goes in is number one, there is no queuing area whatsoever, you can fit one car at a time in there coming off of Stonegate. There are 180 units in the property, people go out to go to work.

Mr. Gibbons: You already built 180 units?

Mr. Nielsen: Yes sir. They have been there for approximately eight years.

Mr. Gibbons: And now it becomes surprise to you that this needs to be done.

Mr. Nielsen: No sir, it is no surprise at all. The owner purposefully put the bond up, the original bond was much greater and it was for the completion of the property in its entirety.

Mr. Gibbons: Correct.

Mr. Nielsen: Everything was completed on the property and accepted except for that gate was not put in. The owner chose, well the County was nice enough to reduce the bond down to the minimum amount, which is the \$30,000. The value of the gate is somewhat else. The owner chose not to put it in and to leave the bond up, have his money tied up because again, he feels very strongly that all this gate is going to do is be a nuisance for the residents on the property and for the county in general. Again, we did not know until I looked into this about the issues with the original design but the owners initial concern was the fact that people would be backing up in to the street trying to get into the property. People will be backing up into the property, in fact blocking access for people to get out of there parking spaces waiting to get out in the morning when you have a number of vehicles trying to exit to go to work at the same. The owner chose to leave there money up, that money has been there since 1998 or 1999. The owner is perfectly happy to leave it there and go on with it there and just not put in the gate. He feels that strongly about it. Mr. Dayton in doing his job, it has been brought to his attention that there are a number of incomplete projects out there. A lot of developers have defaulted, perfect example is High Pointe Boulevard and Liberty Place where they all walked off and their bonds reduced to nothing and left you all holding the bag for a very expensive completion of that road and it impacted us to the extent that we had completed our section at the top, 100 percent done but couldn't get off bond on that because we needed to get VDOT acceptance and VDOT acceptance had not been completed further down the line. We did have a bond there also but we did get off that finally as we worked with the county cooperatively to help get everything completed, got it off bond, got it accepted by VDOT and so that was put out of the way. Again the owner would be happy to let this go on forever but Mr. Dayton in doing his job is trying to eliminate these outstanding bond issues. This is not an issue where someone has defaulted or trying to leave the county holding the bag on a problem. We are concerned that the gate going in is going to create a problem and we are trying to avoid that and that is why we are asking for the Variance. I got up here a little early from Virginia Beach and I have some photos here in the packet I have for you.

Mr. Gibbons: It would help if you just pass them along.

Mr. Nielsen: You have them in the package in front of you. The same copies everyone has. So if you start at the top, you will see a gated community that I happened to drive by when I was passing through Stafford this morning and you will notice the gates are up in this community, I am assuming, that the residents of this community find it a nuisance to have them down. So, the gates are there in conformance with the zoning ordinance but they are not being used, likely, because of that very issue. Additionally, you will see in the photograph, the turn around that is required and if you take a look at this and the entrance we have, there is no possible way that we can put this in correctly if at all, period. Additionally, this is a picture of the entrance of the property itself showing you the current condition and what we have to work with. Right down the street, in fact, if you look at the smaller view of the property, you will see down here Liberty Place Townhouses Section 1 and Liberty Place Townhouses Section 2, Independence Drive, this is a private road as well. The ordinance requires that any private road that comes into a public road that has more than thirty-five residences on it have controlled entry. This is a picture of that entrance, these townhouses were platted after that ordinance went into affect in 1997, section 1 was done in 1998 and section 2 was done in 2002, I believe it was. I don't know why this anomaly exists and I know there are others in the county just in a short period of time, all I am saying is there are others that appear to be exceptions to the rule and it is not like we are asking to be the only one. In closing, for all the reasons mentioned, I believe this is going to be a hardship not just for this community in particular but especially when High Pointe Boulevard continues through which it is slated to do. Can you imagine people go west on High Pointe with the traffic backed up waiting to turn into this location.

Mr. Gibbons: Any questions of the applicant?

Mr. Hudson: You are articulating that the traffic is the hardship?

Mr. Nielsen: Well, we believe there are two hardships. One is the hardship on the community itself, the 180 plus residents. With 180 units in the complex with having to enter and leave the property with that access gate holding them up. It is not properly designed. Who's fault is that, I am not going to get into that. Bottom line is it is not properly designed and cannot be improved upon. It was built per plan but it was built wrong and it was planned wrong obviously. It does not meet the requirements, to put it in there as it is, say ok we are going to spend \$14,000 to put a gate in to meet the zoning ordinance. The gate would be there but the rest of it would not meet the zoning ordinance. The hardship is yes, the residents are going to not be able to have a gate there that is properly designed to allow them to at least a reasonable amount of free passage in and out of the property. One car can sit there while they are going forward and getting there pass key and wait for that arm to come up and finally go in. During rush hour coming back in the evenings, you will have a big line. There is already a big line when the school bus stops there in the morning or in the evening and that arm would only be worse. Additionally if someone comes to visit the property, you have 180 people in there and they have friends. If someone was not home, they would have to back out and they can't if there is a car behind them.

Mr. Gibbons: Just stay with the question.

Mr. Nielsen: That is one hardship. The other hardship is the fact that it just can't be built.

Mr. Hudson: My second question is are you carrying the proxy to those 180 residents that live there? I happen to know one of them, you stand there and you say you are speaking for those residents.

Mr. Nielsen: No sir, I speak for the owner and that is our opinion.

Mr. Hudson: Okay, then you should say that it is your opinion that those 180 residents that live there because you certainly said those 180 residents that live there would be better off. That is your opinion, right?

Mr. Nielsen: Yes sir, that is my opinion.

Mr. Hudson: I just wanted to clarify.

Mr. Gibbons: I guess the concern I have is you knew eight and half years ago you had a problem and you have many vehicles that you could use to get to the Board of Supervisors to change a plat and when you built that you knew exactly what was required. You made the mistake in building it because nobody looked at the position of the arm before you started construction and that it would be a problem. Now after you get all the residents in you come back eight and half years later because staff was doing their job and said you should have done that. You had many avenues to get back to the governing body to say that I need relief from this problem. You can always ask for a zoning change or an amendment to the plat.

Mr. Nielsen: That is why we are here today sir. I became involved in this just a short period of time ago, it came to my attention, the owners said to me their consideration of a hardship was that fact that those gates break down regularly and the residents being able to come in and go out. I was the one that looked at the plans just recently, I was the one just recently that was given the zoning ordinance by Melody and until I saw the Zoning Ordinance within the last thirty days, I had no involvement. When I looked at what we had in the last thirty days is when I found out this was a problem. That is why we are in front of you now.

Mr. Gibbons: Okay. Thank you. Keith can you come up and give us your take?

Dr. Larson: Mr. Chairman, can I ask one more questions?

Mr. Gibbons: Sure.

Dr. Larson: Sir, the owners that you are representing, are they the owners, were they the original developers of this subdivision?

Mr. Nielsen: They were the original owners of this property, yes. Not of Liberty Place, the whole subdivision, no. Just the apartments.

Dr. Larson: Okay. Did they develop this subdivision?

Mr. Nielsen: They built the apartments. They paid for the apartments to be built, yes.

Dr. Larson: So they also developed the entrance to the subdivision?

Mr. Nielsen: They paid for the plans to be developed by an engineer, they are not experts by any means in engineering. They paid engineers to design it, they depended on the engineer's ability and knowledge to design it appropriately and they depended on the general contractor who built the property to build it properly. It was built per plan, that has already been ascertained through everything being approved except for the fact that is one gate has not been put in place.

Dr. Larson: But the hardship that you are talking about, to me, appears to be self-imposed. Your own client paid somebody to do the work but the work was done for your client. They incorrectly designed the entrance, it is a self imposed hardship. Would you disagree with that?

Mr. Nielsen: I would have to give it some consideration before I would agree or disagree.

Dr. Larson: Thank you.

Mr. Gibbons: Thank you, go ahead Keith.

Keith Dayton: Mr. Chairman, members of the Board, Keith Dayton with the Department of Public Works. I would offer only one point of clarification, if the Board would look at the plans approved in 1998, this is the site plan approval. It shows a highlighted location for the security gate, security arms. That does appear to be too close to High Pointe Boulevard, this was amended by the site plan amendment in 1999. If you look at the plan there, it is quite clear that upon the stationing of the water line and some other associated appurtenances nearby, that is was apparently moved back to meet the 100 foot requirement. I have not gone out there and measured it but if it was indeed built according to this plan right here, there will be 100 feet available to offset from High Pointe Boulevard and meet the requirements of the zoning ordinance. Beyond that, I would certainly be happy to answer any questions the Board may have.

Mr. Gibbons: Any questions for Keith?

Mr. Dayton: The larger plan was approved in 1999, that does not have quite the same scale as the original site plan approved in 1998. There may have been other adjustments to the approved plan in 1999 but certainly at some point recognized that it was too close and the location was shifted back away from High Pointe Boulevard.

Mr. Gibbons: Keith, you say you have not been out at the site at all.

Mr. Dayton: That's correct. I have not actually measured it, all I can say is that if it is built in accordance with that plan, it should not be a problem.

Mr. Gibbons: Would you have a problem if we deferred it for a month, if we asked you and staff to go out there and take a look at it. Would you do that for us?

Mr. Nielsen: Is that really necessary, there are four parking spaces over here in that area. What is the width of a parking space?

Mr. Dayton: Eight or nine feet typically.

Mr. Gibbons: I would rather have the Department Head take a look at it and make sure. If we requested that, would you do that for us Keith?

Mr. Dayton: Certainly sir.

Mr. Gibbons: Okay. Does anyone have a problem if we defer it a month and let the staff go out and measure and make sure that they are in compliance with this.

Mr. Ackermann: Make sure that this placement would be 100 feet from the road?

Mr. Gibbons: That is correct.

Dr. Larson: Does that actually get us, right now he is asking for a Variance to the zoning ordinance for the gate. That issue still won't be solved by whether this is 100 feet or not.

Mr. Gibbons: No, but part of his basis and part of his opinion tonight is that he can't turn around and that he is not within the 100 feet. So part of the hardship is stacking people out on the road is what I gathered by what he was trying to say. I am following your line on the hardship, if the 100 feet is there then the hardship should not be a hardship. The gate might be the hardship but right now he is saying he cannot turn around and he is going to stack up traffic on High Pointe, that could be a traffic hazard. That is what he is trying to say.

Dr. Larson: You could continue my argument, the original owner designed the subdivision, if they did not design within the 100 feet they needed then again it is a self-imposed hardship. They

knew the ordinance, they designed the subdivision and they did not design it the right way so they have imposed the hardship upon themselves.

Mr. Gibbons: I am not arguing with you, I just want to make sure that the plan that is on file with the County has been followed.

Dr. Larson: You mean if the plan was followed, they would be within the zoning ordinance?

Mr. Gibbons: That's correct. That is all I was asking.

Dr. Larson: I do not have an objection to postponing. I am just not sure it gets us much. I think the issues will be the same.

Mr. Gibbons: They might have built it not according to what they have here. I just want to make sure it was built according to what the County has and he cannot certify that until he goes and visits the site.

Dr. Larson: Okay.

Mr. Gibbons: Does anybody have any objections to a thirty day deferment? Any problems with that?

Mr. Hudson: I don't have a problem with that.

Mr. Gibbons: Okay, the Doctor is right but I just want to make sure. All in favor say aye.

Mr. Hudson: Aye.

Mr. Gibbons: Aye. All opposed? Any abstentions?

Mr. Ackermann: Abstain.

Mr. Davis: Abstain.

Dr. Larson: Abstain.

Mr. Ortiz: Abstain.

Mr. McRoberts: So what is that two to nothing (0)?

Mr. Gibbons: That is quite a way to pass him.

Mr. Ackermann: If it passes, it passes.

Mr. Gibbons: We have one unfinished business. So Keith you are going to get back to us?

Mr. Dayton: Yes sir, I will provide the information for the next meeting.

VOTE:

The motion to defer this case for thirty days passed 2-0 (4 abstentions).

Mr. Ackermann: Abstain

Mr. Davis: Abstain

Mr. Gibbons: Yes

Mr. Hudson: Yes

Mr. Ingalls: Absent

Dr. Larson: Abstain

Mr. Ortiz: Abstain

Mr. Nielsen: Thank you for your time gentlemen.

Mr. Ackermann: Mr. Chairman, can we have a five minute break?

Mr. Gibbons: Sure.

1. **A09-6/2900336 - LEMING AND HEALY, P.C.** - Appeal of a Notice of Violation dated November 17, 2009 regarding Section 28-62(f), "Development Conditions", and Section 28-62(g)(2)f.2.(a), "General Performance Criteria", for constructing a structure in the Critical Resource Protection Area (CRPA) on Assessor's Parcel 49C-1-1-8M. The property is zoned A-2, Rural Residential, located at 486 Marlborough Point Road.
1. **V09-2/2900337 - LEMING AND HEALY, P.C.** - Request a Variance from Stafford County Code, Section 28-62(f) "Development Conditions", and 28-62(g)(2)f.2.(a), "General Performance Criteria", for an existing structure to remain located within the Critical Resource Protection Area (CRPA) on Assessor's Parcel 49C-1-1-8M. The property is zoned A-2, Rural Residential, located at 486 Marlborough Point Road.

DEFERRED

UNFINISHED BUSINESS

1. **A09-4/2900216 - HCS HOLDING CO, LLC** - Appeal of the Zoning Administrator's letter dated June 26, 2009 regarding a cemetery with a funeral home/chapel as accessory use on Assessor's Parcel 19-22. The property is zoned A-1, Agricultural, located at 154 Shelton Shop Road.

Mr. Gibbons: Can you give a brief synopsis? This has been gone since October.

Mrs. Musante: Case A09-4/2900216, HCS Holding Co, LLC, appealing of the Zoning Administrator's letter dated June 26, 2009 regarding a cemetery with a funeral home/chapel as accessory use on Assessor's Parcel 19-22. The property is zoned A-1, Agricultural, located at 154 Shelton Shop Road. This public hearing has been closed and it back to you gentlemen to make a decision.

Mr. Gibbons: I sent an email out to everybody of Andrew's take on this. So Andrew if you would give us your opinion.

Mr. McRoberts: When we were last together back in October. Mr. Leming gave you a couple of cases, the King George County case and the Alexandria Case and was making an argument that in the Zoning Administrator's opinion that this was an accessory but as she has told many other folks with accessory uses that it must serve the primary use and not offsite users. Mr. Leming argued tow things, one was the fact that these two cases stated that it is okay to serve offsite folks in an accessory use situation and then he was also arguing the fact that there is a state law prevision that says you have to have freedom of use under state licensure for funeral homes. I took a look at those two cases and I appreciate the deferral of time to be able to read them. I am pretty good at picking up on things on the fly but it was nice to be able to sit down and actually read them cover to cover several times. I really came up with this conclusion, I don't thing that those cases really stand for the proposition that generally and generically it is okay for accessory use to serve folks offsite. One of them was a crematorium that was located inside a funeral home, the funeral home was the principle use, the accessory use was the crematorium. The crematorium was presumably serving the people that came to the funeral home and needed crematory services, although it is not described in the facts of the case whether it was or was not offsite. So I do not think that is particularly helpful, I do notice in that case that the facts are that the Alexandria case, the Zoning Administrator said that is was a accessory use, the BZA said yes it was an accessory use and then the case turned on the fact that Judge Kent who was the Alexandria Circuit Judge that wrote the opinion. He said that under the standard of review applicable at that time of BZA decisions, that the decision would have been plainly wrong or without evidence to support it. He said based upon the evidence I see before me, I don't find any evidence necessary that meet that standard to overturn it. So, therefore the BZA's upholding of the accessory use reading by the Zoning Administrator was upheld. I don't think the facts of the case, at least from that opinion were all that applicable because it is not clear that crematoriums serve folks offsite, it certainly could have been just as likely that it was serving people just inside. The other case was the King George case and I don't think that the King George case is applicable at all. While I think that Mr. Leming is absolutely correct that the daycare in that case probably did serve people that did not go to that church and probably served the general neighborhood or whatever. The problem is the case did not turn on it being an accessory use at all. In fact, the Zoning Administrator and the BZA had both said it is not an accessory use at all. On circuit court, the circuit court judge did not determine that it was an accessory use

instead the court was responding to the argument by the church, forget accessory use daycare is part of raising, nurturing, admonishing children and it is part of us being a church, therefore, it is not an accessory use it is part of the principle use. The Circuit Judge in King George found sufficient evidence that yes, daycare is part of church, which was not really defined in the Zoning Ordinance in King George. In his understanding of the word church, he determined that daycare was in fact part of a church. Therefore, overturned the BZA and the Zoning Administrator, not on it being an accessory or not accessory or onsite or offsite but because it was a church, which I don't think aluminates the issue before you at all. So I don't think those two cases are particularly helpful really either way on it. I would say in my view, I think it is more likely crematorium with serving people that came to the funeral home and not offsite people but I just don't know from the facts of that case. The second issue was the state law prevision, which is a licensing provision that says and Mr. Leming put it into his materials in support and it certainly does say that. That if you are licensed by the state, a condition of your licensure for your funeral home is that you have to have freedom of choice on which cemetery. In other words, you cannot say that everybody that comes into my funeral home under the condition of my licensure, you have to go use this cemetery and not some other cemetery. That is a condition of state licensure but what we are talking about here is the Zoning Administrators interpretation of the term subordinate and how you get to an accessory use under the Stafford Zoning Ordinance not an interpretation of the provision under state law. The question is not does that state code say that, it absolutely does. The question is can this particular funeral home meet both the state licensure requirement and the local Zoning Ordinance determination. It appears as it currently stands, it can't. Now I think Mr. Leming called it a conflict, I think a Board member last time may have called it a conflict. It very well may be difficult, if not impossible to comply with both, but I don't call it a conflict. What you have is two layers of regulation. You have the state regulation that you must meet and you have to have the Zoning Ordinance regulation, which you must meet both. I cited to you in my memorandum two cases, County of Chesterfield versus Windy Hill and City of Norfolk versus Tiny House. Both of those cases dealt with ABC regulations and not licensure of funeral homes but I can't really think of a closer example. In both, you have to get a license from the state to operate your business and you also have to have zoning compliance from the locality. I quoted the Tiny House case and the Supreme Court said: We hold that the ABC Commission's exclusive authority to license and regulate the sale and purchase of alcoholic beverages in Virginia does not preclude a municipality from utilizing valid Zoning Ordinances to regulate the location of an establishment selling alcoholic beverages and that is what I believe the Stafford County Ordinance does. I guess I have one question and it is just my lack of familiarity with the Stafford Zoning Ordinance. Rachel, a funeral home is a principle use correct? Defined?

Ms. Hudson: Yes.

Mr. McRoberts: Are there zoning districts in Stafford that allow a funeral home?

Ms. Hudson: Yes.

Mr. McRoberts: Okay, but not this one?

Ms. Hudson: That's correct.

Mr. McRoberts: Okay, well I don't see that there is really any distinction between this case and Tiny House and Windy Hill. Both of those cases dealt with zoning regulations that regulated the proper location of an ABC regulated place. In Windy Hill it was a golf course and there was a lot of complaint from the neighbor about them locating a beer selling bar/ clubhouse right near there subdivision. So one of the conditions that was imposed in approving the golf course was no ABC sales. Windy Hill came back a year or two later and said they wanted to remove that condition and the Board of Supervisors said no, it is going to stay. In light of that, Windy Hill went out and got an ABC license anyway and started selling. When the ultimate Notice of Violation came, your selling ABC goods and you can't do that, that is when the issue went to the Supreme Court and the Supreme Court said that you have to comply with both. ABC regulations and the local Zoning Ordinance and they cited in particular Tiny House, which was an older case but dealt with ABC regulations and the City of Norfolk's desire not to have a bunch of ABC selling bars next to one another. They were trying to avoid a red light district in Norfolk at the time. So, I guess my answer on those two issues is I don't think those two cases are particularly helpful to you or to Mr. Leming's argument. I don't think state law versus local really helps a whole lot either. I think you must comply with both. It does not help you with your ultimate issue in that is what is an accessory use? What is a subordinate? Is the Zoning Administrator's interpretation of that language restricting it to onsite service a proper interpretation of that language? So hopefully I have not gone on to long but that is a summary of what I have said in my memo and I would be glad to answer any questions.

Mr. Gibbons: Any questions? Clark, do you have anything?

Clark Leming: If the Board will permit me.

Mr. Gibbons: We are going to hold you to ten minutes tonight.

Mr. Leming: I am held to ten minutes and hopefully it won't be that long. The points Mr. McRoberts makes I think are good. I think in the end it probably does come down to the language of the Stafford Ordinance. And the Stafford Ordinance, unlike other ordinances does not include language before the term "serves a principle use" such as primarily or exclusively. It simply says: subordinate an area extent, purpose to and serves a principle use. I don't think there is any question that the funeral home and the chapel that is purposed here would serve the cemetery that already exists. The question is whether it must serve exclusively that. The Zoning Administrator agrees that is an accessory use so it really comes down to that point I think. Stafford is a little bit unusual because unlike any other jurisdiction in the area, there is a commercial zoning district where the funeral home is permitted. The cemeteries are permitted in

other districts, there is no district in Stafford County where you can have both a funeral home and cemetery. So how do you get there, there are two ways to get there. One, you could conceivably rezone a piece of property, you could have a cemetery zoned A-1 because it can't be zoned commercial and you could have funeral home zoned B-2 because it can't be zoned agriculturally. That creates a myriad of planning and zoning issues, in this particular case, what it means is that somewhere back in the cemetery there would have to be a commercial zoning district, an isolated commercial zoning district. Whether that would raise questions about other spot zoning or other legal issues, I think would be the problem. Even out along 610, there are already cemetery plots out there. So that is the only that it could be accommodated under these circumstances through that method of rezoning. The only other way to do it is through the accessory use mechanism and surrounding jurisdictions as we indicated in our memo to you that we gave to you in October, do it both way. Some have an exclusive zoning district in which you can do both, Spotsylvania for instance, others do it through the accessory use mechanism which is what we are asking here. The problem is right now there does not seem to be a clear way to there in Stafford County except through the accessory use mechanism. That in our view, I don't think that Mr. McRoberts disagree on this, I think what it comes down to is whether or not the implicit insertion of the word exclusive or primary before the term "serves a principle use or structure" is appropriately added to this ordinance. That in our view is what is being done here, it is being added. No question that the funeral home would in no doubt serve the primary use here or the principle use but it would not serve exclusively that and that I think is the issue. I think that the King George case is interesting because just as inextricably linked as some churches and daycare centers, I think are funeral homes and cemeteries. In fact, in the business today, cemeteries are having such a difficult time and the owner can speak to some length about that if your interested, having such a difficult time that the funeral home is almost an absolute necessity now because there are so many other methods used to expose of remains. Particularly the crematorium. Now with regard to the supremacy clause, Mr. McRoberts indicated that he did not think they could comply with both and I think that very telling in this particular case. The other case, we talk in our brief, that was not discussed here not the ABC case, it is the Blanton case. Blanton case is a Supreme Court case that we had discussed previously and in that particular case, the state code permitted farmers in the state to use sludge to fertilize their fields. Amelia County passed an ordinance that said no, we do not want you to use sludge on your fields for agricultural purposes. You had state law going one way and the local ordinance going the other way. The Virginia Supreme Court said essentially that the locality cannot prohibit what the state permits. In this particular case, not exactly parallel but you have a state law that prohibits the funeral director from doing a certain thing that is limiting the use of those that use the funeral must use a particular cemetery. She can't do that. And you have a locality saying that is the only way the funeral home can operate. That if you use the funeral home you can only use that cemetery. You have the same position of the state code going one way and the interpretation of the local ordinance going the other way. So I think that is somewhat different from the ABC cases. So what we are asking the BZA to do in this particular case is to take the position that you all agree that this is an accessory use, there is no contest on that particular point. We are asking the BZA to find that the portion of the determination by the Zoning

Administrator that limited the users of the proposed funeral home and chapel to the cemetery by overturned and that be found by the Board of Zoning Appeals to be an incorrect reading of the definition of accessory use. Less than ten minutes Mr. Chairman, I do want to point out that Mr. Smith, the owner, is prepared to provide you with some information about what leads to this and the issues are in the industry that leads to the necessity for a funeral home on the premises. I think this case turns on the legal issues that are before you but she is here and can be assisted in that regard.

Mr. Gibbons: Let me ask you one question and I asked you this before, there is nothing prohibiting you from filing a zoning case before the Board of Supervisors.

Mr. Leming: As far as the technical application, no. As far as the likelihood of the success of the application, the problem has to do with the legality of a commercial zoning district deep within the heart of this agricultural parcel. Whether or not the County Attorney would take the position that that was a permissible zoning district or not, I don't know. It is a small commercial district within a larger agricultural district and that is the problem with the zoning. I can tell you that a planner, Mr. Harvey, would take the position that that is not an appropriate zoning, that kind of commercial island within an A-1 district is not good planning and not good zoning. There are significant issues with that, which is why we came this route. The first thing we did was simply to do to Ms. Hudson and ask her to agree that this was an accessory use, which she did. What we did not expect was for her to come back and say that yes this was an accessory use but the users of the funeral home have to use the cemetery, that that is the only cemetery that they can use. We got the fundamental part of the ruling that we were looking for. She can build a funeral home, that is not the issue, the issue is who the funeral home can serve. To turn it around, there was some suggestion that maybe this makes the funeral home the principle use and the cemetery the secondary use. If you look at the definition of secondary use, the cemetery cannot possibly be that because of the size of the cemetery. In every respect the funeral home would be subordinate to the cemetery because of the size of the cemetery and the other dimensions.

Mr. Gibbons: Okay sir, you answered the question. So Andrew, you heard what Clark said, anything?

Mr. McRoberts: Well, I certainly think that Mr. Leming is correct. I think largely this rises or falls on the wording in the definition of accessory use or structure. Mr. Leming argues that the word exclusive is not in there and therefore is inappropriate for her to read it in there. I will say that in the packet last time, you got a whole stack of interpretations that the Zoning Administrator had given over the years of accessory uses and every single one of those, it was determined that in order to be an accessory use on that property, it had to serve that principle and nothing else. I would say that the law does provide for a consistent administrative interpretation. I do not think that is an impermissible reading, I think personally you could probably interpret it either way. Second thing is that Mr. Leming argues that cemeteries and

funeral home should go together they belong together, well evidently not according to the Stafford County Board of Supervisors. All I can say I am not here to question the wisdom of this, I do not think Mr. Leming has questioned the wisdom of that but that is just simply the way it is. Certainly, you could rezone a funeral home to be sitting right next to property that does allow a cemetery. I guess I am troubled with the whole issue, the basis on which the Zoning Administrator issued her opinion that this was an accessory use was premised on the fact that it would only be serving that cemetery and I wonder if somehow her long standing interpretation that it is solely serving that principle use was overturned or was incorrect, would she determine that this was an accessory use in this circumstance and I don't know what the answer is but I think that is a good question. A funeral home is a defined principle use and is allowed in some districts and not allowed in others. There is a reason why the Stafford Board determined not to allow it in some. If you are going to allow it as an accessory use then the Zoning Administrator over the years has said you are allowed to have those types of subordinate uses but they have to serve the principle, they cannot serve offsite folks. That has been her interpretation for many years, it is your job as the Board of Zoning Appeals to determine, is that a reasonable interpretation of this language given the fact that this is an inclusive style zoning ordinance and given everything that has gone on before. I guess the last thing I would like to say is certainly I am familiar with Blanton versus Amelia County, Blanton versus Amelia County was an outright ban of all bio-solids anywhere in the County. You could not do bio-solids even if you beg and pleaded and the Board said yes, that is a great idea because they had banned it by ordinance. You could not apply for it, you could not have it any Zoning Ordinance, it simply was not allowed. That is not the case here. Obviously, I want to clarify something that Clark said, he said that I agreed that you can't comply with both, well I think you can just not on this site and not under this current Zoning. You can get a rezoning or you can go to a different site that has different zoning and yes you can. Those are my response and if there are any questions I would glad to answer them.

Mr. Gibbons: I want to thank you for that.

Mr. Hudson: I do have a question, if I owned the funeral home, what if part of policy was that everyone that passed through the front door and the Lords prayer was said, anyone could be buried in my facility because they passed through the front door and the Lords prayer was said if they are religious, if they are not religious, what if they had some other policy of sort?

Mr. McRoberts: I understand what you are saying. The fact is I don't think this is problem with the Zoning Ordinance itself, I think this is a problem created because a funeral home want to accessory use. if in fact this was a zoning district that allowed it by right or as a special exception or some other way then you would not have this issue. While I know this is an issue for this particular property owner, a significant issue, I don't think it is a condemnation of the definition of accessory use in Stafford County. I am not telling you how to decide the case, if you believe strongly enough that that language does not support the Zoning Administrator's determination and never did then you have the ability to overturn it. If on the other hand, giving great weight to

her interpretation over the years you believe that that is a permissible way to read that ordinance then you should uphold it. That is my legal reading of it.

Mr. Gibbons: Any questions?

Mr. Ackermann: Folks being buried at this cemetery do not have to go through this funeral home?

Ms. Hudson: If you were using the funeral home on this site then you must use the cemetery. Not the other way around.

Mr. Ackermann: And that is because your interpretation is that it is subordinate?

Ms. Hudson: Yes.

Dr. Larson: More generally, historically from what we have been told, the Zoning Administrator has interpreted accessory to be an exclusive accessory to the primary use on that property. You have interpreted that way for a long time. Before you, was that the way it was done?

Ms. Hudson: I believe that several of the memos that are in your packet are not from me. They are from the former Zoning Administrator.

Mr. McRoberts: There is a Daniel Schardein in here as well.

Ms. Hudson: Mr. Schardein was the Zoning Administrator at that time.

Mr. Ortiz: How large is the cemetery?

Ms. Hudson: Forty-five acres.

Mr. Ortiz: And forty-five acres would accommodate?

Caroline Siebold-Smith: I am Caroline Siebold-Smith and the president of the corporation but it is a family business. We are not a national corporation. The cemetery is approximately forty-five acres and of that only seven acres so far has been developed and utilized for cemetery. We still have thousands of burials left in that area and we just recently had a survey done and completed that based on the number of burials per year that we do, this cemetery will continue for 300 plus years at that burial rate with the property that we have.

Mr. Gibbons: I have never had a cemetery come to us as a problem when I was on the Planning Commission and never on the Board. The only problem we had was on Route 1 across from the Catholic Church they wanted to put a crematorium in and of course one of the largest churches in the county, they came out be the groves. The crematorium went away. Has anybody gone to the

Board and the Planning Commission and said we have this problem of the way that the Ordinance is written that precludes. Have we ever gone that far to find out what peoples' feelings are? What I am concerned about is that you have the Comp Plan going through final review right now, they have extended until June is my understanding. This would be a fine time to bring it before the Board and the Planning Commission and say here is a problem that has existed for a very long time. Do you wish to address it now or leave it the way it is? It has presented a problem.

Mr. Leming: I have been to the Board members from that district on the subject of a text amendment.

Mr. Gibbons: Who is that?

Mr. Leming: Mr. Sterling. I don't think he would rule that out but he wanted to see what the BZA did so that is why we came to the BZA. I don't think zoning would work the way it is set up right now. I have to talk to Mr. Harvey about that.

Mr. Gibbons: I have not talked to him on this.

Mr. Leming: If the BZA went to him and said there is an issue that you can't have these two things in this zoning district and the way this is situated does not really make sense, I think that might assist that Board in reviewing the policy. We came this way primarily because we got told by the Zoning Administrator that it is an accessory use and then got the curve ball. It made sense to follow up on that.

Mr. Gibbons: We won't say it was a curve ball. You asked to get a decision and the young lady gave you her interpretation.

Mr. Leming: We did not expect that.

Mr. Gibbons: Are you saying that if the Board of Zoning Appeals went back to the Board member and said here is what we are presented with and Rachel has done a good job with it and it is our feeling that maybe a text amendment or a zoning amendment may be needed.

Mr. Leming: That would be very helpful. I don't think that anybody really argues that funeral homes and cemeteries ought to go together. It makes sense for them to be collocated but there are separate in some respects and you have the state code provision that prohibits the funeral home director from saying where you have to have your family member buried. That makes it more complicated, many funeral homes are collocated with cemeteries. In fact, the Mullins Funeral Home in on Shelton Shop Road next to this cemetery. I think something from the BZA would be very helpful to try and get this cleared up.

MOTION:

Mr. Ackermann: I would like to make a motion to deny the appeal at this point. That we support the Zoning Administrator and that we then also communicate our feelings to the Board of Supervisors as to why we are denying this appeal.

Dr. Larson: I second. I have one bit of discussion. The reason why I seconded it was because I wanted to support the Zoning Administrator's interpretation of exclusivity. I believe that the funeral home cemetery issue is a special exception and I would not want to see that torpedo the historic interpretation of exclusivity for accessories. In fact, if we did overturn the Zoning Administrator here we would be implicitly rezoning the property for funeral homes.

Mr. Ackermann: I think it is appropriate for us to take some action so that we support the Zoning Administrator and don't leave her opinions in limbo.

Mr. Hudson: I would have to say I am going to vote no on the motion, I support the Zoning Administrator, I think what you do when you send it back to the Supervisors or whomever if you vote, you cease to get any action done, if you send it back to them seeking an opinion on a regulation that does not make sense maybe in 2010 or need an interpretation. If you cast a vote, that tends to leave people who are in political positions with an easy way out. So, that is why I would not support the motion. It is not that I do not support what Rachel has done in the County. I certainly think they go together, a cemetery and a funeral home, I think we all agree with that and I think that Rachel has done a good job along with the rest of the County staff; but if we send this to them with a vote then ask them to do something, we are telling them to do something, but we wouldn't.

Mr. Gibbons: Andrew, you are going to write up the synopsis so when we give this to the Board to see what we considered and what points were made and the problems that we see.

Mr. McRoberts: I think that staff can do that certainly Mr. Chairman. They are taking diligent notes and definitely know what the discussion was.

Mr. Gibbons: I am asking since you were part of the deliberation, you prepare a good document.

Mr. McRoberts: If you want me to prepare it, I just need to know the problems you see in the zoning ordinance. Are you suggesting that maybe the Board should consider allowing this as a Special Exception for example?

Mr. Gibbons: Give two or three examples. One could be text amendment, one could be Special Exception. There is two or three ways of handling this.

Mr. McRoberts: One thing that is available without asking the Board anything, the applicant could come and apply to rezone their property, they could go in tomorrow to do that. Obviously, if you need a text amendment then you need to approach the Board of Supervisors to petition the Board and ask them to do that.

Mr. Gibbons: You have to bring up the point about the spot zoning. We have had alot lawsuits about that.

Mr. McRoberts: Let me address that since that came up. Spot zoning is generically known as, anytime you have one zoning, one property zoned one thing and it is inconsistent with the surrounding zoning. That is what the general understanding of it is. That is not how the Supreme Court has interpreted it. The Supreme Court interprets it, if it is zoning that is basically lacks a public purpose, in other words if that zoning is different from the surrounding zones and it is done for the purpose of serving the financial pecuniary interest of the property owner involved then it lacks a public purpose and therefore it is invalid, it is a species of arbitrary and capriciousness. That is what the case law says spot zoning is. Just because you have one zoning district different from the adjacent zoning district, that alone does not mean anything. Obviously, I am not as familiar with your Comprehensive Plan and you are or your Zoning Ordinance and there may be some historic statements within your Comprehensive Plan and your Zoning Ordinance that say something different but I am giving you the generic law from the Supreme Court. I would be glad to do whatever the Board needs.

Mr. Gibbons: We can get together with Rachel, staff and you and come up with something.

Ms. Hudson: If you would like for me to prepare some suggestions for you to send on to Cord.

Mr. Gibbons: Yes. And then we will bring it back and email it to every Board member and review it. Marty, your right, you should go back with a constructive recommendation.

Mr. Ackermann: That was in the motion. I had that in the motion that we would then prepare a report for the Board.

Mr. Gibbons: I agree 100 percent. All in favor say aye.

Mr. Ackermann: Aye.

Mr. Davis: Aye.

Dr. Larson: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: Aye. All opposed? Any abstentions?

Mr. Hudson: Opposed.

VOTE:

The motion to deny passed 5-1.

Mr. Ackermann: Yes

Mr. Davis: Yes

Mr. Gibbons: Yes

Mr. Hudson: No

Mr. Ingalls: Absent

Dr. Larson: Yes

Mr. Ortiz: Yes

ZONING ADMINISTRATOR REPORT

Mr. Gibbons: Zoning Administrator's report.

Ms. Hudson: I have a couple of things to report, a reminder, your yearly report it is time for that to be done and sent to the Board.

Mr. Gibbons: Okay, that should be for next agenda, right?

Ms Hudson: I think it would be nice if it could be prepared by whoever on the BZA and brought to the next meeting.

Mr. Gibbons: Right.

Mr. Ackermann: I think that is what we did last year.

Ms. Hudson: Just a reminder. The February meeting will be the election of officers and then I was told by the County Attorney's office that the Board of Supervisors requested the County Attorney's office to withdraw that appeal of the BZA decision, the case of the Seven Lakes HOA regarding the subdivision sign and that is in the process of being done.

Mr. Gibbons: They did not participate in the Fields' case, they withdrew that and left the BZA actions. There are two cases they did.

Ms. Hudson: I didn't know that they had. Okay.

Mr. Gibbons: So, the BZA decision on the Fields case stands as is.

Ms. Hudson: Yes, I did not know there had been any action.

Mr. McRoberts: I think that what the Chairman is saying is that the Board did not take action in the thirty days and therefore it stands.

Mr. Gibbons: Right.

Ms. Hudson: Okay.

Mr. Gibbons: Okay Rachel, we got this wonderful package tonight.

Ms. Hudson: That is your new updated copy of the Zoning Ordinance. You do not need to hold on to the old one.

Mr. Gibbons: Last time we got a nice pretty cover.

Ms. Hudson: They cost money. We were fortunate that staff had the time to make the copies and distribute them to you.

Mrs. Musante: We actually printed that off from Municode instead of buying new ordinances this time.

Mr. Gibbons: Any other questions?

Mr. Davis: Our bylaws indicate that we are to only use information that we receive at this meeting. We get a lot of information in the mail and email from outside sources. Do we need to change our bylaws or do we need to disregard the information that we get?

Mr. McRoberts: Well, I think reason why that is in there is the statutory requirement that you have a public hearing and to make sure that that is the time for folks to come before you and of course, you are acting quasi-judicially and so you are supposed to be considering the things that come before you and are on the record. The record is what goes up to the Circuit Court when there is an appeal. I will say though you are quasi-judicial and not judicial and so it is really up to you as far as your threshold of information that you wish to have from outside. I do not think that anybody is suggesting and I don't think your current rules say that you can't go out and walk the property for example or drive by. I think that if the rule is inconsistent with your current practice, you might want to change the bylaws, is my suggestion.

Mr. Gibbons: Would you take a look at that we can discuss it next month? That is a valid question.

Mr. Ackermann: In the past, we received letters from members of the general public about issues as well or emails too. What section is that?

Mr. Gibbons: Is there a way for emails to be introduced into the record and letters.

Mr. McRoberts: Absolutely, if emails are printed out and given to staff then they would go in the record.

Mr. Gibbons: Okay, so we could do that as part of the process.

Mr. McRoberts: That would be my recommendation is if your receive individual or collective emails is to forward them to staff and staff can include them in the record.

Mr. Gibbons: So when we have the hearing, we include that.

Mr. McRoberts: Certainly, make sure the whole BZA gets them because you don't want to have information that is individually considered and not collectively considered.

Mr. Gibbons: That's correct.

Mr. Davis: I think we need to ask whomever is sending this stuff, to send it to staff and to our attorney. If I get a stack of stuff like this in the mail, I am not going to make copies and give it to staff.

Mr. Gibbons: I think that we may need something on the website to forward information to the Zoning Administrator and when the Board packet goes out, here are all the emails received in all of the packets.

Mr. McRoberts: I think that is a very good point. If you simply say to the person that gives it to you or emails it to you, that BZA cannot consider this unless it is provided to the entire BZA and provided to staff so it can be part of the record.

Mr. Gibbons: Right.

Mr. McRoberts: And then instruct them how to do that. It should not be the Board members responsibility to recopy everything you have received to make sure the rest of the Board gets it. By the same token, if the person who wants to convince the BZA they need to be told that this is not going to be considered unless it is given to the full Board.

Mr. Gibbons: I think you are right Ray, if we make it part of the bylaws and the newspapers pick it up of the cases going. Here is the mailing address and the email address.

Mr. Ackermann: You can also make it as part of the preamble when you open the meeting to say that only material presented that is in our packets and materials presented at the hearing may be used in our judgment.

Mr. Gibbons: Any other information? Dr. Larson, we will sit down and write up something for the next month for the Annual Report for the Board. I want to make sure we take a section out for hardship. I love that hardship.

Mr. Ackermann: I can send you the report from last year in case you don't have it.

Mr. Davis: Should we be advised when the salvage yard is before the court?

Mr. Gibbons: Yes. I don't know how it was worded the other night but what the Board did was make a Board committee, I think Mr. Snellings is on that and asked to get with Mr. Fields and see if there is something that could be worked out. The judge wanted to know why we have not moved. Here you have this thing that is not going to get any better two years down the road. He told the judge he would move if he had some place to move to.

Mr. Davis: I though he bought property in Spotsylvania.

Mr. Gibbons: I think he is leasing property down there.

ADOPTION OF MINUTES

1. October 27, 2009

Mrs. Musante: Mr. Gibbons, you all will be receiving another electronic draft of the minutes probably tomorrow. I would appreciate you waiting before going over these tonight.

Mr. Gibbons: Okay, we will do that.

OTHER BUSINESS

None

ADJOURNMENT

Mr. Gibbons: Anything else? Okay, we adjourn the meeting and thank you very much.

With no further business the meeting was adjourned at 9:48 P.M.