

**February 23, 2010 Minutes**

***STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES***  
***February 23, 2010***

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, February 23, 2010, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Robert C. Gibbons in the Board of Supervisors Chambers. Mr. Gibbons introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

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

**Present:** Ray Davis, Robert Gibbons, Marty Hudson, Larry Ingalls, Karl D. Larson and Paul Ortiz

**Members Absent:** Ernest Ackermann

**Staff Present:** Gail Roberts, Deputy County Attorney  
Rachel Hudson, Zoning Administrator  
Melody Musante, Senior Zoning Technician  
Aisha Hamock, Recording Secretary

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

Mrs. Musante: Item number one on the agenda has been postponed and item number two has been withdrawn.

Mr. Gibbons: You want to explain why it was postponed?

Mrs. Musante: Item number one was postponed because Mr. Orellana, due to the snow has not had adequate time to clean the property up so he has requested additional time for that.

Mr. Gibbons: Although he has made tremendous effort.

Mrs. Musante: Yes he has.

Mr. Gibbons: I want to thank this Board for that. 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?

## DECLARATIONS OF DISQUALIFICATIONS

Mr. Ingalls: Mr. Chairman, in cases A09-6 and V09-2, those applications are represented by the firm Leming and Healy and the firm that I work for Sullivan, Donahoe and Ingalls has from time to time shared the same clients with Mr. Leming's firm. Sullivan, Donahoe and Ingalls has not worked on any of the projects and I do not personally represent Mr. Leming's firm or any of the applicants that are before us tonight, therefore I am able to participate fairly, objectively and in the public interest on the cases before the Board.

Mr. Gibbons: Okay, any others? I ask the secretary to read the first case.

## PUBLIC HEARINGS

# Postponed

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.

# Withdrawn

2. 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.

3. SE10-1/1000021 - DIANE K. HALL - Requests a Special Exception per Stafford County Code, Section 28-273(a), "Nonconforming structures", to allow an addition to an existing nonconforming single family dwelling on Assessor's Parcel 54S-2-39. The property is zoned R-1, Suburban Residential, located at 204 Castle Rock Drive, Clearview Heights Subdivision.

Mrs. Musante: Case SE10-1/1000021, Diane K. Hall, requests a Special Exception per Stafford County Code, Section 28-273(a), "Nonconforming structures", to allow an addition to an existing nonconforming single family dwelling on Assessor's Parcel 54S-2-39. The property is zoned R-1, Suburban Residential, located at 204 Castle Rock Drive, Clearview Heights Subdivision. You have the application, the application affidavit, plat of property, constructions plans, photos of the property, copy of Section 28-38(b) and copy of Section 28-273(a), the tax map and the vicinity

map. The applicant is requesting a special exception to construct a twelve by twelve, 144 square foot sunroom on the back of an existing non conforming single-family dwelling. This is a corner lot. Cumberland Road has been deemed the front based on our current ordinance even though the front of the house faces Castle Rock Drive. After research, at the time that the house was constructed 1976, the front was considered to be the shortest side as well as in 1978 when the Zoning Ordinance was adopted. Therefore, the dwelling did not meet the required yard setback at time of construction. The existing house is twenty-six point six (26.6) feet from the rear property line, which does not meet the minimum requirement of thirty-five (35) feet. Currently the ordinance for corner lots reads the same. The sunroom addition will not be constructed within the non-conforming area and will meet the required setbacks. Single-family dwelling was constructed in 1976, applicant submitted permit for a sunroom addition December 2009. Application is on hold pending approval of the Board of Zoning Appeals.

Mr. Gibbons: Any questions of staff? Okay, Ms. Hall, would you like to come forward please ma'am. You have to state your name and your address please.

Diane K. Hall: My name is Diane Hall and I live at 204 Castle Rock Drive in the Falmouth District. Now do I tell you why?

Mr. Gibbons: Yes.

Ms. Hall: I will be repeating some of what Melody said, I am requesting this Special Exception because Stafford County changed from using the front, which is the address road of the home which is on a corner lot to determine distance required thus making our home a non-conforming structure. I would like to add a twelve by twelve, 144 square foot sunroom on the back of an existing home at 204 Castle Rock Drive in the Clearview Heights Subdivision in Falmouth. Our home is small and the addition would enhance the existing living space. Homes in our older subdivision are not selling very well and rather than buying a new home, we decided to upgrade our existing home. I would like to thank the staff in the permit department and Melody Musante's staff also, everyone was so easy to work with and I really appreciate it.

Mr. Gibbons: Thank you ma'am, we appreciate that. Any questions of Ms. Hall? I will open the public hearing, would anybody like to speak for or against the application? On my right or my left, anybody? Hearing none, I will close the public hearing and bring this back to the Board.

Dr. Larson: Mr. Chairman, I had a question, just a clarification from staff. Basically looking at the drawing I have here, it looks like it does not really matter how the front and rear were defined, they could be swapped and the addition that she is asking for still would not be in the non-conforming area. Is that correct?

Mrs. Musante: Actually, if we considered Castle Rock as the front, the sunroom addition would not meet the rear, because the rear requirement is thirty-five (35) feet and she only has thirty-four (34) feet.

Dr. Larson: Oh, I see, Castle Rock. Okay. That was not one of the options right?

Mrs. Musante: Cumberland is what we consider the front based on the way our Ordinance reads today.

Dr. Larson: I see.

Mr. Gibbons: Anybody else? Okay, we need a motion?

**MOTION:**

Dr. Larson: Mr. Chairman, I move that we approve the Special Exception as shown on the drawing we have.

Mr. Gibbons: Dr. Larson moves, do we have a second?

Mr. Ortiz: I second.

Mr. Gibbons: Mr. Ortiz seconds, any questions or comments?

Mr. Ingalls: Mr. Chairman, I am going to vote in favor of this motion because I think it does meet the requirements we set up in Section 28-273(a) for a non-conforming structures, also it meets the requirement for the granting of a Special Exception so, therefore I am going to vote in favor of the motion.

Mr. Gibbons: Okay, thank you very much, any other comments? Call for the question, all in favor say Aye.

Mr. Davis: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: Aye. All opposed? Any abstentions? You did very well and enjoy your sunroom.

**VOTE:**

The motion to approve the Special Exception as shown on the drawing passed 6-0.

Mr. Ackermann – Absent

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Hudson – Yes

Mr. Ingalls – Yes

Dr. Larson – Yes

Mr. Ortiz – Yes

4. **SE10-2/1000022 - JAMES A. CONWAY** - Requests a Special Exception per Stafford County Code, Section 28-273(a) "Nonconforming structures", to allow an addition to an existing nonconforming single family dwelling on Assessor's Parcel 42-14-24. The property is zoned A-1, Agricultural, located at 5 Ridgeview Circle, River Ridge Estates Subdivision.

Mrs. Musante: Case SE10-2/1000022, James A. Conway, requests a Special Exception per Stafford County Code, Section 28-273(a) "Nonconforming structures", to allow an addition to an existing nonconforming single family dwelling on Assessor's Parcel 42-14-24. The property is zoned A-1, Agricultural, located at 5 Ridgeview Circle, River Ridge Estates Subdivision. You have the application, the application affidavit, plat of the property, construction plans, copy of Section 28-273(a), photos of the property, the tax map and the vicinity map. The applicant is requesting a Special Exception to construct a twenty-five point nine (25.9) by twenty-nine point nine second story addition to an existing non-conforming single-family dwelling. The existing dwelling sits seventeen point one (17.1) feet from one side property line which does not meet the current requirement of twenty (20) feet. The proposed second story addition is on the opposite side of the non-conformity, therefore, there will be no further encroachment into the non-conforming area. At the time the single-family dwelling was constructed, the side yard requirement was fifteen (15) feet, the side yard requirement changed in 1997 to ten (10) and then again in 2000 to twenty (20) feet for the A-1 zoning district. The single-family dwelling was built in 1989. The permit for a second story addition was applied for in December 2009 and placed on hold pending approval from the Board of Zoning Appeals.

Mr. Gibbons: Any questions of staff? Okay, Mr. Conway.

James A. Conway: Good evening, my name is James A. Conway Jr. and I reside at 5 Ridgeview Circle in Fredericksburg. I am here because I would like to add a mother in-law suite to my house due to some unfortunate circumstances, I have had to take my mother in. I currently have a wife and three daughters; daughters ages are four, two and one. It is a three bedroom house, so

me, my wife and three daughters, I simply don't have the room. I don't have any other options but add to the house and all I am asking for is permission to do that.

Mr. Gibbons: Any questions of the applicant? Okay Mr. Conway, we will be right back with you. I will open up the public hearing now. Anybody in the audience that would like to speak for Mr. Conway's application? Anybody want to speak against the application? Hearing no comments, I will close the public hearing and bring it back to the Board.

**MOTION:**

Dr. Larson: Mr. Chairman, I move that we approve the Special Exception as shown in the packet.

Mr. Gibbons: Dr. Larson moves.

Mr. Davis: Second. I had one comment. I was out and looked at the property yesterday and I agree it would not be a problem with the addition. However, I would request that you put a house number on your house, maybe on your mailbox.

Mr. Conway: The plow came by and kind of...

Mr. Davis: I noticed, they took out your mailbox.

Mr. Conway: I will take care of that.

Mr. Ingalls: Mr. Chairman, again, I am going to vote in favor of this motion because I believe it meets the section of code for non-conforming structures to be able to be enlarged and it also meets our requirements for granting of a Special Exception.

Mr. Gibbons: Okay, call for the question, all in favor say Aye.

Mr. Davis: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mr. Ortiz: Aye.

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

Mr. Gibbons: Good luck to you and take good care of mom.

**VOTE:**

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

Mr. Ackermann – Absent

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Hudson – Yes

Mr. Ingalls – Yes

Dr. Larson – Yes

Mr. Ortiz – Yes

5. **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.

Mrs. Musante: Case 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.

Mr. Gibbons: Can I interrupt you for just a second? I would like to have one hearing pertaining to both of these items. They do pertain to each other, right? Item 5 and Item 6?

Mr. Ingalls: They are both very different cases.

Mr. Gibbons: Okay, go ahead.

Mrs. Musante: You have the application, owners consent form, notice of violation dated November 17, 2009, copy of Code Section 28-62, memo from Alan Smith, Assistant County Attorney, photos of the structure, the tax map and the vicinity map. Periodically, the county conducts a survey of the condition of the tidal shoreline, during the 2008 survey, a new structure which was not shown on any surveys or aerial photographs was identified on Assessor's Parcel 49C-1-1-8M. The staff reviewing the shoreline reviewing the surveys referred the matter to the Environmental Division of the Department of Public Works for investigation. The investigation revealed that this structure had been constructed with no building permit or county approval.

Therefore, a notice of violation for the Critical Resource Protection Area (CRPA) requirements of the Chesapeake Bay Preservation Area Overlay District Ordinance was issued to the owner on November 17, 2009. The applicant is appealing the violation notice. You have Steve Hubble here tonight from the Department of Public works to answer any questions you have.

Mr. Gibbons: We also should have somebody from the state too, shouldn't we? Alright, is there any questions of the staff?

Dr. Larson: Mr. Chairman, is there a definition anywhere in the CRPA documentation as what a shoreline is defined as?

Mrs. Musante: You will have to ask Steve Hubble, he is answering any questions.

Mr. Hubble: I don't know off the top of my head. We can certainly check the definition section of the Zoning Ordinance. The term shoreline is defined in different ways depending on the circumstances or the regulations in effect. There are multiple levels of regulation depending on where you are. The Wetlands Board, the Chesapeake Bay Act and then the Wetlands Permit requirements that are typically administered by the State or Federal Government. So that definition varies depending on what circumstance you are in.

Mrs. Musante: The Zoning Ordinance does not have a definition for shoreline.

Dr. Larson: I was hoping one of the other relevant documents would have something.

Mr. Gibbons: Did you find anything Melody?

Mrs. Musante: There is not a definition in the Ordinance for shoreline.

Mr. Gibbons: Andrew, do you have a generalized definition?

Mr. McRoberts: I do not, I am looking for one right now. Typically under the law when a term is not found in the Zoning Ordinance the general dictionary definition will do.

Mr. Gibbons: Okay and you are looking that up. Is it Webster or Merriam?

Mr. McRoberts: I don't think there is a rule of law of what dictionary to use.

Mr. Gibbons: Can you wait until he gets that doctor?

Dr. Larson: Yes sir, we can proceed.

Mr. Gibbons: Any other questions of staff?

Mr. Ortiz: Mr. Hubble can you also comment on why the violation was in fact given to the individual. I know there is an awful lot written on it but can you just comment on it in your observation.

Mr. Hubble: Basically, the staff felt that the building in questions did not qualify as an allowed use for the type of use that would be allowed in the CRPA section (f) of Section 28-62 defines five categories of allowed uses within the CRPA or RPA and we did not feel that this particular structure fit into any of those uses.

Mr. Ortiz: And the structure you are talking about is a duck blind? That is my next question, do you have a definition of what a duck blind is?

Mr. Hubble: I think you asked a couple questions there but to answer the last one, the County ordinance does not define what a duck blind is. Since there was a building permit applied for, we do not know what type of structure this is. We just have to assume based on our investigations.

Mr. Ortiz: Okay, thank you.

Mr. Gibbons: Then how do you define a structure?

Mr. Hubble: I believe we do have a definition of what a structure is. I felt what Mr. Ortiz was asking was did we call this particular structure on this property something and at this point we don't know what it is.

Mr. Gibbons: But it is a structure?

Mr. Hubble: Yes. It is a structure, we just don't know what type of structure it is.

Mr. Gibbons: Any other questions?

Dr. Larson: Mr. Chairman, we got some photos that were sitting here waiting for us. I am assuming they are of the duck blind in question. I guess my question for staff is when were these photos taken?

Mr. Davis: Yesterday.

Dr. Larson: Thank you.

Mr. McRoberts: Mr. Chairman, on the question regarding definitions, Melody is going and getting something called a zoning dictionary that they refer to as well as Websters. She will be

bringing that in so she can read you the definition of shoreline as well as duck blind or any other term that you would like to have read. Give us a few more minutes.

Mr. Gibbons: Thank you sir. Any other questions?

Mr. Ortiz: In terms of the history of that particular location, it was said that there was existing structure items. Do you have any history or any background on that?

Mr. Hubble: Yes sir, the County's has not been presented any information of preexisting structures there for the one that is in question. We also went back and look at some of our old aerial photographs slightly back in time and we did not see any indication of any preexisting structure on those either. I believe there is a 2006 aerial photograph in either this package or your next package that you could see as an exhibit for that.

Mr. Ortiz: Okay, thank you.

Mr. Gibbons: If there is no further questions of staff, I will ask the applicant...

Mr. Ingalls: Can we have the conservation officer come up here.

Mr. Gibbons: sure.

Mr. Ingalls: I would like to ask him something.

Mr. Gibbons: He has been requested to appear. Do you want to come forward please?

Sgt. Paul Adkins: Evening Gentleman. My name is Sgt. Paul Adkins and I have been with the Department of Game and Inland Fisheries for twenty-one years and currently supervise a five county district, which includes Stafford.

Mr. Ingalls: I guess I want your definition?

Sgt. Adkins: Definition of a blind or shoreline?

Mr. Ingalls: A blind.

Sgt. Adkins: I have to go by the State's definition and we have a regulation that basically parallels that definition. It is basically a structure that can conceal one or more hunters for the purpose of taking water fowl. That verbiage "for the purpose to take water fowl" was added in 2004. I am on a duck blind committee that one of our delegates asked the state to put together to address some issues. That got originated in Stafford and they had a public hearing here when Ms. White was the County Attorney. The purpose, one of the issues we were faced with people

using the state code section of building what we refer as building dummy blinds, these are people that are opposed to hunting and building structures and putting duck blind tags on them to prevent hunting on the public waters. We were trying to address that change of the verbiage to its building and intent to hunt water fowl from there.

Mr. Ingalls: I understand why we had to add that.

Sgt. Adkins: Okay.

Mr. Ingalls: Let me ask you another question. If I had a house that was fifty feet away from the shoreline, wherever the shoreline is, and it had a deck on the back of it. As the property owner, could I put up some camouflage on my deck and shoot for ducks off my deck?

Sgt. Adkins: If you are not in a no shooting zone in the County. I have seen that in the County.

Mr. Ingalls: And I would not even need a license, would I?

Sgt. Adkins: You would not need a license, in order to hunt from a blind on your property, you are not required to have a duck blind license. That is only required if you build it in public waters. What people are looking for with the duck blind license is what protection that it offers them if the encroachment of other hunters come within 500 yards.

Mr. Ingalls: I could shoot off the back of my deck. I could license it or not license it.

Sgt. Adkins: I have seen people put Rubbermaid tool sheds on the end of there dock for the purpose of sitting inside of and shooting waterfowl from and consider it a blind.

Mr. Ingalls: I had a gazebo or a little picnic pavilion down by the shore, I could do the same thing? I could shoot ducks out of that, with or without a license.

Sgt. Adkins: I have some pictures of the Paattie's residence and I farmed it out to many of my officers and I have questioned them. If you were out patrolling and you see this and someone is in it hunting and shooting waterfowl would you consider this a blind? I got the resounding answer, absolutely yes. Under the state definition we would have to consider that a blind.

Mr. Ingalls: If I was shooting off my house, I have a license, is that a duck blind?

Sgt Adkins: Well, we get into that issue of shoreline, of how far away. We have been dealing with the same thing you are. I could not help but chuckle back there when you were looking for that definition. I think you get into an area of reasonableness if your house is so far away from the water. All my concern would be, are you in fact hunting and if you are I am okay with it. If

you are trying to put a duck blind license on your house or on your deck to prevent someone from hunting in public water, the job would be on my people to prove your intent.

Mr. Ingalls: I would have to shoot right?

Sgt. Adkins: I would be an adversary in trying to prove you're to hunt.

Mr. Ingalls: And not just trying to keep other people from hunting. Right.

Sgt. Adkins: If you are actually hunting it, I am good with it. As long as it is not violating any laws or regulations.

Mr. Ingalls: Another questions would be, do you know of any other localities that would require building permit to build a duck blind?

Sgt. Adkins: I am not. I know I had a conversation with someone at the County, I know I spoke to a young lady that zoning and building permits is not something that I would normally really concern myself with. If we were referred to look at duck blinds as being the traditional blinds that we are all familiar with, I have seen all kinds of stuff out there and on the shores that people have used for a duck blind. Some you kind of grimace at and think wow, you have to run the definition through your head and it meets the definition, it is a blind.

Mr. Ingalls: If you want to stop duck blind building, all you have to do is require them to get a building permit and they would never get one. I don't know many duck blinds that would meet our building code.

Sgt. Adkins: I was on the phone today with Capt. Rose from VMRC and I know in Virginia tidal waters requires, if you build any structure in public waters (I know this issue is not on public water) it would require a permit from VMRC, except duck blinds.

Mr. Ingalls: Good.

Mr. Ortiz: Just on other question, this is an extension so that I am 100 percent clear. The issue of reasonableness or practicality and or of safety is normally not consideration in defining what a structure or a duck blind is?

Sgt. Adkins: By the way the current code is written, I would say that is not in there. I was an advocate on that committee that the state actually put into code dictating a minimum size and structure and how it could be built. That was opposed by the public members that were on that committee and most of them were water front land owners. They were advocates for the not so wealthy people, to go out and spend money where some people would simply take a fallen tree on the shoreline and put a tag on it and say it is a duck blind. By definition, it is not but if they

bring in some camouflage material, put up a stick or two and drape the material over it, they have provided concealment for one or more hunters and therefore they have a duck blind.

Mr. Ortiz: My last question, in terms of duck blinds, metal roofs and things of that nature, not a big deal in terms of the definition of what a duck blind can be?

Sgt. Adkins: Not from our perspective, no sir.

Mr. Ortiz: Okay, thank you.

Mr. Gibbons: Ray?

Mr. Davis: You said you have seen the photographs, you have been out there and seen the duck blind?

Sgt. Adkins: Yes sir.

Mr. Davis: Is it reasonable to assume that you could shoot a duck from the front of this duck blind?

Sgt. Adkins: That was my conclusion. I also took photographs of empty shell casings in the ground in front of and off to the side of it. There was decoys inside and it was within distance of, if they put decoys in the waters in front of that, it is reasonable that they would shoot waterfowl there. Yes.

Mr. Davis: Thank you.

Mr. Ingalls: So it is a structure used as a duck blind?

Sgt. Adkins: Yes. I mean I did not physically see anybody there but as an investigator and going down there after the fact, finding the evidence I found of steel shot shell casings, which are required, they can't use lead shot, I would presume it had been used for that.

Mr. Ortiz: Mr. Chairman, just one other follow-up question, in terms of the violation they received. What was your part in that violation and should that violation been issued?

Sgt. Adkins: I had no part in that, not to my knowledge.

Mr. Ortiz: Okay, that was question one, question two would be knowing what you know and you may not know it all, should that violation extended?

Sgt. Ortiz: That puts me in between a rock and a hard spot.

Mr. Ortiz: Life is tough.

Sgt. Adkins: You are asking my personal opinion? I see this violation sort of as a... If the County has a code that this is a violation, it seems to be in contrast to state code that allows this landowner to hunt waterfowl from that structure.

Mr. Ortiz: Thank you.

Mr. Gibbons: Go ahead Andrew.

Mr. McRoberts: Yes, there is no definition in Webster's for duck blind, there is one for blind, which is very similar to the State's definition. It says "a place of concealment, especially a concealing enclosure from which one may shoot game or observe wildlife". As far as the definition of shoreline, there is a definition in Webster's of shoreline. A shoreline is defined very simply "as the line where the body of water and the shore meet".

Mr. Ortiz: Thank you for the clarification.

Sgt. Adkins: My family, we own waterfront property down in the Northern Neck and I have asked this question too. How wide is that line? Is it just the beach or does it get up on the bank where the woods are? Is it the mean low water mark or the high water mark? Even that definition seems subjective.

Mr. Ingalls: On property survey, a lot of times it is called the mean low water is your property line.

Mr. Gibbons: Doctor, you had a question?

Dr. Larson: I was hoping for more on the definition of shoreline, as you point out a line is an infinitesimally thin artifact. To say that the shoreline is an infinitesimally thin artifact between that water and non-water is pretty tight. Unless something intersects that line, I mean if it went beyond the shoreline, it would either be in the water or not. I think that is probably an unreasonable definition, I was hoping for more.

Mr. McRoberts: The definition does go on a little bit to say "this it is the strip of land there next to the shoreline" but that does not define how wide the strip is either. So that does not really help you a whole lot.

Mr. Ingalls: Can I ask one more question? How long was the duck season this year? I know it may vary from season to season.

Sgt. Adkins: Duck seasons and the waterfowl seasons are dictated by the Federal US Fish and Wildlife. I think normally they allow a set number of days, like sixty days.

Mr. Ingalls: Sometimes it is not consecutive?

Sgt. Adkins: Right, it is not consecutive and the state will take that total package number and set the seasons accordingly. We have an early duck season, we have a teal season, which comes in September and the seasons out. Then we have another early duck season in October for about four days, it covers Columbus Day holiday and it's out. Then it comes back in November and it's out. It is not consecutive but the number of days are dictated by the Feds.

Mr. Ingalls: Sixty to ninety?

Sgt. Adkins: I don't remember the number off the top of my head, I want to say sixty days, it could be ninety days. The season runs, you have some early duck hunting that starts in September and will go through usually January 24 this year and for the western zone of the state for geese it usually goes into February. A couple weeks in February and that is really to address the resident geese and to allow a little extra hunting.

Mr. Hudson: I don't mean to be doubtful in anyway, obviously the evidence you saw was shell casings and you saw some waterfowl instruments that could be used. Was there any time that you saw anybody duck hunting out of that place.

Sgt. Adkins: No sir I did not.

Dr. Larson: I have a question Mr. Chairman. Would you duck hunt there?

Sgt. Adkins: Probably, yes, if I waterfowl hunted. I used to, I don't anymore. If I lived there and had an opportunity to put decoys next to my dock and some ducks would show up, I would, yes. Twenty-one years ago, I got assigned to Stafford County in 1989 as a field officer. I was on boat patrol in Accokeek Creek and a gentleman flagged me down, Mr. Greg Murwhin that used to live down there. He wanted to discuss issues of people violating the no wake zone, which is right there where his place is at. While I was talking to him, I noticed a duck blind license on the post of this little shack that was on the water. It had windows and a porch and it was attached to his dock. I commented to him, you know sir, that duck blind license, unless you replace that with a blind by November 1<sup>st</sup> that tag is not going to amount to a hill of beans. It is not going to do anything for you and he said that is my blind, referring to the shack and I looked at it. I was processing the codes in my head and I was a new officer and he said I sit in there with my grandkids, I have heat, I have a coffee pot and I put decoys in the water and when the ducks show up, we shoot a few. I just had to think about it for a moment and I just said that is a Taj Mahal of a duck blind. Its good to go. I considered that a blind and he licensed it every year that I know of ever since and I have a photograph of that also.

Dr. Larson: Did you see any evidence of any other uses of the duck blind.

Sgt. Adkins: Yes. I would say that it appeared that it could be used for other uses.

Dr. Larson: Did you see things, you know like a grill? Something that would indicate that it is being used for something else?

Sgt. Adkins: There was a picnic table in there.

Dr. Larson: How many entrances would you say the duck blind has?

Sgt. Adkins: Two, it was open on each end. It had a solid back, I think you have a photograph and the front was covered with camouflage material that you could sit behind and provide concealment.

Dr. Larson: Thank you officer.

Mr. Gibbons: Any other questions? Okay, thank you officer. Now I will open the public hearing, will the applicant come forward please.

Clark Leming: Thank you Mr. Chairman, members of the Board of Zoning Appeals, good evening my name is Clark Leming and I am here on behalf of the applicant. Sgt. Adkins indicated that he did have some photographs and I would ask that you permit him to submit those for the record. He just made reference to them, I think.

Mr. Gibbons: Do you have them with you Sgt.? If you would give them to the Secretary over there, I would appreciate it.

Mr. Leming: He also has some copies of Virginia Department of Game and Inland Fisheries regulations that I am going to be referring to that I think would be helpful for you. First, with regard to the shoreline, a little clarification and I will refer to specific pages in the departments' regulations. Page 19, the definitions for two things and some or all of you may realize that there are stationary blinds, a relatively new thing, that is a fixed structure on the shores. Then there are floating blinds, which are the ones out in the water that would require the VMRC permit. In Stafford County, and this appears on page 22 of these regulations, there are special provisions for stationary blinds in Fairfax, Prince William and Stafford Counties. This appears at the very bottom of that page "no stationary blind" that would be those that are located on the shore "shall be located more than 300 yards from shore". This particular blind in question is twenty feet from the shore but under the regulations, it could be 300 feet from the shore. It goes on to say "except in waters less than 600 yards wide". Now, what I would like to do, Sgt. Adkins covered a fair amount of the material that I wanted to cover and I don't want to be redundant. Let me give you

a little bit of background here. In 2008, the Pattie's constructed what they believed based on what they had seen on Accokeek Creek and we have some photos of those too, and in Stafford County generally, believed they constructed what was a waterfowl blind. It is nineteen by twenty-six feet and approximately twenty feet from the shore. It does have two entrances and an open front, which is camouflaged at the bottom and solid back wall. It was built and we will provide you with some testimony about this, on a previous structure that was a dry dock repair platform. There had been a prior owner that did work and we originally thought maybe it was a picnic pavilion of some kind. We have learned since then and since our memo went out to you all that it was used for dry dock repairs. The pilings were still there and some of the floor structure was there and he constructed his blind on the footprint of what was the platform there that was used for dry dock repair. The Pattie's contacted the Army Corp of Engineers (ACOE) to see if they needed any permits, of course the ACOE would not regulate this, they told them no. They also learned that they did not need any VMRC permit because it was not in the water and assumed they were good to go. The County became aware of the structure and issued the violations that you are familiar with. The County takes the position that this is not a waterfowl blind and therefore, not a water dependent structure but I think they concede that if it were a waterfowl blind that it is a water dependent structure and that no permit or violation of the County ordinance would be relevant or the Chesapeake Bay regulations would be an issue here. The County concedes that Stafford County Code does not define what a waterfowl blind is. There is no definition in the Stafford County Code or anywhere else of what a waterfowl blind is. We have the state definition and you have heard what Sgt. Adkins had to say about this. Our fundamental position is that it is a waterfowl blind under any definition that can properly be considered here and the reasons are these: 1) it meets the state definition, Sgt. Adkins has read that to you as contained in the regulations. I have the state code provisions here also, which are what the state regulations say it is. I point out that there were changes to this particular portion of state code that occurred 2004. If there was a concern about some kind of conflict with Chesapeake Bay regulations, this occurred long after those were in place. I have an affidavit for you from the owner indicating that it is used as a waterfowl blind, that it has been used in hunting season, approximately one week a month during the current hunting season and he stated categorically, I have not used the blind for any other purpose. Now, does he eat? Does he put food on the picnic table when he is there hunting, probably so. Does that make it not a blind? I don't think so. He has some other photos of some blinds on Accokeek that may also be helpful for you. Thirdly, this is a waterfowl blind. The county does not say what it is. If it is not a waterfowl blind, what is it? Mr. Hubble has indicated that he does not know what kind of structure it is. The ordinance does not define what a waterfowl blind is but he can't tell you what it is and state code and Sgt. Adkins say that it is a waterfowl blind. Certainly, it is consistent with the waterfowl blinds that you will see photos of up and down Accokeek Creek and elsewhere within Stafford County. Fourthly, this is I think the critical point here, maybe the county has the authority to regulate waterfowl blinds but if it does, it has to tell the land owner what they are. You can't do this, as it is proposed by the county on a case by case basis. Oh I think this one is a blind, I don't think that one is a blind; the land owner is entitled to a specific definition, the land owner has to be on notice as to what is and what is not a blind if the county chooses to regulate

it. Stafford County has not chosen to do so, I can find no other zoning ordinance in the state that gives a definition of waterfowl blinds. Stafford would be the first if it started to start regulating or attempted to start regulating these. Zoning violations are criminal violations and you can be prosecuted criminally for violating the zoning ordinance. Now seldom does that happen, they usually go the injunction route but these are class one misdemeanors in many cases or class two or class three. It seems to me that it is absolutely fundamental that the land owner, if the county is going to start defining what these are, the land owners are entitled to notice. It is simply a fundamental violation I think of due process not to put the land owner on notice as to what these things can and cannot be. I have some others photos for you that I would like to hand up for the record. These are photos of actual hunters in the blind. I think I have a set here for each of you and there are also photos of other blinds up and down Accokeek Creek and elsewhere within Stafford County. I have a photo of the Taj Mahal of blinds, this one is constructed on a dock, it is on Potomac creek, two stories, platform on top. You can see the license from the state, the yellow tag right on the edge of the platform but a pretty impressive structure. Those are the primary points that I intended to make, I do have information, I do have the state code here if anybody would like to copies of the state code. It is our position that this is a waterfowl blind, it was built for that purpose, the state agrees that's what it is, you have an affidavit from the owner saying that is what he uses it for, you have no definition in the County Code saying what a waterfowl blind is and yet the county is telling the landowner that this simply does not meet the whatever their definition may be. There was a Supreme Court Justice named Potter Stuart and he got into hearing pornography cases back in the early 60's and somebody asked him what pornography was and he was fairly famous for this quote, he said "he does not how to define it but he knows it when he sees it". That strikes me as a pretty scary way to enforce any kind of structure. Thank you and I will be happy to answer any questions that members of the BZA may have.

Mr. Gibbons: Do you have any questions now?

Mr. McRoberts: On the picture of the other standing duck blind structure, when was that taken and by who?

Mr. Leming: That was taken in January. The Saturday before what would have been the January hearing and it was taken by a friend of the Pattie's.

Mr. Davis: I have a question. Under your definition in the information that you have provided, this Taj Mahal, a person could build a three bedroom house with a deck on the back and call it a duck blind.

Mr. Leming: The state may consider it a duck blind, you don't have to decide that question tonight because if you don't have the Taj Mahal before you. I concede that at some point there is a line out there where the County or some governmental entity would be entitled to come in a say no, that is not a duck blind, you cannot call that a duck blind but we cannot get anywhere close to

that in this particular case. Whether that does or not, I don't know, but it has a state license on it and I think that Sgt. Adkins would tell you based on what he said before, as far as he is concerned that is a duck blind in the state of Virginia.

Mr. Ingalls: I assume he is talking about the same one, your exhibit G?

Mr. Leming: Yes.

Mr. Ingalls: That is a duck blind?

Mr. Leming: That is what the license, the little tag on the building says.

Mr. Ingalls: You don't think it is a structure with a duck blind license on it?

Mr. Leming: Well...

Mr. Ingalls: Is it a deck?

Mr. Leming: I guess the question before you all is it is a deck too. If the County came in and said it was not a duck blind, would that structure be in violation of the Zoning Ordinance?

Mr. Ingalls: What is it that the judge said? I think I know a duck blind when I see one. That is not a duck blind. I believe I could almost identify a duck blind without a license as being a duck blind just because you put a license on it, in my mind does not make it a duck blind structure. It makes it a legal duck blind per state. It is not a duck blind.

Mr. Leming: I don't disagree with you.

Mr. Ingalls: Okay.

Mr. Leming: But there one is.

Mr. Ingalls: Do you agree that is not a duck blind? That is a deck with a duck blind license.

Mr. Leming: It is not up to me to make the decision, in my view I think the only reasonable thing to do is to defer to those that are in power to make the decision. I am not that person. Whether it is a duck blind or not, I don't know. Whether that particular structure crosses the line or not, I don't know.

Mr. Ingalls: I know a duck blind when I see one and that does not look like one. Just a comment, no way do I want Stafford County to get into regulating what a duck blind is or all that

stuff. We won't have any duck hunting in the county if the county gets involved trying to define that. We are better off leaving that alone.

Mr. Leming: On that, I do agree.

Mr. Ingalls: I don't disagree that is a structure used to shoot ducks from. He did not need a license.

Mr. Leming: No.

Mr. Ingalls: He could have just built that structure and he did not need a license.

Mr. Leming: I think that is probably right.

Mr. Ingalls: The structure by itself could be there and he could go down and shoot. The license is more, as the office said, to keep other people from hunting close to him than giving him the right to do it. That is the reason that most people buy a license. He does not have to have a license, he could have gone down there and hunted, he does not need a license and I guess from the earlier pictures we had when the leaves were on the trees, there were pictures with coolers, non hunting items there.

Mr. Leming: If you are asking me to comment on that, I think probably the county violation got his attention and he decided that he was going to stick to his original intent here and be sure that this was a duck blind and use it as a duck blind. I am not sure that coolers, in it of themselves are inconsistent with a duck blind. It seems to me that that would be a reasonable thing to have if I were sitting on the shoreline hunting for ducks.

Mr. Ingalls: Well the picture as submitted to us in the first part of the case, it has what looked like a generator, which I guess you could need a generator to hunt ducks.

Mr. Leming: There is no generator at this point.

Mr. Ingalls: Well there was at this moment, there was some buckets. Maybe there is no cooler, but there are buckets and racks down there. To be honest with you, I don't see any hunting paraphernalia. There is a nice potted plant here, lawn chairs with very decorative cushions, white chairs, which normally hunting ducks you would not normally have white chairs. This picture showed white on the background, which he has not painted brown, I believe.

Mr. Leming: Right. It was still under construction when that photo was taken.

Mr. Ingalls: I don't see any construction equipment, it is set up with benches to sit on and the picnic table. I know a duck blind can be very elaborate. As a kid, my father took me to a duck

blind, they had kerosene heater in there, they had almost everything you ever needed inside this duck blind. But it was a duck blind, it sat on the shore for the remainder of the time it was not used, it sat there. This structure, what do you do with this structure for the other, I cant figure out the days but it is close to seventy days or so, what do you do with it the other 270 days of the year. It does not sit there and say I'm a duck blind.

Mr. Leming: I don't know what they intend to do with it the rest of the year or if anything.

Mr. Ingalls: The picture we got shows it being used as something other than a duck blind.

Mr. Leming: Well, nothing that you have indicated to me is in my view incompatible with a duck blind.

Mr. Ingalls: If you take a position that is a duck blind.

Mr. Leming: No, I did not take that position. I said I did not know.

Mr. Ingalls: It is a structure with a license on it and to me that is not... There are others ones that the officer showed us and there is probably nothing going on in any of those other than duck hunting. It can't be used for much.

Mr. Leming: I think that answer to that is that you may have indicia of this or that, you can make this guess or this assumption. I still have not heard any specific reference to anything that would not be compatible to the use of this structure as a duck blind. It seems to me what this really comes down to is that there is no evidence for you that this was or had been used for any other purpose other than a duck blind. You may surmise based on the existence of this or that or this that maybe somebody did use it for something else but there is no evidence to that affect.

Mr. Ingalls: There is a picture.

Mr. Leming: You have an affidavit from the owners saying that it is a duck blind and that has been the only thing that he has used it for. Now do they go down there and sit and watch the water non-hunting season, maybe so. Does that mean that it is not a duck blind, I don't think so.

Mr. Ingalls: Would you agree that it is our decision to decide whether it is a duck blind or not?

Mr. Leming: I think the state has already decided that it is a duck blind, I don't think Stafford County has the ability to decide that it is not.

Mr. Davis: I have a question. Does the applicant have any relationship with the adjacent property owner?

Mr. Leming: I am sure they know each other. Tell me what you are looking for.

Mr. Davis: Do they have any written authorization from the adjacent property owner to hunt there?

Mr. Leming: This is the adjacent owner, would you like to hear from him?

Mr. Davis: Yes.

Tom Hoioos: My name is Tom Hoioos and I live at 14 Burns Road in Stafford, which is not the property in question. I do own the adjacent property immediately to the north of Mr. Pattie. I have since 2001 and he does have my full permission not that I think it is necessary for me to give it to him but he hunts there with my full support and willingness to hunt with him on occasion.

Mr. Ingalls: Is your property used as a residence or vacant?

Mr. Hoioos: My property is currently vacant, it is my dream home property that will hopefully one day hold that residence.

Mr. Davis: Is that the house next to the property.

Mr. Hoioos: My house, I don't have a house, my property is vacant. It is eleven acres of just raw land to the north of Mr. Pattie.

Mr. Davis: There is a house within one hundred (100) yards of that property.

Mr. Hoioos: Yes, that is on the other side.

Mr. Davis: Okay. According to the state, Stafford Section 26.8, he must have written permission from a residence within one hundred (100) yards.

Mr. Leming: I think he can testify to that.

David Pattie: My name is David Pattie, I live at 458 Marlboro Pointe Road in Stafford. I do not have written permission at the moment from a Richard Cadenas, he is the adjacent property owner south to me. He lives in Middleburg, he rents that house. We are good friends with the people that currently rent the house, Megan Oden and her husband Buddy, I have even spoken with them, and they so not have any problem with me hunting waterfowl from my duck blind. I have also spoken with the Cadenas' on several occasions. I work with them almost monthly do repairs on their property, I currently built a driveway for them and we spoke about the duck blind. Rick and Debbie told me that they did not have any problems with it being a duck blind at all and wished me luck. I have had good luck this winter. My family came down to Stafford in

1937 from Quantico, my grandfather was an avid duck hunter and he introduced me to the sport as a young boy. I finally got the opportunity to buy me some water front property in Stafford County, ironically after living here all my life, after working thirty –five years could finally afford something and so I bought something and I am pretty damn proud of it. Pay a lot of taxes on it and I erected my duck blind down there this year and I hunted my duck blind with several of my friends. I feel that I am in no violation of anything, I am not trying to punch Stafford in the nose, not trying to punch anybody in the nose. Some of the issues in question that you saw in the picture, for example the generator, does not have a thing to do with duck blind hunting but it sure does make it easy to cut a board when you are building it, drill a hole, run a nail gun and that is what that generator was for. The picnic table was something to sit at and eat lunch at when I got tired of working. I built it by myself, I am self employed and so I get one weekend a month to work on something. When I go down there to work, I am not going to work with a hammer and a nail, I am going to work with a nail gun. It speeds the process up and I needed to have the duck blind constructed with a certain time frame. I don't remember off hand but I think it was October 10<sup>th</sup> it has to be constructed by. I met all those obligations. I got my duck blind license even though I am the riparian land owner and I don't need a license. I chose to get a license for one reason, I am going to do my part to support the state in its program. I am a member of ducks unlimited and I am going to do a part in my membership fees, my license fees, my ducking hunting fees and my federal stamp fees, they all help us have ducks. If it was not for the duck hunters supporting organizations, we probably wouldn't have any. I feel comfortable with my duck blind, I have been a citizen of Stafford County for a long time and I continue to be so, I am not going anywhere. I just got my kids through high school here in Stafford and I haven't decided to leave, I'm staying. I have just bought several adjacent properties, not necessarily waterfront but they do adjoin the parcel that I own that the duck blind is built on and I invested a considerable part of my future and my sons future in this land. I am going to continue to hunt it, it is a duck blind.

Mr. Gibbons: Any questions of Mr. Pattie?

Mr. Ingalls: Do you have a boat Mr. Pattie?

Mr. Pattie: Yes sir.

Mr. Ingalls: I see a dock down there, I assume you bring it over.

Mr. Pattie: It is a skiff, it is a twenty-one foot Carolina skiff.

Mr. Ingalls: Did you build the shed that is back there? Is that on your property, that wooden shed?

Mr. Pattie: The wooden shed is on that particular lot and it was rebuilt from an old horse barn that was existing on the property when I purchased it in 2002 or 2003. The property was owned

by the Betts Family back in the 50's and early 60's and that is when the existing platform was constructed down there that I built upon. There was not a whole lot left of it but I reused the existing pilings, I did not have to change the footprint at all, I disturbed no ground, created no erosion.

Mr. Ingalls: When I looked underneath of your decking, it looked like old telephone poles that were cut off. Were they there?

Mr. Pattie: Yes, those were the existing pilings that were there.

Mr. Ingalls: Maybe six pilings or so?

Mr. Pattie: Yes, I think it is eight. I had to level them up, that is why there is a fresh cut mark at the top.

Mr. Ingalls: But the pilings that I saw are the original pilings for this?

Mr. Pattie: Now as you can see, they were all creosoted pilings, they have been there since long before I was born.

Mr. Ingalls: Okay.

Dr. Larson: I have a question for Mr. Pattie. When did you move into your property, your house?

Mr. Pattie: My existing residence that I live in, I built the house in 1990. I bought the house in 1987, the duck blind is on an adjacent piece of property that I purchased in 2002 and 2003.

Dr. Larson: One of the applications refers to the pad as a concrete pad but its wooden pilings beneath the wooden deck.

Mr. Pattie: Correct.

Dr. Larson: Okay, thank you.

Mr. Gibbons: Any other questions? Thank you Mr. Pattie.

Mr. Pattie: Thank you.

Mr. Leming: Thank you all.

Mr. Gibbons: Is there anybody else that would like to speak for or against Mr. Pattie's application?

Paul Wills: My name is Paul Wills, I live in Fredericksburg. I have been in town since 1983 but in 1961 in the middle of the summer, the beginning of the summer, my father William B. Wills, Sr. purchased the property down there. The house that is next to David Pattie's duck blind, where he lives and all the property he has purchased, thirty-five acres was waterfront and farmland that had road frontage from Mr. Betts. There is a little road that goes around part of the old farm called Betts Road and that is named after Mr. Betts. The place where the duck blind is, the footprint, that is where the dockyard was. There is a natural keef there, that is where the ground does not wash away, the water comes in and the water goes out and it does not erode the shoreline. Usually, something like that is manmade, stone or concrete but this is hard clay and the footprint there is the dockyard. For dry dock and boats back in the 50's or 60's, they just came out with fiberglass later on. They were all wood boats, so they got barnacles on them and we had some technology that we do not use anymore, the eniphalin, you would put that on so the barnacles would not attached themselves to it. That dockyard was pretty deteriorated and if your people had flown over and done and aerial shot in 1982, that was like the last year my father was alive, he had refurbished the boat launch down there where you could launch a boat. It was the only place on our property where the water and the shoreline went down and met and you could drive any kind of... You could put a piece of heavy equipment right on the shore and this natural keef would prevent it from going in the water. It would not erode and it still has not eroded, it is still like it was twenty, thirty or fifty years ago. I would like to show some support, there was a lot of thing down there that maybe were not on the plat. The boat launch was always there and there was always pilings in the water because when you launch a boat, unless you have somebody to stand there and hold the boat it is going to float away so you had to tie it up to something. That was where we brought the boats in, we did not like it but they had to be pulled out because after a while, they got so heavy with all the crustations on the bottom you had to bring them in and flip them over on something and that was were that duck blind is built. If you have any questions about that property... I am glad that a guy like him has bought the last of our old farm and waterfront property down there because he is not going to do very much with it. He interviened when a builder was going to buy that area were the duck blind is and build a house there. Before it would have not been allowed to build a house there and refurbished, my little sister lived there after my mom died and turned what he is referring to as the horse barn. That was the old chicken house and it even had electricity. I think he got into a little bit of trouble when he could not have electricity from the old house, what used to be a five bedroom brick cape cod that was my mom's house so he had to bring in power of his own. I think that is was kicked off this whole...

Mr. Ingalls: So it is your testimony that there was dock of some kind or wooden platform where he built the duck blind.

Mr. Wills: Well he built the duck blind on what was the dockyard because there was also a ramp to launch boats and there was also a place to tie boats off in the water but you had to bring them in. The footprint of that thing is on the old dockyard where we had racks to put wooden boats on. In my day, a skiff was fifteen feet long, that was a small skiff. Nowadays, these guys are going out in ten foot boats and drowning in the Potomac River. I would not be caught dead in a ten foot boat, I weigh 240 pounds and if I had a buddy that weighed 240 pounds, a ten foot boat is inadequate but it happens, I read about it in the paper all the time.

Mr. Gibbons: Okay sir. Any questions?

Dr. Larson: Mr. Wills, you said that where the current duck blind is located was some sort of boat repair facility. What is your earliest recollection of that being there?

Mr. Wills: 1961.

Dr. Larson: 1961?

Mr. Wills: Yes, because it is a natural... There is no bluff there, the water and the shoreline come down and meet each other and there is no erosion because the shoreline has this, I don't know. If you wanted to put something there it would be poured in concrete but you don't need that because it's hard clay. I thought maybe there was some stone or something and I questioned David Pattie about it and he said no, it is sand and under that it has a little layer of sand is this hard clay. It is a wonder that every part of that dry dock or dockyard where we flipped over the big wooden boats, you know they were cabin cruisers but fishing boats, it was all still there. Nothing was very high but down at the ground level, there was enough for him to work with.

Mr. Gibbons: Thank you Mr. Wills.

Mr. Wills: Thank you.

Mr. Gibbons: Anybody else? Okay, I will close the public hearing. The applicant, do you have anything further?

Mr. Leming: Not unless there are any questions from the Board.

Mr. Gibbons: Any further questions of staff? Okay, I will close the public hearing and bring it back to the Board.

Mr. McRoberts: Mr. Chairman, I have a couple questions for staff if I can jump back in. I am still struggling to understand how this Ordinance applies and frankly, I am a little more confused

now than when I arrived here. If that is okay? As I understand it, I am looking at 28-62(f), development conditions, and that where the analysis starts.

Mr. Hubble: Actually, it would start in 28-62(e), which is titled permitted uses or something similar to that effect.

Mr. McRoberts: Okay, and if it is permitted than it would have to comply with development conditions?

Mr. Hubble: That's correct.

Mr. McRoberts: Okay. Then you look under 28-62(f), Development Conditions, and the first thing says "it may be allowed only when permitted by the Administrator and if it is" and it lists A, B, C, D, E and F.

Mr. Hubble: That's correct.

Mr. McRoberts: Okay, does it have to meet all of those or just one of them?

Mr. Hubble: It would need to be a use that would fit into one of those categories and meet the conditions where those categories have conditions.

Mr. McRoberts: Okay, so we are talking (f)(1)(a), water dependent and satisfies the conditions in section one, that is the only discussion I have heard here tonight.

Mr. Hubble: I believe that if one were to argue that this use were to be allowed within the RPA that they would suggest that it would be allowed under that provision.

Mr. McRoberts: It's not redevelopment, it's not a road or a driveway, it's not flood control, it does not seem to apply to the other one so, lets just assume that if it is permitted it would have to be under (1)(a). Okay. The first thing under (1)(a) is water dependent. Okay, there has been a lot of talk about duck blinds and water fowl blinds but not a lot of discussion about water dependent. What does water dependent mean?

Mr. Hubble: Water dependent uses are defined in the Zoning Ordinance.

Mr. McRoberts: Okay and that's where we get waterfowl blind?

Mr. Hubble: No, waterfowl blind is not even listed as a water dependent use in the Zoning Ordinance. I am sure Melody could pull up that definition to tell you exactly what it says, I don't know it off the top of my head but generally it is talking about things like marina's or wharf's, things that by there nature have to be located at or near the shoreline.

Mr. McRoberts: Okay, looking at this structure, does it have to be located near the shoreline?

Mr. Hubble: I think it depends on what its purpose is.

Mr. McRoberts: Okay. When I read the term dependent, it sort of is the same thing you said and that is that it sort of has to. The definition in Webster's of dependent is "it is contingent upon, it is dependent upon", being there at the water. So I guess that is one of my questions. One of things under, taking it further down (f)(1)(a)(c), it says one of the criteria that has to be met for a new or expanded water dependent facility, assuming it is a water dependent facility, is that any non-water dependent component is located outside the CRPA.

Mr. Hubble: That's correct.

Mr. McRoberts: And this is 100 percent inside the CRPA?

Mr. Hubble: 100 percent within.

Mr. McRoberts: It is 100 percent water, I mean none of it is water... Well it says non-water dependent. I am very confused.

Mr. Hubble: I can give you an example. If you had a marina for example, you know the piers, the boat ramps and the loading areas, all those facilities are going to need to be at the shore line. But for example, the marina may have a building or a sales office or a facility where you would need to work on boats and if we were to get an application today to construct a new marina we would require those components to be located outside of the CRPA so that only the water depend components were located there.

Mr. McRoberts: So only this absolutely had to be there at the water would be there?

Mr. Hubble: That's correct.

Mr. McRoberts: I understand now. Okay, and then under (f)(1)(a)(1)(b), it talks about complying with the performance criteria in Section G.

Mr. Hubble: Yes.

Mr. McRoberts: Okay, flipping over to G, that is were we get limited are necessary to provide it. There are some other things about protecting the wildlife, then it talks about encroachments in the buffer areas of the minimum necessary to achieve a reasonable buildable area for a principle structure.

Mr. Hubble: That would only apply to the construction of a principle structure.

Mr. McRoberts: Okay, so this is not a principle structure?

Mr. Hubble: I would not argue that it is. I would argue that or suggest that it might be an accessory structure.

Mr. McRoberts: Okay, I see. Thank you very much, that helps me quite a bit understand how this thing works and how the pieces flow together. I guess Mr. Chairman and Board, I would suggest two things, one is legally it is important to understand what you are here to do is determine the meaning of the terminology used in the Zoning Ordinance and not in the State Code. The State Code has it's own meanings and own definitions of things and it is what it is. Certainly, you can look at it just like you would look at Webster's and other things but State Law does not decide for Stafford County what terminology it uses and how it uses it. The second thing is, I think it is critical for the Board to consider whether in fact this is water dependent. Is it contingent on being next to the water and I guess that is a question fro you all to decide. Those are my thoughts.

Mr. Gibbons: Let me come back and ask you, if it is water dependent then what are you saying.

Mr. McRoberts: Water dependent is the threshold inquiry for it being allowed at all here and if it is not water dependent than it is not permitted here no matter what other issues you wanted to talk about here. It says here under (f)(1)(a), it is water dependent and it satisfies everything that follows after it. I did not hear a whole lot of discussion from the applicant about it being water dependent other than saying it is used for duck hunting.

Mr. Gibbons: Doesn't a duck have to have water?

Mr. McRoberts: Absolutely, but is this structure water dependent? In other words, is this structure contingent upon it being against the water or could it be somewhere else? I guess that depends on what this Board thinks that its purpose is.

Mr. Ortiz: I guess the question is, what is the percentage of duck blind built near water or significantly away from water? If you could comment on that.

Mr. Hubble: To be honest with you, we do not commonly deal with duck blinds. This is the first issue I have dealt with in eight years that connected to the term duck blind, so I don't know the answer to your question.

Dr. Larson: Mr. Chairman, I have the definition of water dependent facility from the Zoning Ordinance. It says "a development of land that cannot exist outside of the CRPA and must be located on the shoreline", which is why we need to know what a shoreline is, "by reason of the intrinsic nature of its operation. These facilities include but are not limited to ports, the intake

and outfall structures of power plants, water treatment plants, fresh water treatment plants, storm sewers, marinas and other boat docking structures, beach and other public water orientated recreation areas and fisheries or marine resource facilities”. Unfortunately, duck blind is not called out there but it is up to us I think to figure out if a duck blind is a water dependent use.

Mr. Gibbons: Okay, any further questions or discussions?

Mr. Hudson: The problem I have to try to come to some understanding is this is the first you looked at situation like this in eight years and I see the affidavit from the owner, I take affidavits very seriously, that he says what it is. He says it is a duck blind and I think a duck blind has to be water dependent. I don't think ducks are going to land on the bank. I am troubled that we... I am a fisherman and I see duck blinds all up and down that river and I am on that river about four days a week in the summer and I hate to get into regulating duck blinds, we may be the first and only county in the state that does something of the sort. I lean strongly towards the affidavit that the applicant supplied that in the face of it without evidence for someone to prove that it is not accurate, it would be hard pressed for me to say that it is not accurate without evidence to the contrary. I have to say that I am confused, I do take seriously the affidavit and I have not heard anything that disputed the affidavit and that is an important fact to me.

#### **MOTION:**

Mr. Ingalls: Mr. Chairman, I move that we uphold the Zoning Administrator's violation.

Mr. Gibbons: We have a motion by Mr. Ingalls, do we have a second?

Mr. Davis: Second.

Mr. Gibbons: Second by Mr. Davis, any discussion?

Mr. Ingalls: Let me just explain why I made that motion. There is no question that this was used as a duck blind, he used it, the evidence says he used it, I believe he used it, I think there is no one here that does not believe that he did not shoot ducks out of that structure. We also have evidence from conservation officer that you could have a house and put a duck blind license on it. That does not make a duck blind, it is a house used as a duck blind. The picture that the attorney submitted showing this big structure with a deck and duck blind license on it, I think most of us would say that is not a duck blind. I think Mr. Leming had a very good analogy about what is pornography and I think most of us would a duck blind when we see it. If you just saw it without the license and say that is a duck blind, I don't believe you would call that a duck blind, if you walked down to the structure without a duck blind license and in the summer time you would say it is not a duck blind. That is why I believe that to get into trying to regulate what a duck blind is, I am fearful of us getting into that issue. I do not want the county in it, I do not think we belong in it. I think, up and down the shore you will find duck blinds and I don't

believe the county would have said anything about it if that was a real duck blind if that is what you used it for. Duck hunting is a seventy, seventy-five day a year season. A lot of time goes by and I think this structure is intended to be used just as much in the summer as it is during duck hunting season. That is why I made the motion to uphold the violation notice.

Mr. Ortiz: I actually take a different perspective on this. In looking at all of this information I can truly understand why people can be confused as to what is a duck blind and what isn't a duck blind, the purpose, etc. I am actually going to vote to support Mr. Pattie's perspective because whether I think this is a duck blind or not, I think the definition is rather vague and I have seen significantly larger pieces than this but based on all the element I see, the vicinity of which it is to the water, his affidavit saying he utilization of it is primarily for duck hunting during the season. I will support Mr. Pattie's perspective.

Mr. Hudson: I just have to say, from traveling the river and seeing all of the docking from Potomac Creek up to Matawomack Creek that I fish, I see this duck blind permits on the end of a lot of docks out there and they are docks. They are docks where maybe people tie their boats and docks where people hunt for sixty days or thirty days and obviously there are some in the water but I can go up and down that river from Potomac Creek up to Matawomack Creek and find you a dozen of the yellow certificate from the state on the end of docks out there. That kind of concerns me that we would microscope or pinpoint one particular situation here when we just happen to look at it after eight years. I am a little troubled by that. I don't think I am going to be able to support the motion because I think it is too complex to not to share the belief of a citizen submitting an affidavit. People tie boats on the ends of their docks, people go swimming at the end of those docks, people do a lot of those things at different times of the year out there and I think my position is that I can't support the motion but I am still troubled as to how we got here.

Mr. Gibbons: Doctor?

Dr. Larson: Mr. Chairman, I wish there was a little more clarity in this case but there isn't so based on testimony from Sgt. Adkins and photographs to the effect showing evidence to the fact that it was being used as a duck blind, based on the affidavit by the owner that he uses it as a duck blind, based on the definition of water dependent facility, if it is a duck blind it would be water dependent, based on the definition of the shoreline here in this hunting book Virginia Migratory Waterfowl 2009/2010, which in any cases even if you believe that the water is less than 600 yards wide. Based on these photographs the structures would still be within the shoreline defined in this book, which is the best thing we have for shoreline. I am afraid I can't support the motion.

Mr. Gibbons: Any other comments?

Mr. Ingalls: Let me ask this question, if I want to go down there and build a fifty by sixty pavilion on the shore or twenty feet off the shore and I go down and build it with no building

permit and I go see the conservation officer over there and get my yellow tag and stick it on there and say you don't have any regulation here, I am a duck blind. It is a fifty by sixty foot building and I am going to have a lot of hunters in here and that is what I want. I don't know how we regulate what we say is okay.

Dr. Larson: The difference is this building has camouflage on it and shell casings around it.

Mr. Ingalls: I agree 100 percent, it can be used as a duck blind.

Dr. Larson: Even if he did not have a duck blind permit he could still hunt. That really does not matter in my mind, he does not need a permit.

Mr. Ingalls: No, he does not need one.

Dr. Larson: So even if he does not have one, if I walk up to a house under those circumstances and it had a duck blind permit on it, that really does not mean a whole lot.

Mr. Ingalls: So I could build that same structure anywhere in this County along the shoreline and that would be okay.

Mr. Hudson: I refuse to answer on the grounds that I don't know. There are tags on the ends of peoples boat docks out there on that river and whether that is right or wrong I can't say. I fish every boat dock out there. I know they are there.

Mr. Ingalls: I can't see how we can say that you can go and build that same structure. Everybody can build that same structure on their lot, twenty feet off the water and if what you are saying is true, he does not have to have a license on it. All I have to do is say to the County this is a duck blind. The license does not make it a duck blind.

Dr. Larson: If there was evidence that it was a duck blind, the camouflage, shell casings and conservation officers testimony. I think we have to do better than that looks about right. To me when I saw the pictures, it did not look like a duck blind but I am not a duck hunter I listen to people that are. This structure meets the definition we have in place to satisfy the requirements for a duck blind.

Mr. Ingalls: I think it looks like a duck blind today and I think it is used as a duck blind today. I think it could be used for the purpose of more than that. It is a multipurpose use. Just like this deck, it is a multipurpose use, one of the uses is a duck blind but it is not a duck blind. It is a multipurpose structure that could be a deck, boathouse, boatlift and a duck blind.

Mr. Hudson: I think it gets kind of complex because in general as a fisherman, we are used to seeing duck blinds out in the water, now who regulates them, I would like to know because they

put them in every good bass hole that I fish out there and I would like to see some of them moved. The wind actually gets them and the waves tear them down and somebody comes back out and build them back. I don't know how they get the permits, does the county approve them. Does the state, I guess the state issues them as long as they are not in 500 feet of another one.

Mr. Ingalls: I read that Mr. Leming said that he agreed that Mr. Pattie should have gotten a building permit. Well, are we going to require building permits for duck blinds, I mean he agreed that this thing should have had a building permit. Like I said, if it were a duck blind and you tell a duck hunter you have to go get a building permit that is the end of the duck hunting on the shore.

Mr. Hudson: I don't want to debate it, I am no expert on this but I understand that Maryland owns the water way all the way over to the Virginia Shore so there are people from Maryland that have as many duck blinds as the people from Virginia so when you get to Aquia Creek, it belongs to us. All that shoreline out there and I read one time that Maryland gains a foot a year of our property but I understand they own the water rights up to our shoreline and the duck blinds out there are clearly from Maryland. How could we regulate that.

Mr. Ingalls: I felt the applicant had a good case about being able to build the structure because he built it over another structure. All he did was build it over an existing structure and maybe the Variance would have been okay but it is not a duck blind. It is a built structure with a duck blind license attached to it, in my opinion.

Mr. Gibbons: Let me ask a question, if we had not done this in eight years and its been out there, have you gone back to Rachel or Jeff and say that if we are going to have a structure we need to define what a structure is?

Mr. Hubble: No. From our perspective, we got a complaint, we went to the property, we saw what was there that looked to me to be a shed, pavilion, there are a number of names you could suggest that it was and we saw no building permits, we saw that it was twenty feet from the shoreline. We did not see an immediate purpose of why it needed to be located or potentially allowed to be located in that particular location in the RPA and we issued a violation based on that. So at the time we went there, there was electricity run to the structure and there was a refrigerator. There were many things to us at the particular time that indicated to us that it was a shed for lack of a better word or something beyond what it is being discussed now. Our big mystery in all this is that there is no building permit, no one came to us up front and suggested what they wanted to build or what this was going to be so that forces us into a situation where we have to make assumptions or use our common sense or use our discretion in determining what this is. When we went there and looked at everything this is what we came up with.

Mr. Gibbons: You know in agricultural that a farmer can put a pole building as part of the agricultural use. What would define the difference in a water use than agricultural use?

Mr. Hubble: I think first you would look at the definition if we have definitions provided in our own ordinance for these things we would use that. Lacking that I think common sense takes over and you have to go back.

Mr. Gibbons: I am not doubting what you are saying but if you go back, a person raised his right hand tonight and he is under oath. A person brought up an affidavit that stated this was the use of this and this is what I am using it for. When you challenge that in court, how would you prove that the intent was not there for the use when you don't define it in the ordinance. How do you define water use if a farmer says he is going to use this to store hay or feed, that is part of the use of the thing and he says it is a blind and for water use, how would you challenge that?

Mr. Hubble: I think we would have to use all the information we had to make the best decision we could.

Mr. Gibbons: You are saying that every time someone builds anything on this property that he would have to come before a review?

Mr. Hubble: That is not correct. There are certain thresholds that trigger zoning and building permit compliance.

Mr. Gibbons: What would be different from this as the threshold? That is what I am trying to get at.

Mr. Hubble: The structure is larger than 150 square feet in size and that is typically when permit requirements would kick in so this is a structure under the building and zoning code that would require county permit.

Mr. Gibbons: So if he built the other than he would have been alright. If he cuts part of it off, would he be alright with you then?

Mr. Hubble: I can't answer that question without knowing more what the potential plan would be.

Mr. Gibbons: What I find hard, if you don't define something then how do you hold somebody to a rule?

Mr. Hubble: I think that is a fair statement but then also is it appropriate to use a definition from an unrelated matter to then apply it to a different scenario. I don't know that that makes sense either.

Mr. Gibbons: What unrelated matter?

Mr. Hubble: I think what the applicant is arguing is that they are a duck blind but the definition of duck blind and in that instance is related to licensing requirements, it is not related to local zoning, local building or local environmental laws. So to me, the two is comparing apples to oranges.

Mr. Gibbons: You have not defined a duck blind as a structure. So how can you hold him, that is what I don't understand. How long have we had this thing and you have not taken any action to go back and see if there is something wrong with the process and fix the process.

Mr. Hubble: Again, it is not connected directly to the issue of duck blind. It's is this building water dependent? Does it have to be located within that 100 foot? And when we went to the property and saw that building, we didn't believe at that particular time with the information we had that we felt it was a building that should be located within the RPA area.

Mr. Gibbons: Okay, but if he gives you an affidavit and swears under oath that that is what it is then how do you challenge that.

Mr. Hubble: He has given you all an affidavit, I think that is part of that purpose why we are here tonight is for you all to rule on issues that don't have clear answers some time.

Mr. Hudson: I appreciate the hard work but I have a hard time getting from A to Z without taking into account the facts that the applicant submitted here.

Mr .Hubble: I understand your perspective and the Bay Act is a very complex set of regulations.

Mr. Ortiz: I would like to say thank you very much, sometimes if there is doubt then appropriate action needs to be taken and then clarity of that action. I think that is what is happening here today so again I think you have done a very positive thing. Please continue to do so.

Mr. Hubble: Thank you very much.

Dr. Larson: Andrew, in the Zoning Ordinance, it says land development in the CRPA areas, I will share it with you, will only be permitted by the administrator if it is and then down on (d) it has any non water dependent component is located outside the CRPA. Could you tell me in your mind, does that mean that any used this facility that is not water related has to be outside the protection area.

Mr. McRoberts: I think that is what that says. For example, staff suggested that if there was something that supported the use it had to be outside. I think that is what is intended. Any part of it that has to be there has to be outside.

Dr. Larson: Thank you

Mr. Gibbons: Okay, any other questions? Call for the question, all in favor say Aye.

Mr. Ingalls: Aye.

Mr. Gibbons: We have one.

Mr. Davis: I seconded the motion for discussion.

Mr. Gibbons: Okay, all the nays?

Mr. Davis: Nay.

Mr. Hudson: Nay.

Dr. Larson: Nay.

Mr. Ortiz: Nay.

Mr. Gibbons: Nay. Any abstentions? So if I read the record right, it is 5-1. I agree with what you are saying though and I think we ought to go back.

Mr. Ingalls: I don't want to go back and create an ordinance I've been arguing all night about it. I don't want a duck blind ordinance, I don't want it in the Chesapeake Bay Act, I don't want it in there.

**VOTE:**

The motion to uphold the Zoning Administrator's violation failed 5-1.

Mr. Ackermann – Absent

Mr. Davis – No

Mr. Gibbons – No

Mr. Hudson – No

Mr. Ingalls – Yes

Dr. Larson – No

Mr. Ortiz – No

Mr. Gibbons: Next case please.

Mr. Leming: The next case would be the Variance. I do have a question you voted in contrary to Mr. Ingalls motion, do you need a motion in the other direction?

Mr. McRoberts: I would say so. Yes, if there could be a motion to take action on the Zoning Administrator because that motion failed.

Mr. Gibbons: So we need a motion.

Mr. McRoberts: We need a motion to act on the applicants request because that motion failed.

Mr. Gibbons: We need a motion please.

**MOTION:**

Mr. Ortiz: Motion to act on the applicants request.

Dr. Larson: I understand this is a motion to overturn the violation?

Mr. Ortiz: That is correct.

Dr. Larson: I will second that.

Mr. Gibbons: Okay, we have a motion by Mr. Ortiz and a second by the good doctor, all in favor say Aye.

Mr. Davis: Aye.

Mr. Hudson: Aye.

Dr. Larson: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: Aye. All opposed?

Mr. Ingalls: Nay.

Mr. Gibbons: And no abstentions.

## **VOTE:**

The motion to motion to overturn the violation passed 5-1.

Mr. Ackermann – Absent

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Hudson – Yes

Mr. Ingalls – Nay

Dr. Larson – Yes

Mr. Ortiz – Yes

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.

Mr. Gibbons: Now we don't need this case. You want to withdraw it, there is no need of it.

Mr. Leming: We withdraw the application.

Mr. McRoberts: It has been overturned, so currently as the law stands, it is a permitted structure according to this Boards action.

Mr. Leming: Thank you all.

Mr. Gibbons: Keith, while you are here, I wanted to thank you very much on the research for the other application that was withdrawn tonight.

Mr. Ingalls: I would like to thank the conservation officer. I know he was not here to get away from his house tonight and I do thank him for his input because it was very valuable to this discussion.

Mr. Hudson: I agree.

## **UNFINISHED BUSINESS**

Mr. Gibbons: Okay, the next item it unfinished business, do we have any?

Mrs. Musante: We don't have any unfinished business.

Mr. Gibbons: We do have one thing, we passed out tonight a copy of the FY2009 report so we would like to have you take that home and we can look at it this month. Staff did a good job on it and it is pretty inclusive. So if there is anything you don't like about it, give the comments back to Aisha. She did a good job.

Mr. Hudson: Quick read, it looks very good.

Mr. Gibbons: The Board did ask staff to review the possibility of taking the Variance out of the BZA taking back into their perview and staff if going to make a report to Anthony on that.

Mrs. Musante: You mean the Special Exceptions?

Mr. Gibbons: I mean Special Exceptions. We will see what happens on that as it progresses.

### **ELECTION OF OFFICERS**

Mr. Gibbons: Elections of Officers. Chairman.

#### **MOTION:**

Mr. Ingalls: I would like to nominate Mr. Gibbons to be our Chairman again. He has done a great job this past year and he brings a lot of effort to it so I would like to see him try it for one more year if he will willingly take it.

Mr. Hudson: I second that. I think you have done an excellent job of keeping control of the meetings and carrying out the letter of fairness to everyone that has come before us.

Mr. Gibbons: Any other nominations? All in favor say Aye.

Mr. Davis: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: All opposed?

#### **VOTE:**

The motion to nominate Mr. Gibbons as Chairman passed 5-0-1.

Mr. Ackermann – Absent

Mr. Davis – Yes

Mr. Gibbons – Abstained

Mr. Hudson – Yes

Mr. Ingalls – Yes

Dr. Larson – Yes

Mr. Ortiz – Yes

**MOTION:**

Mr. Gibbons: For Vice-Chairman, I nominate the good doctor, Dr. Larson. Do I have a second?

Mr. Ortiz: Second.

Mr. Gibbons: All in favor say Aye.

Mr. Davis: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Abstained.

Mr. Ortiz: Aye.

Mr. Gibbons: Aye. All opposed?

**VOTE:**

The motion to nominate Dr. Larson as Vice-Chairman passed 5-0-1.

Mr. Ackermann – Absent

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Hudson – Yes

Mr. Ingalls – Yes

Dr. Larson – Abstained

Mr. Ortiz – Yes

Mr. Ingalls: Do we need a secretary?

Mr. Gibbons: Yes, we do need a Secretary.

**MOTION:**

Mr. Ingalls: I will nominate Mr. Hudson to be Secretary.

Mr. Gibbons: Second. All in favor say Aye.

Mr. Davis: Aye.

Mr. Hudson: Abstained.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: Aye. All opposed? And I will abstain.

**VOTE:**

The motion to nominate Mr. Hudson as Secretary passed 5-0-1.

Mr. Ackermann – Absent

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Hudson – Abstained

Mr. Ingalls – Yes

Dr. Larson – Yes

Mr. Ortiz – Yes

**ZONING ADMINISTRATOR REPORT**

Ms. Hudson: I don't have much of a report, I just wanted to point out that you received three proposed ordinances. The first one that is going to joint public hearing on March 2, 2010, is composition and terms of members of the BZA, which is the Board of Supervisors recommended that three alternates be submitted to serve the BZA.

Mr. Gibbons: Like we had talked before when the doctor and I met with you to go over the yearly report, we are going to have to make a change to the bylaws because we will have three additional members that will fill in when a member is absent or abstains from the vote. Do we rotate it? We need to get some thought on that. One point Dr. Larson brought up is if these people are appointed they should take the course so we all have the same ground rules.

Ms. Hudson: If the Board approves the ordinance, they would be required to take the course.

Mr. Gibbons: Right.

Mr. Ingalls: That is not stated here.

Ms. Hudson: There qualifications would have to be the same as your qualifications. The other two proposed ordinances will be going to the Board of Supervisors on the 16<sup>th</sup> of March and they are the changes to the sign ordinance in the zoning ordinance and assignment of subdivision names in the subdivision ordinance.

Mr. Gibbons: That would help clear up the confusion we had previously.

Ms. Hudson: Correct. The other one is an ordinance to reordain Stafford County Code Section 28-350(b), Granting of Variances, which takes out those two words “approaching confiscation”.

Mr. Gibbons: Any questions? Anything else Rachel?

Ms. Hudson: I don't think I have anything else.

Mr. Gibbons: And we want to welcome you back Aisha.

## **ADOPTION OF MINUTES**

1. October 27, 2009

Mr. Ingalls: Do you want us to adopt the minutes of the October 27, 2010 meeting or do you want us to look at them and do it some other time?

Mr. Gibbons: I would like to adopt, we have had them around for two months.

Mr. Ingalls: The only thing I saw was Donahoe and not how it was spelled.

Mr. Gibbons: Do I have a motion with the correction?

**MOTION:**

Mr. Ingalls: I move that we approve the October 27, 2009 meeting minutes.

Mr. Gibbons: Motion by Mr. Ingalls, do I have a second.

Mr. Davis: Second.

Mr. Gibbons: Second by Mr. Davis. All in favor say Aye.

Mr. Davis: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mr. Ortiz: Aye.

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

**VOTE:**

The motion approve the October 27, 2009 meeting minutes passed 6-0.

Mr. Ackermann – Absent

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Hudson – Yes

Mr. Ingalls – Yes

Dr. Larson – Yes

Mr. Ortiz – Yes

**OTHER BUSINESS**

Mr. Gibbons: How many applications next month?

Mrs. Musante: We have Mr. Orellana and an appeal.

Mr. Gibbons: What about the next month? Anything yet?

Mrs. Musante: We do not.

Mr. Gibbons: I noticed you did a good job Aisha, you and Melody, in writing it about how the cases came down from two years ago of fifty-two cases, then it was twenty-six and now it is down in the teens.

### **ADJOURNMENT**

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

With no further business the meeting was adjourned at 9:12 P.M.