

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
July 23, 2013

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, July 23, 2013, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Dean Larson in the Board of Supervisors Chambers of the George L. Gordon, Jr., Government Center.

Members Present: Dean Larson, Danny Kim, Robert Grimes, Ernest Ackermann, Larry Ingalls, Gregory Poss, Heather Stefl, and Steven Apicella

Members Absent: Ray Davis

Staff Present: Melody Musante
Stacie Stinnette

CALL TO ORDER BY CHAIRMAN

DETERMINATION OF QUORUM

Dr. Larson: I would like to bring this meeting of the Board of Zoning Appeals to order. Good evening ladies and gentlemen and welcome to this meeting of the Stafford County Board of Zoning Appeals. The BZA is a quasi-judicial body that is appointed by the Circuit Court of Stafford County. The purpose of the BZA is to hear and decide appeals from any order, requirement or decision or determination made by the Zoning Administrator. Hear and decide upon request for variance from the Zoning Ordinance when literal enforcement of the Ordinance would result in unnecessary hardship to the owners of a property. Hear and decide on requests for special exceptions, one of which we have tonight, where the Zoning Ordinance allows for special exceptions. The Board consists of seven regular members and two alternate members. An alternate member may be called upon to participate when a regular member is unable to hear a case. Let the record show that we have 7 voting members present. Those voting members are Dr. Ernest Ackermann, to my left, Mr. Larry Ingalls, Mr. Danny Kim, Mr. Robert Grimes, Ms. Heather Stefl, and Mr. Gregory Poss. In addition, we have Mr. Steven Apicella here as an alternate member of the BZA who will be seated at the dais tonight. He will be hearing the case only and will not ask questions, participate in discussions or vote on any cases unless otherwise directed by the Chair. The County staff is represented tonight by Mrs. Stacie Stinnette, who is by the way the Senior Administrative Associate for zoning appeals. Okay, or zoning administration and Mrs. Melody Musante, the Zoning Manager. Hearings will be conducted in the following order: the Chair will ask the staff to read the case and members of the Board may ask questions of the staff. The Chair shall ask the applicant or the representative to come forward and state their name and address and present their case to the Board. The presentation shall not exceed ten minutes, unless additional time is granted by the Board. Members of the Board may ask questions of the applicant to clarify or better understand the case. The Chair will then ask for any member of the public who wishes to speak in favor of the application to come forward and speak. There shall be a three minute time limit for each speaker and a five minute time limit for a speaker who represents a group. After hearing from those in favor of the application the Chair will ask for any member of the public who wishes to speak an opposition to the application to come forward and speak. After all public comments have been received the applicant shall have three minutes to respond. We ask that each speaker present their views directly to the Board and not to the applicant or other members of the public. After the applicant's final response, the Chair shall close the public hearing. After the hearing has been closed there shall be no further public comments. The Board shall review the evidence presented and the Chair shall seek a motion. After discussion of the motion the Chair shall call for a vote. In order for any motion to be approved four members of the Board must vote for approval. And the applicant should be

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aware that there are actually seven members voting, that is the maximum you can have, so that is your best odds of getting four affirmative votes. If however you want to defer you can, you have the right to withdraw or defer until another meeting. However you may only withdraw or defer the hearing only once in a 12 month period. In fact you may withdraw your application at any time prior to the vote to approve or deny the application provided that you have not withdrawn a substantially the same application within the 12 previous months. Any person or persons who do not agree with the decision of this Board shall have 30 days to petition the Stafford County Circuit Court to review our decision. Also be aware that the Board will not hear any denied application for variance or special exception that is substantially the same request for at least one year from the date of our decision. I now ask anyone who has a cell phone or pager or any other electronic device, please turn it off. Do not place it on vibrate as this interferes with our electronic equipment. Thank you. It is the custom of this Board to require any person who wishes to speak before the Board shall be administered an oath. Therefore I ask that anyone who wishes to speak tonight, stand and raise your right hand. Would you like to speak ma'am? During the meeting would you like to speak? Would you stand and raise your right hand please? Do you hereby swear or affirm that all testimony before this Board tonight shall be nothing but the truth?

(From the audience): I do.

Dr. Larson: Thank you, you may be seated. The Chair asks that when you come down to the podium to speak, please give your name and address clearly into the microphone so that our recording secretary can have an accurate record of the speakers. Also please sign the form on the table at the rear of the room. Thank you. Are there any additions or changes to the advertised agenda?

Mrs. Musante: There are no changes.

DECLARATIONS OF DISQUALIFICATIONS

Dr. Larson: Before we hear the first case does any Board member wish to make any declaration or statement concerning any of the cases to be heard before the Board tonight? Thank you. I will now ask the Secretary to read the first case, actually staff please.

PUBLIC HEARINGS

1. **SE13-01/1300302 – Yiming Chen** - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses and Standards", PD-1, Planned Development 1, to allow tutoring as a home business on Assessor's Parcel 46M-4B-123. The property is Zoned PD-1, Planned Development 1, located at 7 Edwin Court, Leeland Station Subdivision.

Mrs. Musante: You have the application, the application affidavit, plat of the property, diagram of the area for business and a copy of the Commissioner of Revenue's records. The applicant is requesting a Special Exception to conduct Education/tutoring and debate coaching for grades Kindergarten through 12th grade as a Home Business. Requested days and hours of operation are Monday through Friday from 9:00 a.m. to 5:00 p.m. with no business being conducted on the weekends. The applicant indicates they will provide four off-street parking spaces for approximately one to eight students per class with two classes per day. After reviewing the plat submitted, it does not appear the driveway is large enough for four off-street parking spaces. Wayne and Amy Consulting, name of business, will provide individual tutoring, group lessons, or speech/debate coaching and practicing. Per a phone conversation, the applicant stated they primarily tutor home schooled children. Home Business standards allow for 25% of the gross floor area to be utilized for the business. The applicant has indicated 873.25 square feet will be used for

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the business which meets this requirement as the gross floor area of the dwelling is 3,713 square feet. The single-family dwelling constructed in 2006 and a permit issued in 2006 to finish basement.

Dr. Larson: Thank you Melody. Are there any questions for staff?

Mr. Ingalls: I have a question Mr. Chairman. Melody, under the definition of a home business under definitions, we have kind of a opening paragraph under the definitions, you might want to look at it. It is on 1604 in the Ordinance I have, I don't know where it is in yours.

Mrs. Musante: Okay.

Mr. Ingalls: It has an opening paragraph and then it lists five, I guess they are standards is what the Ordinance says, and one of those five standards says the business must provide off street parking for an employee and customers in addition to the minimum requirements for the district and fleet parking shall not be permitted. Under that scenario there, if I understand it and read it the way I do it, the district requirements for a single family dwelling would be two parking spaces. So they have to provide two parking spaces just for the house and then any other park... all the necessary parking would have to be in addition to those two parking spaces. Does the garage count as parking spaces? So the two car garage...

Mrs. Musante: That can count as their two parking spaces.

Mr. Ingalls: Can count as the two parking spaces.

Mrs. Musante: That is correct.

Mr. Ingalls: And you could put two cars, it looks like, in front of the house for an additional two.

Mrs. Musante: Correct.

Mr. Ingalls: Okay. That is all I have.

Dr. Larson: Any other questions for staff? Will the applicant or his or her representative please come forward to present their case?

Yiming Chen: Hello, my name is Yiming Chen. I am applying for a home business for tutoring to K to 12 students at my home. And my subjects will include math, language, debate, logic, etcetera. And I will be providing class from 9 o'clock to 5 o'clock every day except weekends. The average class size will be from one to eight students and I will provide two classes per day.

Dr. Larson: Any questions for the applicant?

Dr. Ackermann: I have a question. About how long are the classes?

Ms. Chen: Each class will be about 60 minutes.

Dr. Ackermann: Sixty minutes. So you will provide two classes per day in the 9 to 5...

Ms. Chen: Window.

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Dr. Ackermann: ... time period. Okay. And you said the average size if one to eight.

Ms. Chen: Yes.

Dr. Ackermann: How large could the classes get? Is eight the maximum number?

Ms. Chen: Eight... well is my imaginary maximum number. So far I have only had... the largest class I have ever had is six students, including two of my own children there.

Dr. Ackermann: Okay, and what ages were the students?

Ms. Chen: Right now my students are from 12 to 18 years old; middle school and high school students.

Dr. Ackermann: Okay, okay. That is all I have.

Dr. Larson: Any other questions for the applicant?

Mrs. Stefl: I have two questions. One, you said that you have the potential of tutoring K through 12?

Ms. Chen: Yes.

Mrs. Stefl: Alright. And when the students come to that 60 minute class, are you requesting that the parents stay on site during that class time or that they drop the children off and come back after the hour?

Ms. Chen: They usually drop them off and come back. I don't require any parent to stay.

Mrs. Stefl: So you are not really requesting parents to stay and park, in essence.

Ms. Chen: No.

Mrs. Stefl: Because that's my fear, is eight parking spots. So, alright, thank you.

Dr. Larson: Generally then, do the parents drop them off and then leave and come back?

Ms. Chen: Yes.

Dr. Larson: Thank you.

Mr. Kim: So the only employees there would be you and your husband?

Ms. Chen: Yes.

Mr. Kim: Okay. So you guys have no future plans on hiring more staff or more employees for...?

Ms. Chen: No.

Mr. Kim: Okay, thank you.

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Mr. Grimes: In the classes, since you have K through 12, that includes high school, so that potentially includes students that can drive themselves.

Ms. Chen: Yes.

Mr. Grimes: Are your classes set up so that they're... the ages are grouped together so it might be seniors attending the same class? For example, what I picture, my concern is that you're having a debate class for seniors. Eight students, all of them with drivers' licenses show up at your house for the class. You may be able to accommodate four in the driveway. It's up for debate if it's large enough. Where do the other four park? I mean, one of the issues is have no on-street parking. Would you be willing or can you make it a requirement that the students don't drive themselves?

Ms. Chen: So far I only had one student driving, and usually she will carpool with another student. And I have one more student who lives in my neighborhood; he just walks over. So I haven't had so many students driving yet.

Mr. Ingalls: Question. I need to get a sense of your class... are the classes mixed? Some K, some 12th graders, or are they like...?

Ms. Chen: Yeah, the nature of home-school is the students, they are grouped by their ability, not their age. So, for example, in my debate class, I may have from 13 year... one student is 13 years old, the other student is 18 years old. But that is discussing the same kind of topic. I teach them together. The class is based on ability, not age.

Mr. Ingalls: It seems to me, you say you're going to have two classes for an hour each?

Ms. Chen: An hour each, yes.

Mr. Ingalls: During the whole day.

Ms. Chen: During the whole day. For example, I may have Algebra II class in the morning and a writing class in the afternoon. And those students, you know, not necessarily will be the same group. So, for my Algebra students, they only do Algebra; they do not come for the debate. They pick and choose from my class; they don't have to take all my classes.

Dr. Larson: I have a question. So, do you assign homework to your classes?

Ms. Chen: Yes.

Dr. Larson: And, presumably, you have to grade the homework.

Ms. Chen: Yes.

Dr. Larson: Okay, so that's done in the off hours when you're not teaching, presumably, correct?

Ms. Chen: Yes.

Ms. Stefl: Where do you presently conduct your classes?

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Ms. Chen: In my house, in my basement.

Ms. Stefl: So, you're already operating this business at your home?

Ms. Chen: Yes.

Ms. Stefl: So, what prompted you to now request this, if you've already been doing it? Was this a zoning, where you told that you were in violation, or...?

Ms. Chen: Some friends suggested us to do it. We applied for the business last summer; I don't remember exactly when, from the other building. And then a friend told us "you can apply for a special exception" and so that's how we did.

Ms. Stefl: How long have you been operating this business out of your home?

Ms. Chen: This past year.

Ms. Stefl: So, you've only been doing it for a year now.

Ms. Chen: Yes. I only started charging my students as a business this past year. I been teaching them for free for the last two or three years.

Ms. Stefl: Okay, thank you.

Mr. Kim: I have a question. Can you clear up... you said you have two 60-minute classes, but I'm kind of confused on why you need a 9 to 5 business hour if there's only two 60-minute classes.

Ms. Chen: Because of my class time will depend on my students' schedules, because they take classes from other places. So, for example, if their morning is blocked with their online class or their music activity, and they will request me to do classes in the afternoon that I will accommodate to their schedule. I don't have a fixed schedule year to year; every year changes.

Mr. Kim: I'm sorry, it may be the last question. Sorry. I guess what I'm... I mean, from what you're saying, I can see that you're meeting all the requirements but the one concern I have is giving such a big window of 9 to 5 saying that you only have two 60 minute classes. Is there any plans for, you know, you know what? We'll have eight 60 minute classes one after another. I mean, is that something that... I mean, I'm just kind of...

Ms. Chen: I really try to do that. I'll get really tired. At most I can handle three classes a day, if the class size is small. Like, for example, if I have two students for Algebra II and two for Geometry, I may be able to handle a third class on writing. But otherwise, I don't think physically I'll be able to handle eight classes for a whole day.

Mr. Kim: Well, maybe not eight, but just, you know, adding extra additional classes might be foot traffic, and I'm only looking at it at the view of your neighbors. And that's my one concern is, you know, if you're asking for such a big window from 9 to 5 and you said you have two 60 minute classes and people have child daycare centers in your home. And there's a couple in my neighborhood, so I understand but I just wanted to make sure it wasn't like kind of an in and out, you know, eight 60 minute classes a day.

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Ms. Chen: No, no, no, no.

Mr. Kim: Okay great, thank you.

Dr. Larson: Ms. Chen, on the application, somebody has noted that they spoke with you and the note says "one to eight students is the class size with two classes per day." So you're applying... the application says two classes per day. Are you saying that you might want to, at some point, go to three? Or are you happy with two classes per day?

Ms. Chen: Right now I'm very happy with two classes. The reason I mentioned three is for is, for example, if there's a snow day. For example, if Wednesday it snowed; there was a class scheduled but I had to move it to Thursday and Thursday I have two classes already scheduled. I might have to move the Wednesday class to Thursday. That will make it three classes on Thursday for that time.

Dr. Larson: Okay, thanks. I understand that, thank you. Any other questions for the applicant?

Mr. Ingalls: I'm still trying to grasp my hands around this thing. Do you teach a subject? If my grandkids, which are in the second and third grade, would both of them... like I said, I want you to tutor... of course, they're in regular school... but you were going to deal mostly with the homeschoolers so are you teaching a course like Geometry or Reading to a certain age group? You said it's by level, not by age. Within this class of eight students, are you teaching some of them Geometry, some of them Reading, some of the...?

Ms. Chen: Each class is one subject only.

Mr. Ingalls: One subject. Each class has one subject.

Ms. Chen: Yes.

Mr. Ingalls: You have computers and so forth in your house? I mean, in your classroom? Is it computer classes? Do they do a lot of work on a computer?

Ms. Chen: They do their work at home. They usually come to my class to report their work and I correct them on the spot. And we discuss all the difficulty they have met. Sometimes they use computer like for debate when we do research; I show them how to do research, they will use computer. And, you know, they can use my computer or they can bring their own laptop.

Mr. Ingalls: But you don't have six computers or eight computers set up?

Ms. Chen: No, no. Not that way.

Mr. Ingalls: What's in your library? You said on your...

Ms. Chen: Oh, my library has tons of dictionaries, reference books, and... yeah, all kinds of reference books and dictionaries mostly.

Mr. Ingalls: Have you, since you've been operating it you should have some knowledge of what the traffic has looked like over the past year. I mean, tell me, what do you think?

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Ms. Chen: When the class, before the class starts, I will have average about two to three cars coming, dropping their students off. Maybe one of them will park there. And the others, they just leave. And usually the mother, she will come back at the end of the class to pick up the student. So, at most, I had three cars, because usually they'd carpool. They want to save on their gas money.

Mr. Ingalls: So, I guess... I was by there today sometime this morning. I don't know whether a class was going on at 10 or 11.

Ms. Chen: No.

Mr. Ingalls: There were already three cars parked on your street, in the street, not in the driveway. There were three. One was kind of in front of your house and there was a truck and another car on the opposite side. So there were three cars parked on the street today. But they're not yours; they weren't at your place.

Ms. Chen: No. I don't have any class in the summer.

Mr. Ingalls: Good. The good news is, you're on a cul-de-sac which means there's a lot less traffic running up and down the road. So that's a positive, but the street is not real wide and if people park on each side of it, it makes the lane down the middle narrow. If they park in the cul-de-sac, it could impact somebody in trying to go down and turn around in the cul-de-sac. So, parking is my biggest concern and I have to address that. I guess I just watch my grandkids, my daughter's and her kids, she takes them to a tutorer for a class but maybe it's a half hour class. She drops them off and comes back; sometimes she might sit there I guess, I don't know. I don't go very often. Would you never schedule two classes in a row? Like, one at 9 o'clock and one at 10 o'clock?

Ms. Chen: I usually schedule a 30 minute break in between.

Mr. Ingalls: So you do have time...?

Ms. Chen: Between? Yes.

Mr. Ingalls: I know that, again, with my grandkids, if I go pick them up at Ferry Farm Elementary, all of us mothers and grandparents, we're there 15, 20 minutes before they get out and there's a long line of traffic waiting to pick up these kids as they come out. And I'm sure if I had a kindergarten or first or second or third grader, I probably would be there early enough to know that I'm there when you finish with them and they come out. So I would be parked there for at least 15, maybe 20 minutes, especially waiting for them to be picked up. Dropping off, I guess if I was kindergarten, maybe if I was a mother I'd get out and even a grandfather, maybe I would take them up to your door and say here they are. So, I've got to believe at sometimes there's going to be some cars parked in front of your house. Like I say, maybe you haven't had eight because you said some of the kids are your own kids which they don't really count towards some of these things, I don't think, because they're not customers of yours. They're just your kids; if they want to sit in on a class, I'm not sure how we handle that. Maybe we have to say a maximum of eight with two of them can be your own or something. So I know there's got to be sometime there's traffic... or not traffic... but cars, vehicles, parked in front of your house because, and maybe you just haven't had a large enough class and maybe it's been so diverse that, like you say, two of your own, one of your neighbors, and one person comes. But I am concerned like someone mentioned here about teenagers, especially the older ones who can drive. And more than likely their parents are going to say you drive yourself there. And if these people are home-schooled, they're probably very

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responsible; they can drive, they probably would drive to your house and stay there for the hour then drive home or wherever. Don't you think?

Ms. Chen: Yes.

Mr. Ingalls: And your driveway may be, not counting with the two cars that are in the garage which I'm assuming you can get two cars in the garage. A lot of people could roll up the door and you find out there's more than cars in there. But you probably could park two cars in front of your garage, but that's all I really saw that was available for you to park would be the two cars in front of your garage. Is that a fair assessment?

Ms. Chen: Yeah, two cars in front of my garage, yes.

Mr. Ingalls: Okay. That's all I have for right now.

Dr. Larson: Alright, so just for my clarification Ms. Chen, are you saying then that you couldn't park four cars in your driveway? Is that correct?

Ms. Chen: I thought I could because I have a van. My van is larger but my students, they drive a smaller car. So, I thought I could park four smaller cars on the driveway.

Dr. Larson: Okay, thank you. Any other questions for the applicant?

Dr. Ackermann: Have you discussed this business with your neighbors? What do they think about it?

Ms. Chen: We talked to my next door neighbor some. The other neighbor I can hardly see her.

Dr. Ackermann: And your next door neighbor thought it was fine?

Ms. Chen: Yeah, she's happy with it because she's thinking about sending her daughter to me for after class help.

Dr. Ackermann: Is there a Homeowner's Association?

Ms. Chen: Yes.

Dr. Ackermann: And do they have rules about this?

Ms. Chen: I sent a letter to them but I haven't heard anything back from them yet.

Dr. Ackermann: Okay.

Dr. Larson: Do you covenants say anything about parking on the street, for example, cars in the neighborhood parking on the street? Is there any restriction on parking on the street?

Ms. Chen: I don't remember if there's any.

Dr. Larson: Okay.

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Mr. Ingalls: I guess if I could ask my famous question, if I lived two doors down across the street from you, and I didn't know anything about this hearing, would I know that you've got something going on in that house that none of the other houses have by the number of cars and traffic?

Ms. Chen: If you work 9 to 5 and you come home...

Mr. Ingalls: But I'm home... if I'm home...

Ms. Chen: If you're home you probably will notice I will have some cars coming and dropping students off and then they leave.

Mr. Ingalls: But it wouldn't look like maybe I wouldn't complain because there wouldn't be that many? Is that would be what you would say? You know, if I was like I say two doors down and across the street.

Ms. Chen: Oh, two doors down? You would not notice anything, no.

Mr. Ingalls: Thank you.

Ms. Chen: Now, my next door neighbor would notice something, not two doors down.

Dr. Larson: Any other questions for the applicant? Thank you Ms. Chen. The Chair will note that there are no members of the public in the audience, so I'm going to bring it back to the Board now and close the public hearing. Do we have a motion for this case? Any more questions for staff?

Dr. Ackermann: Did you measure the driveway?

Mrs. Musante: We do not measure driveways. On the plat...

Mr. Ingalls: The house location says she has 25 feet from the garage to the right-of-way line.

Mrs. Musante: Yes, right.

Dr. Ackermann: Okay. Thank you, I'm sorry.

Mrs. Musante: I would also like to mention that, first of all, staff was not aware that she was already running the business from her home. We do check to see if there's been any complaints on the property. There hasn't been any complaints. So, that tells us that if the neighbors know it, they either don't have an issue with it or that they're... right, there has been no complaints.

Dr. Larson: Thank you Melody. Do I hear a motion?

Mr. Ingalls: Mr. Chairman, before we make a motion, staff had put in some suggested development conditions and I'd like to discuss that a little bit.

Dr. Larson: Please do.

Mr. Ingalls: The first one about days and hours of operation. It says Monday through Friday 9 to 5, no weekends; a total of eight students per class with no more than two classes per day. And I would suggest maybe we should add something about the length of the class because a class could be four hours. So,

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would it be appropriate to say two 60-minute classes per day so that it would be clear what the applicant has stated?

Mr. Grimes: The applicant brought up the fact of make-up days and snow days. So, I like the idea of limiting the number of classes, but maybe not doing it to a per day but per week so that she can conduct make-up classes, for example, on a snow day so that potentially she could have four classes or three classes. Say Wednesday's a snow day and she makes up a class on Thursday and makes up a class on Friday; so she has three classes that day. It's not her norm but if we took it over the week then we could maybe say 10 classes per week not exceeding an hour.

Dr. Larson: Well, she's talking about two classes per day and I think she was talking about two days. So, first of all, a total of four classes is what I think I heard. Is that not correct?

Dr. Ackermann: I thought it was 10?

Dr. Larson: Two per day for five days? Oh, okay. Somehow I missed that.

Mr. Ingalls: Well, would you... I like your idea. I think if you want to say 10 per week with a maximum of three per day; a maximum of three 60-minute classes. I guess I'd like to even say and at least 30 minutes between classes just so you don't have these overlaps of traffic. The second suggested development conditions, they said provide four off-street parking spaces for clients. I mean, she can't do that if we make that a hard and fast rule then basically you're denying it. I don't know how I count dropping off, coming in and staying five minutes, dropping my kid or picking my kid up for five minutes. If we just change that one to no on-street parking.

Dr. Larson: What about their own personal vehicles?

Mr. Ingalls: I don't know.

Mr. Kim: If I may, I don't think the street parking is a big deal because, you know, most people do work 9 to 5. And I would absolutely agree if it was more off hours when people were home but, as many of us here are parents, if we can drop off for an hour and do what we can I think we will. So, I'm not terribly concerned about that.

Ms. Stefl: Well, there are still helicopter parents who want to linger so there is the potential of having... I'll just read a book upstairs in your living room. There's still that potential. (Inaudible - microphone not on.)

Dr. Larson: I guess I'm not as concerned as I would be if it was a thru-street. In my cul-de-sac people typically park on the street all the time and it doesn't disrupt anything.

Mr. Ingalls: But we can't say, provide four off-street parking spaces because she can't do that. I mean, if you say that she can't comply. So we've got to change the parking to something. No on-street parking to me... or provide two off-street parking spaces, which she could provide in front of her garage, and no on-street parking. The ordinance for a home business pretty much, you know, I can't get by that one. And those standards are already in the ordinance; I mean, we can't bypass the standards that have been set. So they must provide off-street parking for an employee and customers, in addition to the minimum requirements. So, she could provide two off-street parking places in addition to the minimum because the

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two in the garage does count. And we said provide two off-street parking spaces for clients and no street parking.

Dr. Larson: What paragraph of the ordinance is that?

Mr. Ingalls: I'm reading under the definition of home business, page 1604 in the ordinance I have. Under definitions, those are standards that are already set up. Now, the ordinance does give her an opportunity to have one employee. We could limit that to no employees if we wanted to, as a condition now, by making sure there's at least two parking spaces available for clients.

Ms. Stefl: (Inaudible - microphone not on.)

Mr. Ingalls: I would prefer that she notify her students' parents that you're not allowed to park out on the street and read a book or work your iPhone or whatever you want to do, you must not do that. You can park in the driveway but you can't park for any extended time on the street.

Ms. Stefl: And if those two spots are taken, you've got an hour to kill.

Mr. Grimes: I wouldn't want to limit the applicant's ability to have an employee. Employees can commute, take public transportation, be dropped off. If you wanted to phrase it in such a way that there would be no employee parking on site potentially, but by simply saying she can't have any employees... because she's allowed to have one.

Mr. Ingalls: She is by the ordinance. But it says you've got to provide an off-street parking space for an employee, under the definition. It says the business must provide off-street parking for an employee and customers.

Mr. Grimes: Point well taken.

Mr. Ingalls: It's probably not an issue; it sounds like she's going to do this. I mean, it's not a big issue for her. I don't believe she's going to hire another somebody to help her; to teach two classes every day for an hour.

Ms. Stefl: You don't know; I mean, a young kid looking to make a few bucks... a whiz kid, you know...

Mr. Kim: The one question that I have is I know plenty of people... well, not that I know them, but I know a lot of people in Aquia Harbor... they have daycares. And I don't know if they're running legitimately or not. I assume they are. But, we have no street parking, at all. So, I'm just kind of wondering, I can't imagine the four that I know that they're all running illegally or not with licenses and the up and up. How do they get away with it? I mean, that's just a question that I'm going off of the code. I wouldn't ask how they got permits then... because there is no street parking in Aquia Harbor.

Mr. Ingalls: Those were the two suggested development conditions that I thought maybe we need to work on.

Dr. Larson: Could you state succinctly your parking suggestion?

Mr. Ingalls: I guess I would still say provide two off-street parking spaces for... we mixed the term here... clients in that sentence and the next sentence we say customers by appointment only, so I'm not

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sure. We ought to make sure it's the same. The ordinance talks about customers which I find these people are not really customers, but maybe they are. So I would say provide two off-street parking spaces for customers, no on-street parking.

Dr. Larson: No on-street parking for customers?

Mr. Ingalls: For customers, right.

Dr. Larson: Because the reason I add that is they do have two garage stalls.

Mr. Ingalls: Right.

Dr. Larson: So, they may need to use those for customers and they could park their personal vehicles on the street.

Mr. Ingalls: Right.

Dr. Larson: Any other conditions?

Mr. Ingalls: In the first one we were going to change that one, the total of eight students per class with no more than 10 classes per week.

Dr. Larson: What I have noted is a max of three 60-minute classes per day and a maximum of 10 classes per week. Is that what you were...?

Mr. Ingalls: That's fine. You had the 60 minutes in there, right?

Dr. Larson: Yes. Three 60-minute classes. Any other suggested conditions to address concerns? Alright, so what I have down then for conditions is: days and hours of operation Monday through Friday 9:00 a.m. to 5:00 p.m.; no weekend hours; a maximum of three 60-minute classes per day and a maximum of ten classes per week; provide 2 off-street parking spaces for customers and no on-street parking for customers.

Mr. Grimes: I think there was one other item which was the 30 minutes between classes. I think that was a great point that would help reduce the traffic flow.

Dr. Larson: Okay. Yes, I did miss that.

Ms. Stefl: And we're still going to keep the maximum of 8 students?

Dr. Larson: Yes.

Ms. Stefl: These were suggestions, so we probably need to read that in too.

Mr. Ingalls: Well, hopefully if somebody makes a motion they will add those.

Dr. Larson: I was going to try to summarize everything, so somebody could say "so moved". Okay, so...customers by appointment only; must comply with state and local codes; the approval will expire when this applicant vacates the property, it is non-transferable; approval may be revoked for not

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complying with the conditions imposed that we're talking about now. So, let me see if I can rephrase the conditions one more time and get it right this time. We're talking about days and hours of operation Monday through Friday, 9 a.m. to 5 p.m.; no weekend hours; a total of 8 students per class; a maximum of three 60 minute classes per day with a minimum of 30 minutes between classes; a maximum of 10 classes per week. Are you getting all this, Melody? We want her to provide two off-street parking spaces for customers and there will be no on-street parking for customers. Customers will be by appointment only. The applicant must comply with all state and local codes; approval of this special exception for educational tutoring only...that's what this special exception is for...will expire when the applicant vacates the property and is non-transferable and the approval may be revoked on non-compliance with the conditions imposed by the BZA. I believe those are the conditions we just discussed. Do I hear a motion?

Mr. Grimes: I would move to approve the application with the modified suggested development conditions.

Dr. Larson: Do I hear a second?

Ms. Stefl: Second.

Dr. Larson: Okay, moved and seconded. Any other discussion?

Mr. Ingalls: Mr. Chairman? I think if you look at the granting of special exceptions that are set forth in our ordinance for the Board of Zoning Appeals to look at, with the conditions that we've put on it, I believe, in my opinion, that we have met those conditions that have been set aside. I'll just quickly go through them. The proposed use (tutoring) will not change the character of the area. The proposed use is in harmony with the uses permitted by-right in this zoning district. Some examples of by-right uses are dance studios and group family daycare. These by-right uses can generate more traffic than this home business. There will be no additional buildings constructed for this home business as the applicant will utilize the existing home. The proposed use shall not affect the health or safety of persons residing or working in the neighborhood. The use shall not be detrimental to the public welfare or injurious to property or to improvements to the neighborhood. The use shall be in accordance with the purposes of this chapter and the comprehensive plan and the special exception and I believe that this application with the conditions imposed meets those conditions.

Dr. Larson: I agree. Any other discussion on the motion? All those in favor say aye.

Dr. Larson: Aye.

Mr. Poss: Aye.

Mr. Grimes: Aye.

Mr. Ingalls: Aye.

Dr. Ackerman: Aye.

Mr. Kim: Aye.

Ms. Stefl: Aye.

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Dr. Larson: Any opposed? Motion carries. So the staff will send you a summary of the conditions on your special exception.

Ms. Chen: Thank you. Thank you so much.

UNFINISHED BUSINESS

Dr. Larson: Okay, unfinished business. Everybody should have a copy of the Attorney General opinion that we got in response to the letter dealing with dual membership on the Planning Commission and the BZA and I note a couple of things in the response. First thing I would like to note, it is from a Mr. Norman A. Thomas, a Senior Appellate Counsel and Director of Administration in that office. It says: The views expressed herein do not constitute an opinion of the Attorney General under the provisions of relevant law. It says: In my view the prohibition of Section 15.2-230(A) against members of the BZA holding other public office in the locality applies to both regular and alternate members. That's his opinion. I also expressly subject alternate members to the same qualifications as regular members of the Board. I'm just picking out what I think are relevant passages here. So he interprets the law to allow only one member of the Board amongst all appointed regular and alternate Board members to additionally hold a position on the Commission and he further advises what he thinks should be done in the event that something like what happened before, happens again. So I would suggest at a minimum that the Board as a whole take note of this and if somebody else on the Board decides or is appointed to the Planning Commission or some other office that they summarily resign from this Board if there is already a member on the Planning Commission then that should be what's done. If that doesn't happen then I believe it's on the Chairman to go to the Circuit Court and ask them to dismiss that Board member, based on this opinion from this attorney. Any discussion? Okay, I don't think we need to put that in the by-laws. I think everybody here has read and heard the opinions and it was sort of a unique situation I believe and I hope we won't be presented with it again. So I think we can draw that one to a close. Okay, under other business I wanted to talk about the late arrival of information. It seems that periodically, maybe periodically is the wrong word, but at times we are presented with information at the Board meeting and some of the information can be rather voluminous and we're not given an opportunity to review the information the way it should properly be reviewed. I think we talked about this issue a while ago, but we... a while meaning maybe a year or two ago... but we... I don't recall us ever... well we certainly never put anything in the by-laws. I think we may have had a vote on it, but I don't recall what the vote was and maybe we should put something in the by-laws if we strongly enough about how this is done.

OTHER BUSINESS

Mrs. Musante: I think it already is in the by-laws. If you could, give me just a second to look at it.

Dr. Larson: Oh, I looked for it and I couldn't find it.

Mr. Grimes: I think it's under 7.4, but I'm reading that right now where it says, material to the Department of Planning and Zoning 10 days prior to the meeting and included in the staff report. But I'm not sure if it actually specifically prohibits somebody from presenting additional information at the meeting.

Dr. Larson: That's the way I read it.

Mr. Grimes: Yeah, actually the second sentence says, interested parties and or staff may submit relevant material during the hearing.

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Mrs. Musante: We had an issue, I believe it was the last appeal... it might have been June, or May's appeals... but anyway, there was an abundance of material submitted and staff did not have time to review the materials to include it in the staff report for us to get the packages out. The material was delivered on Thursday afternoon at 4 p.m. and we have to have the material ready to copy on Monday. It's not enough time to review this amount of material. There's just no way.

Dr. Larson: Yeah, I remember that and I gave the staff sort of a waiver on that, because, again, the by-laws actually say, interested parties and/or staff may submit relevant material during the hearing. But I don't think anybody envisioned that type of submittal, and I'm a little concerned that if there's an appeal, the appellant can say, well we gave them this information, why didn't they consider it.

Mrs. Musante: Absolutely. There's not enough time to review that amount of material.

Dr. Larson: Right and that's why I wanted to have this discussion.

Mr. Kim: Can we add something to the by-laws that the applicant has to submit a certain amount of information by, I mean, is it Thursday?

Mrs. Musante: What we can do, we could leave the 10 days but we could do 10 business days.

Dr. Larson: Yes.

Mr. Kim: Would that be enough time for staff to...?

Mrs. Musante: That would definitely help. Absolutely.

Mr. Apicella: Mr. Chairman, I don't know if I can speak.

Dr. Larson: Please.

Mr. Apicella: My concern was and is, and this happened over a couple of meetings, where the attorney for an applicant hands us a piece of case law, sometimes one page, two pages, multiple pages in legalese. And we're trying to understand what it says on the fly as it's presented to us. What we don't have the advantage of is whether there is additional case law that supersedes that. We just have an attorney handing us one piece of case law. So, that's my concern. They should, especially when they're represented by an attorney, know what the timeframe is. They know they've got to get it to us in advance and not at the last minute or as they're standing in front of us. I just think it's unfair to the public and to this body not to have an adequate chance to review the material in advance and to check and see whether there's something else that contravenes what they're putting in front of us. That was my concern in raising it the last time. Great piece of information but they had more than adequate time to give it to us, not at the last minute.

Dr. Ackermann: So, then do we not allow it? Is that what we do?

Mr. Apicella: I'm not suggesting we not allow it. Again, satisfy the timeframe. Get it to us 10 days in advance.

Dr. Ackermann: But I mean if they don't get it to us 10 days in advance, then don't consider it? And then according to our by-laws, it's appropriate for us not to consider it.

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Dr. Larson: Just a reminder for everybody. Since we're not considering cases, even though Mr. Apicella was not participating in that discussion, he is allowed by the by-laws to participate in this discussion. I guess, what I wonder about is information that comes available late that's relevant, that we should see, I'm thinking more of... and I want to hear discussion on this... but maybe a one page, limit it to a page. If you have late-breaking information that you really want the Board to see and you couldn't make the deadline, make it a page so that we can at least have time to read it during the meeting and make judgment on it. Then when, if it's appealed, we have the page but we're not responsible for 80 pages of stuff we weren't able to read.

Mr. Apicella: I guess my response to that is they always have the opportunity to delay the hearing to another date to give us new information.

Dr. Larson: True statement.

Mr. Ingalls: Well, we have that same opportunity. If they give it to us, we say well we can't read this amount of information. We're going to table it till some other time.

Mr. Apicella: But the onus it's on them. It's their case. They've got to present us with all their information in a timely manner. That's what I think. You don't show up to court without having all the information in front of you. Again, it's unfair to everybody who participates, not just us, but to the public to not have the advantage of knowing what's coming in front of us.

Mr. Ingalls: Well, suppose that somebody from the public walks in and wants to speak and give us that much information about a case. What are we going to say? No, we can't see that?

Mr. Apicella: Again, they have the same opportunity as the applicant to present this information.

Mr. Ingalls: I don't know whether they did or not, I mean, it doesn't say that. I don't know what the by-laws say. But I am worried if we don't accept what he has in hand, he's going to go appeal it and say, well, Judge I had all this information, it came to me late, and they would not even accept it. And it would put us, I think, in bad light with the judge. How would he uphold that decision if we didn't even look at it? Like I said, we have the opportunity, if we think there is enough information here that maybe is pertinent to a case that we could certainly table the hearing and table the case until... continue the case until next month.

Mrs. Musante: I can check other localities and see how their BZA handles additional information being submitted at the time of the hearing. We state and we should be practicing that we should not be accepting an incomplete application which this all really goes back to that. If they have the material, they're submitting the application to me. I'm thinking or assuming that they are submitting to me a complete application in good faith. I'm accepting it so they can get in by the deadline and then this 10 days prior to the hearing we get a 300 page document. So to me, that's not a complete application if they're submitting this additional information.

Dr. Larson: When we send out a public notice for the hearing, is that two weeks prior to the meeting?

Mrs. Musante: Yes, we're required to advertise twice. It's the second and third Tuesday we advertise.

Dr. Larson: If we give 10 days' notice, or if we allow 10 working days, and even if we put in that advertisement to the public that you should give us pertinent material, would they have time to do that? If

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they read that in an advertisement and said, oh my gosh, this is going to be a factory right next to my house, I have material pertinent to this. Do they have time to respond, if we set the cutoff at 10 working days?

Mrs. Musante: No.

Ms. Stefl: How much time would they need? You're saying it's the second and fourth Tuesday of the month that it runs.

Mrs. Musante: The second and third Tuesday.

Ms. Stefl: Second and third. (Inaudible – microphone not on).

Mrs. Musante: The first... like I used August... the first advertisement goes out on the 13th. Their 10 days is the 14th. So it will advertise the day before their 10 days is up to get the information out.

Dr. Larson: I think I understand.

Ms. Stefl: I'm also a little bit skeptical here too, because I don't underestimate some of the applicant's at least legal representation from submitting their application in the timeframe and then somehow say will you submit this, you know, as another person. You're trying to sneak in more information to us under a rogue and so that's what concerns me is...

(Inaudible – microphone not on).

Ms. Stefl: Yeah, I mean I could see certain legal counsel doing just that. And maybe an opposition or someone you could work with, like you said, that neighbor who says, oh no, a factory is coming to my home and will be my next door neighbor (inaudible – microphone not on).

Mr. Apicella: Again, my concern is, especially when it comes to a legal opinion or a case, I don't have the advantage of doing my homework time to do my own research and say, this person is saying, the attorney is saying this is what this case means. And reading it on the fly, I might not be able to catch everything that the case says. I'd like to be able to step back and do my research and understand is this what that what that case really says, or maybe it says something else or maybe again, maybe there's a case that superseded that and he or she chose not to provide us that case. So, they're selectively giving us the information that they want us to consider, I don't have the advantage of really weighing whether that's truly the point that's being raised.

Mr. Grimes: I think that's a great point when somebody presents with counsel especially. There's a possibility to massage our by-laws that the applicant when filing, must file all this material 10 days before. But not close it to the public to present material. If the applicant, especially if represented by counsel, discovers additional material, then they could choose to delay the hearing, but we're leaving it open that... maybe massaging that, because the way the language is written here in our by-laws, it just uses the word "interested parties" several times. That could be the public, that could be the applicant, that could be the counsel. If, when submitting to the Planning & Zoning 10 days prior, if we were to kind of narrow that down to "the applicant must provide all material". Still have in here "interested parties and our staff may submit relevant material". The counsel is still an interested party at the time of the application, so that needs some work there; but possibly you could just exclude it that only the material to be included to be presented to the Board from the applicant must be presented 10 days prior.

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Mr. Apicella: I think that strikes a good balance.

Mrs. Musante: Can we include 10 business days and not just 10 days, because that 10 days is what got us in trouble the last time.

Mr. Grimes: Yeah, I think business days is appropriate.

Dr. Larson: Then I would suggest that if somebody from the public submitted material during the hearing and we thought that it was too voluminous to consider at that time, then we defer the decision until the following meeting. That doesn't happen very often so it wouldn't be deferred for that reason very often. So I think we may have just covered it.

Dr. Ackermann: A related issue, I think... at least to me in my mind it's related... is we were talking about it last time about whether we were going to guarantee the same Board members. If we delayed, would the same Board members hear the case for the delay? I think that's going a little far, because I could be at one case and the next month I have every intention of coming, but then I'm ill. I think it's unreasonable for us to think that we can guarantee the same seven folks will hear it, if the hearing is delayed or the same six folks will hear it, if the hearing is delayed, because then we just delay it on until who knows when that would happen. I just think that's a difficult position for us to put ourselves in, to say, well if we delay then we have to have the same people here.

Dr. Larson: I think all we have in the by-laws is, it says if an alternate member substitutes for a regular member of the Board on a case that is continued to another day, that alternate will substitute for that same regular Board member for all continuances. What we could add is, if the alternate's available. That is sort of implied because if the regulars aren't available, they can't... they're going to have to have an alternate too. So, I think we're okay with...

Dr. Ackermann: Yes, I think we're okay, I just don't want to let us think that we can (inaudible).

Dr. Larson: Right. I don't know if anybody can guarantee this. Well, we tried that last time, right? We tried to guarantee it and it just couldn't happen.

Mr. Ingalls: But that was more of an applicant's request. He wanted the same ones there. He was just trying to see whether it would be there. Whatever had happened... I don't think so. But it's not something that we would make a rule of, that the same ones would show up.

Dr. Larson: Okay, what I'm going to suggest is I draft some modified language for paragraph 7-4 of the by-laws. I think... I'm inclined to leave in the sentence about submitting material during the hearing, because again, for the public, that's probably their only real option. But I would add something about the applicant must submit all material 10 working days... or 10 business days prior to the hearing.

Mr. Apicella: (Inaudible – microphone not on).

Dr. Larson: I can put that language in there, sure.

Mr. Grimes: Even the second sentence could be "interested parties" could be changed to "public", because that's where it says public and/or staff may submit. It excludes counsel/applicant from submitting that, so it could go either way. You can kind of do it from two angles if we were concerned about...

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Mr. Apicella: And an interested party could be the applicant's spouse.

Mr. Grimes: Exactly.

Ms. Stefl: And I don't put it past certain legal counsel to do just that, to bring a next-door neighbor instead. Introduce this during the public hearing, I didn't get a chance to submit it.

Dr. Larson: I don't know if there's any way, realistic, where we'd police that. Alright, I'll take a shot at re-wording 7-4 and send it around for consideration. Melody, did you want to present what you had now before we go on to the minutes?

ZONING ADMINISTRATOR'S REPORT

Mrs. Musante: Sure. I have a Zoning Administrator's report. Susan is ill, which is why she's not here tonight. The first item I have is, we have been asked to sponsor a VAZO event, Virginia Association of Zoning Officials, in October or November regarding vesting. This is a one day training that we will get certification for, that we need for credits for VAZO. My question to you all is, is this something that you would be interested in attending?

Dr. Larson: I would.

Mr. Poss: Yes.

Mr. Grimes: Yes.

Mr. Ingalls: Yes.

Dr. Ackermann: Yes.

Mr. Kim: Yes.

Ms. Stefl: Yes.

Mr. Apicella: Yes.

Mrs. Musante: Okay. We already have a speaker lined up which some of you all may know. It's Andrew McRoberts. He is excellent on vesting and I did speak with him on Friday, and he has agreed to do the event for us. I will let you know as soon as I can as far as the available date. It will be here in the Board Chambers. It will probably be a weekday, approximately 6 hours. So as soon as I have the date secured, I will forward that on to you all. The other thing that Susan wanted me to discuss is the deferral of cases which we've kind of touched base on. The state code is written, the 90 days is written to protect the applicant. I did speak with our County Attorney's Office and that is their opinion. It's for the applicant. It's not for us to say we have to hear the case within 90 days. It is up to you all, the BZA, on how many times you will allow them to defer a case. The other thing she said was possibly, and we could put this in the by-laws as well, but asking them to defer prior to us advertising. Advertising is very expensive. Actually, this month we had advertised two cases. I was notified the day after that they were requesting a deferral. Those ads can run up to \$400 per add.

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Mr. Apicella: Is there any reason we can't charge them when an applicant chooses to pursue a deferral? We do that for the Planning Commission.

Mrs. Musante: We have to look into that. We've never done it before. I think it's a great idea that we assess additional fees, considering we're paying for these ads. There has to be a way for us to fix this problem on these deferrals.

Dr. Larson: I don't think assessing them is a good enough solution because if I'm a member of the public and I see the ad and I think I'm interested in that, and then I happen to miss the follow-on where it said oh by the way we're postponed, then I'm going to be here and the case won't be presented and... that's just not right.

Mrs. Musante: Well, I will tell you on the second ad it was written postponed. It wasn't taken very well from higher up and I got myself in trouble for it, but they don't like postponed or deferred written across it. They want it completely taken out of the paper which I did bring up. I raised the question, you know, the citizens, especially older generation, rely on that paper and they may see it one week and not look at the next week and show up here and they'll be looking at us with no applicant.

Dr. Larson: Can we put, can we write somewhere, maybe in the application package, that the staff is going to send in the announcement on this date and there'll be no deferral considered after that date?

Mrs. Musante: Sure we can.

Dr. Larson: Let's do that.

Mrs. Musante: Okay.

Dr. Larson: So the applicant knows that if they want to defer they have to do it by such and such a date, two weeks before the meeting, three weeks, I'm not sure what it is.

Ms. Stefl: I thought there was something where they had up until the opening of the public hearing to defer. I thought there was something to that effect, that they have that legal stance.

Mr. Apicella: In fact, you ask if there's not enough members of the panel, do you want to take your chances or defer.

Dr. Larson: That's true. What I want to try to get away with is getting... we have had cases in here where, believe it or not, a lot of people come from the public. A lot of people have something to say and I don't want to get into a situation where we've already deferred a case and the public shows up. But that's a good point. They can defer it at any time.

Mr. Kim: The Aquia Towne Center, the deferral that we've had or the postponement or the not-postponement or deferral or whatever, a lot of people in Aquia Harbor has actually asked me and I have gone from "no we're not doing it this month", "oh no, they've deferred it to next month", "oh no, the attorney's having a surgery"... So, I mean, and it was people I really didn't even know actually were coming up to me... and none of them are here today... so I think word kind of gets around also. I'm not expecting a lot, but I mean there was at least 10 to 15 people that requested information when the hearing was on the Aquia Towne Center came up.

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Dr. Larson: It wasn't advertised for this one, that's why nobody is here today.

Mr. Kim: Well, maybe I said something that...

Mrs. Musante: Actually it was advertised.

Dr. Larson: For this?

Mrs. Musante: Yes, Sir.

Mr. Kim: That was the postponement.

Dr. Larson: That was the postponement. Well then the people seen the postponement or heard from you.

Mr. Kim: Well, they asked and I said their attorney is going into surgery so we postponed it for... I said I hope next month. And then I got Melody's email saying we won't have that next month and that's when I said, well maybe in September and then that's when I got the weird look like, what, what happened to August? So, I think it works somewhat.

Mrs. Musante: The only thing the by-laws state about deferral, it says "on request from the applicant or his authorized agent, at any time prior to the Board taking a definitive vote, the Board will consider a request to defer any agenda item he has pending before the Board. If a deferment is granted by the Board the Chairman may still allow those members of the public to comment." So if we haven't gotten to you all... I mean, we could put in the application they either defer or request a deferral prior to advertisement or they have to come in front of you the night of and say "I'm requesting a deferment" and they only get the one.

Ms. Stefl: I like that.

Mr. Apicella: Can I ask a question about this deferral up to the last minute before we take a vote? So, we go through the motions of hearing the applicant. They can tell by the kind of line of inquiry what their chances are, especially if there's five members of the panel over here. I think that's really giving them the best of all worlds to be able to duck out if they think they're not going to win on that night and maybe might get a different panel in front of them who might go the other way or more members of the panel who might give them enough votes to get to 4. Now that I think about it, that's a little troublesome. Either you go forward that day, or you don't go forward that day. I mean, that's the way we ought to potentially do it.

Mr. Kim: I absolutely agree.

Mrs. Musante: Unfortunately that has happened.

Mr. Apicella: I mean, is there a legal reason why we're required...?

Dr. Larson: That's what I'm trying to figure out. Is there a law that applies to that or is that just our by-laws?

Mrs. Musante: I would have to research that, I'm not sure.

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Dr. Larson: Please do that.

Mrs. Musante: I will.

Mr. Ingalls: As far as the fees are concerned, I assume the Board of Supervisors sets the fees for us.

Mrs. Musante: Correct.

Mr. Ingalls: To me, then you should suggest they set a fee that, if they withdraw it, then they have to pay for the advertisement. If whatever happens, then they have to pay for it to be re-advertised, because I don't think we can set our fees.

Mrs. Musante: Right.

Mr. Ingalls: The Board of Supervisors sets the fees for everybody, so they need to hear from you to say okay, we've got this problem, that I'm paying all this advertising cost and then it's costing us for them to postpone it. Well, if they do, if they postpone it after it's been advertised and you've got to re-advertise it, they've got to pony up some more money and that ought to be part of the fee schedule. As a side light, what does it cost to come before this Board? What's your fee schedule?

Mrs. Musante: A variance and special exception for residential is \$600; commercial is \$900. A residential appeal is \$1,300; a commercial appeal is \$1,900.

Mr. Ingalls: Thank you.

Dr. Larson: I'm just reading the by-laws here for this particular thing and all I can find here is "the applicant may withdraw his or her application at any time prior to a vote to approve or deny the application, provided the applicant has not withdrawn a substantially similar application in the previous 12 month." I can't find the deferral language.

Mrs. Musante: 7.7, the one underneath.

Dr. Larson: Oh; I'm blind. Will consider a request. Okay, the preamble is a little stronger in that regard. It says "if you think that there are not enough members to receive a fair hearing, you have the right to withdraw or defer till another meeting. In fact you may withdraw your application at any time"... Oh, wait a second. That's... no, this is actually the same wording. Hmm... Okay, I guess I would suggest that we modify the wording a little bit when it says "then you have the right to withdraw or defer the hearing until another meeting", I would say "withdraw"...you can withdraw, I mean that's just withdrawing the application... but deferral ought to always be at the option of the Board, wouldn't you say? Yeah, me too. I'll just use the same language that we have here. Again, I'll send a small draft change around. Okay, if nobody else has anything to say about that, let's go onto adoption of the minutes. Any discussion on the February 26th minutes? Changes? Suggestions?

ADOPTION OF MINUTES

Dr. Ackermann: I have one item, maybe two. On line 289 on the February minutes, it says "Okay, so what's the"... I think it's "rationale for the state law" as opposed to the "rational for the state law". And on line 1221 it says Dr. Kim and he's Mr. Kim.; not a doctor yet. And line 1240 it should be "just to throw something out there" instead of "just to through something." I actually read the minutes.

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Dr. Larson: Any other corrections? I have one on line 218. That may be a quote, but it's a little ambiguous; the "anybody there" should be "any member of the public", because clearly there were people here. Any other corrections to the February 26 minutes? Is there a motion to adopt?

Dr. Ackermann: So moved.

Dr. Larson: Is there a second?

Mr. Grimes: Second.

Dr. Larson: Those in favor say aye.

Mr. Poss: Aye.

Mr. Grimes: Aye.

Mr. Ingalls: Aye.

Dr. Ackermann: Aye.

Mr. Kim: Aye.

Ms. Stefl: Aye.

Dr. Larson: Aye. Any opposed? It passes. April 23rd minutes? Any corrections? I have one on line 1214. The sentence is "the motion is defeated, which means the." Where it says "motion" it should be "Zoning Administrators decision is not overturned."

Mrs. Musante: Dr. Larson, can you repeat that please?

Dr. Larson: Yes. Line 1214; I called for the question and then we had a vote and the vote was defeated, which meant the Zoning Administrator's decision was not overturned. So that second motion on line 1214 should be "the Zoning Administrator's decision is not overturned."

Mrs. Musante: Got it.

Dr. Larson: And then on line 1442, just delete the word "are." Any other corrections to the minutes? Do I hear a motion to approve the minutes? April 23rd?

Mr. Ingalls: So moved.

Dr. Larson: Second?

Dr. Ackermann: Second.

Dr. Larson: Those in favor say aye.

Mr. Poss: Aye.

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Mr. Grimes: Aye.

Mr. Ingalls: Aye.

Dr. Ackermann: Aye.

Mr. Kim: Aye.

Ms. Stefl: Aye.

Dr. Larson: Aye. Opposed? The motion carries. Zoning Administrator's Report?

ZONING ADMINISTRATOR'S REPORT

Mrs. Musante: I guess the only other thing I have is what we're going to do with the two appeals that are still pending. Are we going to schedule them for August, or are we scheduling them for September?

Dr. Larson: I don't have a compelling reason to postpone them anymore. If there is a compelling reason, let's hear it. I think... if Mr. Leming has other people working at his firm, somebody else could present the case.

Mrs. Musante: Okay, do you wish for me to email him that information or would you like to do it? I'll gladly do it, but I know what's going to happen.

Dr. Larson: I'm not sure I have his email address, but I may have something I could reply to when he said the September meeting. So, yeah, if I still have that email, I'll reply; if not, you can forward it to me and I can reply to it.

Mrs. Musante: Perfect. Thank you.

Dr. Larson: Unless the Board thinks we should defer it again. The consensus appeared to me that we probably shouldn't defer it again. Okay.

Mr. Apicella: So, just to ask a question. Let's say you say this needs to come up in August and he says "well we still can't do it." Can we just drop it? Do we have the ability to drop it, as if it was withdrawn and cannot be re-submitted?

Dr. Larson: I think there is a limit to how many times they can defer, isn't there?

Mrs. Musante: They can request to defer. It's whether you grant it, as the Board. That's the issue. You do not have to grant them another extension. Again, what the County Attorney's Office told me is that the state code is written to protect the applicant. So they could request every month. We could go next year and they're still requesting a deferral.

Dr. Larson: Right. But this is a deferral for a violation. So, in theory you could defer for 10 years and just continue violating.

Mrs. Musante: That is correct.

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Dr. Larson: That's not fair to the public. But it does say 90 days. I mean, it doesn't say it only applies to one side, does it?

Mrs. Musante: It doesn't. I'm only going off of what the County Attorney has told me that the 90 days is for... once you've actually heard the appeal, you have 90 days to make your decision. The applicant can continue to defer 190 days, as long as you all grant it.

Mr. Kim: So if we say no and he wants another deferral, where do we go from there?

Ms. Stefl: We can force him to then present the case.

Mrs. Musante: Or you can deny it.

Mr. Kim: Oh, just straight up say no?

Dr. Larson: Wait, you mean deny it by affirming the Zoning Administrator's decision summarily?

Mrs. Musante: Correct.

Mr. Apicella: So, if I hear you correctly, we would go ahead and schedule it. They either have the option of showing up, presenting their case and if they don't show up, because they say they're not ready to go or for whatever reason, we can deny it because they didn't present a case. Is that kind of what you're saying?

Mrs. Musante: That is correct. I have not seen that process on an appeal. We have done them on a special exception, where the applicant did not show and we denied it. Now I did speak with County Admin last week and she told me what they have required the applicant to do is come before you and request the deferral. We can schedule it. If he's not ready to present it then at that time, if you do not accept his deferral, we move on and if they're not ready to present it, you all have the right at that time to make action.

Ms. Stefl: So he requested the deferral and staff deferred it when really what probably should have happened is he should have come to the Board to see if...

Dr. Larson: No, I deferred it.

Ms. Stefl: Oh you deferred it. Oh, okay.

Dr. Larson: Where's that timeline? I printed it out just in case. Okay, they had a notice of violation sent on March 4th. They sent their appeal application on April 3rd, but there were two violations and the County needed two applications. They needed to be treated separately, so there was a paperwork snafu for a month. They were notified, this says week of May 15th, notified application needed on two separate applications. So they were notified in May and they came back asking... they said there was not sufficient time to prepare for the June BZA. Well, probably May 16th they were already past the advertisement anyway so there was no deferral for May because they didn't even come back. So the first deferral was June, where they said they didn't have sufficient time to prepare for the June meeting to which I said fine. I mean, I'd rather have people prepared to submit a case. That's fine. Then Mr. Leming had an operation that conflicted with this meeting, so we deferred again for medical reasons. And then when Melody asked about... I'm not exactly sure how you phrased it... but he came back with

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September and you sent back “what about August”, to which he said there was a conflict with August. But I never gave an input for August... yet.

Mrs. Musante: He already has a public hearing scheduled in Spotsylvania in August which is the reason...

Ms. Stefl: So let's do it in August. I'm sorry, Mr. Leming has a big law practice.

Mr. Apicella: No, we should do it in August, because it is a violation. It either needs to be corrected or they need to be given relief. One way or another, we need to adjudicate it so that the clock isn't being run out for this problem to solve itself.

Dr. Larson: That was my... my feeling was that too and I think I have the consensus of the Board behind me. So that's just fine. I can take care of the email. Okay, do I have a motion to adjourn?

ADJOURNMENT

Dr. Ackermann: Motion to adjourn.

Dr. Larson: Second?

Mr. Ingalls: Second.

Dr. Larson: Alright, those in favor say aye.

Mr. Poss: Aye.

Mr. Grimes: Aye.

Mr. Ingalls: Aye.

Dr. Ackermann: Aye.

Mr. Kim: Aye.

Ms. Stefl: Aye.

Dr. Larson: Aye. Thank you everybody.

With no further business to discuss, the meeting was adjourned at 8:35 p.m.