

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
April 22, 2014

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, April 22, 2014, was called to order with the determination of a quorum at 7:02 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, Ray Davis, Larry Ingalls and Gregory Poss

MEMBERS ABSENT: Steven Apicella, and Heather Stefl

STAFF PRESENT: Susan Blackburn, Melody Musante, and Denise Knighting

DETERMINATION OF QUORUM

Dr. Larson: I will bring the meeting to order. Good evening ladies and gentleman, and welcome to this meeting of the Stafford County Board of Zoning Appeals. The BZA is a quasi-judicial body that is appointed by the Circuit Court of Stafford County. The purpose of the BZA is to one, hear and decide appeals from any order, requirement, or decision or determination made by the Zoning Administrator, two, to hear and decide upon requests for Variance from the Zoning Ordinance, when a literal interpretation or enforcement of the ordinance would result in unnecessary hardship to the owners of a property. And three, hear and decide on requests for Special Exceptions where the zoning ordinance allows for Special Exceptions. The Board consists of seven regular members, all of which... and two alternates. All of the regular members are here tonight. All the way down to my left we have Mr. Gregory Poss, and then we have Dr. Ernest Ackermann, Mr. Danny Kim, and the proceeding down this way Mr. Robert Grimes, Mr. Larry Ingalls and Mr. Ray Davis, and my name is Dean Larson. Welcome. I should point out the county is represented tonight by Mrs. Susan Blackburn, our Zoning Administrator, Mrs. Melody Musante, our Zoning Manager and Ms. Denise Knighting, Administrative Manager. The 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 their representative to come forward and state their name and address, and present their case to the Board. The presentation shall not exceed 10 minutes unless additional time is granted by the Board. Members of the Board may ask questions of the applicant to clarify or better understand the case. The Chair will then ask for any member of the public who wishes to speak in support of the application to come forward and speak. There shall be a three minute time limit for each individual 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 in 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. In order to allow the Board time for appropriate review, the applicant or applicant's representative is required to submit relevant material to the Department of Zoning and Planning, ten business days prior to this hearing to be included in the staff report. The Board may accept additional relevant material from the applicant or the applicant's representative during the hearing. However, large amounts of additional material may require a deferral at the Board's option on behalf of the applicant to allow the Board time to consider that additional material. Members of the public and/or staff may also submit relevant material during the hearing. The may defer their hearing

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for any reason, but only once during a twelve month period. Deferral request are granted at the sole digression of the Board. The applicant may also withdraw his or her application at any time prior to a vote to approve or deny the application provided that the applicant has not withdrawn a substantially similar application within the last twelve months. Any person or persons who do not agree with the decision of this Board shall have 30 days to petition the Stafford County Circuit Court to review our decision. Also be aware that the Board will not hear any denied application for a variance or special exception that is substantially the same request for at least 1 year from the date of our decision. I now ask that anyone who has a cell phone or pager, or other electronic device, to please silence it. 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 to stand and raise your right hand.

Several members of the audience stood and raised their right hand.

Dr. Larson: Do you hereby swear or affirm that all testimony before this Board shall be nothing but the truth?

Several members from the audience: I do.

Dr. Larson: Okay. Thank you. You may be seated. The Chair asks that when you come down to the podium to speak, please first 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 changes or additions to the advertised agenda?

Mrs. Musante: There are no changes.

DECLARATIONS OF DISQUALIFICATION

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 this Board tonight? Thank you. I'll now ask the Secretary to read the first case.

PUBLIC HEARINGS

1. **SE14-01/1400115 - Danielle Gilason** - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards," A-1, Agricultural, to allow firearm transfer services, trade shows and internet sales as a Rural Home Business on Assessor's Parcel 36B-5-49. The property is A-1, Agricultural, located at 236 Summer Breeze Lane, The Willows Subdivision.

Mrs. Musante: Case SE14-01/1400115, Applicant Danielle Gilason requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards," A-1, Agricultural, to allow firearm transfer services, trade shows and internet sales as a Rural Home Business on Assessor's Parcel 36B-5-49. The property is zoned A-1, Agricultural, located at 236 Summer Breeze Lane in The Willows Subdivision. You have the application, the application affidavit, plat of the property, aerial photo, diagram of area for the business, HOA requirements and the rural home business standards. The applicant is requesting a Special Exception to conduct firearm transfer services, trade shows and internet sales as a rural home business. Firearm transfer services are a convenience for an applicant who resides in a different state. The weapon is sent to the local licensed FFL for pickup, paperwork and verification only. Requested days and hours of operation are by prearranged appointment only for background check

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and transfer of ownership of the weapon, Monday through Friday from 3:00 PM to 6:00 PM, Saturday and Sunday 3:00 PM to 5:00 PM. The applicant indicates she will provide four off street parking spaces but only anticipates three customers per week. Very little or no inventory of firearm accessories will be store at the residence since most of these products are drop shipped directly from manufacture warehouses. The applicant states her address will only be used as a business and shipping address for item and will not be used as a point of retail sales nor will any signage associated with the business be displayed at or on the premises. This will be a federally licensed business and a person with the business be displayed at or on the premises. I am sorry, let me go back. The applicant states her address will only be used as a business and shipping address for item and will not be used as a point of retail sales nor will any signage associated with the business be displayed at or on the premises. This will be a federally licensed business and persons will, from time to time, come to this residence to complete a firearm transfer transaction or background check. Rural Home Business standards allow for 25 percent of the gross floor area to be utilized for the business. The applicant has indicated 200 square feet will be used for the business which meets this requirement as the gross floor area of the dwelling is 3,221 square feet. You also have a letter from The Willows Community Association to the applicant as well as I have received an email from Sue Furtado, from the ATF that could not be here tonight, that states if the applicant intends to operate a business from a private which is located in a subdivision regulated by a HOA, the applicant is required to obtain compliance. The applicant would need to provide ATF with a letter of authorization issue by the HOA

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

Mr. Ingalls: I guess you didn't read the whole applicable background. The last paragraph where you talk about neither the Gun Control Act nor the Zoning Ordinance provides a definition for retail sales and then you go on and quote Webster's definition and then you say per this definition it appears that the requirements of the ATF gun sale permit is in conflict with the regulations for a home occupation concerning retail sales and such businesses cannot be conducted within a single-family home. This type of business could be considered a retail by-right use in the Commercial Districts. Are you saying that it is your opinion that this is not an allowed use as a home business? What is the purpose of that statement?

Mrs. Musante: We do not allow retail sales as a home business.

Mr. Ingalls: Well it is your opinion? You put that statement there and then are you going to say... my questions is do you... is it your opinion, or the staff's opinion or somebody's opinion that this is not a proper use in a home business.

Mrs. Musante: Yes.

Mr. Ingalls: Thank you.

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

Mrs. Gilason: Good evening, my name is Danielle Gilason. I would like to clarify a little bit of what was in the package. We intend to use this home based business to conduct federally approved firearm transfers, thus strengthening the Gun Control Act. It is not a retail sales business. We originally applies for this business under the uses permitted by-right home based business but were denied and were told that we needed to reapply for a Special Exception to the rural home business, which is why we are here

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today. As was mentioned in the package, we only think we will have perhaps 3 a week. There is definitely no need for any street parking to alleviate any HOA concerns. There is plenty of room in our driveway. We do have a large safe that we can keep all the transfers in. Even though there are hours of operation all appointments are by appointment only, so there won't be anyone ever just showing up at our door. Earlier today I did receive the letter of concern from the HOA and again that was just today. We sent an email to the President of the HOA, Mr. Collins, but have not heard back. I followed the by-laws that I found in the package we received and as you can see it is a very thick by-law. In the package that I found it is in that package it said that home businesses were approved as long as it was approved by the County, that there were no signs being displayed or outside storage. I apologize, I didn't realize there was an amendment very far in the back, so we will try and get that concern alleviated. That is really all I have unless anyone has any questions.

Dr. Larson: Thank you Mrs. Gilason. So just to clarify, do you have the amendment to the homeowners covenants?

Mrs. Gilason: I do have it now.

Dr. Larson: The amendment?

Mrs. Gilason: In the letter it is pointed out where it was and I searched through and I did find it.

Dr. Larson: Okay. And just for your information the reason why staff steered you to a Special Exception is you will require foot traffic in your home even if it is not retail sales taking place in the home. And that is required by the ATF.

Mrs. Gilason: Okay.

Dr. Larson: In order for you to get a license, they have to... you have to have foot traffic in the home. That is why you are basically forced to a Special Exception.

Mrs. Gilason: Okay. We believed that the home business said the same thing, but that is fine.

Dr. Larson: Any other questions for the applicant?

Dr. Ackermann: I just had a... how far along are you on your business plan? Have you received the FFL license?

Mrs. Gilason: We have not started that yet because we needed to get approval through the County to operate as a business before we are allowed to apply to the ATF for our FFL.

Dr. Ackermann: And have you done a request for a business license yet?

Mrs. Gilason: Through the County or through the...

Dr. Ackermann: Yes through the County.

Mrs. Gilason: That is why we are here.

Dr. Ackermann: That was in your plan? I just wondered where you were in that?

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Mrs. Gilason: Stafford County does not have a business license per se.

Mr. Kim: You just have to register the business.

Mrs. Gilason: Right.

Dr. Ackermann: Okay.

Mrs. Gilason: So that is what we are trying to do.

Dr. Ackermann: I see, okay. Thank you.

Mrs. Gilason: Sure.

Mr. Ingalls: Mr. Chairman?

Dr. Larson: Yes.

Mr. Ingalls: Can you explain to me, a little better, what do you really do? I mean I read conduct firearm transfer services, trade shows and internet sales as a rural home business.

Mrs. Gilason: Really, and again all we want to do is the firearm transfer services through the ATF. So firearms are transferred from either a business to a person or a person to a person through 2 FFL license people. So someone would go purchase a gun either from another individual from a shop, from whichever. They would need to transfer that to an approved FFL located near them, which would hopefully be us. That person that purchased the firearm would then come to us so that we could see them in person. We would do a background check. We would have a computer system that goes directly into the police. It would come back either yes, they are approved you can do the transfer or no it is not at which time we would then send the firearm back to whomever they purchased it from. So there is no sales being... no sales from us, it is sales from the person to the shop. All we are doing is transferring ownership.

Mr. Ingalls: Do you charge a fee for doing that?

Mrs. Gilason: There is a minimal fee, yes.

Mr. Ingalls: So you are not selling the gun or whatever.

Mrs. Gilason: We are not selling the gun, no.

Mr. Ingalls: You are selling a service...

Mrs. Gilason: Correct.

Mr. Ingalls: ... to a shop or somebody.

Mrs. Gilason: Right, to the end... to the person it is being transferred to. They are the ones that would pay the service fee.

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Mr. Ingalls: Do you have to see the person...

Mrs. Gilason: Yes.

Mr. Ingalls: ... to be able to do that?

Mrs. Gilason: Yes.

Mr. Ingalls: And verify...

Mrs. Gilason: That is why we have the hours of operation by appointment only so that they can come and we can see that they are who they say they are and answer... there's about 10 questions that they have to answer that we submit for the background check.

Mr. Ingalls: I don't see it right now but thought I read something about making it easy for out of state people. Do you... maybe that was not yours.

Mrs. Gilason: It could be... anyone could use an FFL. It is easier if you have someone close to you. But if the person purchased the firearm from someone out of state they could then ship it to us, we are basically the intermediary, would hold it until they become approved to transfer the item to.

Mr. Ingalls: Is it, again being uninformed about background checks, is it something you do and sit there and wait and before the person leaves you know whether they are approved or not approved.

Mrs. Gilason: For the most part, yes. There could be a flag that comes up that says we may need some more time to investigate this. At which time I would tell them that they would have to leave and come back for an appointment later. But yes, for the most part they would come within 10 minutes say, we would know.

Mr. Ingalls: Do you have the item in your hands at that point?

Mrs. Gilason: Yes.

Mr. Ingalls: With them standing in front of you?

Mrs. Gilason: Yes, and once I get the green light saying that he is good and I can transfer it, it would hand it over to him and he would be on his merry way. And then that would be the end of the transaction.

Mr. Ingalls: Thank you.

Mrs. Gilason: Sure.

Dr. Larson: So just to clarify, you do some sort of background check for each person that comes and collects a weapon. Is that correct?

Mrs. Gilason: Right. It's with... as becoming part of the FFL, you get a computer program that you enter in their information and it goes to whatever they do with the information, it is not really something that we do. We enter in the information and say go and they State Police or whomever runs the information and sends it back to us, yes.

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Dr. Larson: You access a database? They have a database of people that are probably not good to go, that would be my guess. And then you get back some sort of notification saying this person is good to go.

Mrs. Gilason: Correct.

Dr. Larson: Or not.

Mrs. Gilason: Or not, correct.

Dr. Larson: Thank you.

Mrs. Gilason: Sure.

Mr. Kim: Can I ask a question?

Mrs. Gilason: Sure.

Mr. Kim: I agree with FFLs because even in local state transfers, you know you are selling to who you can sell to. So I agree with it, but the only concern that I have is did you go to your HOA and ask?

Mrs. Gilason: I did not because again I did not realize and I apologize, I didn't realize that we had to get their approval ahead of time. We've only recently moved in to the HOA and so I have become as familiar with as I could with the by-laws but I did not realize.

Mr. Kim: Yes, I just... from hearing from the FFL guidelines, one of the guidelines is it has to be accepted by the HOA also?

Mrs. Gilason: Right. The guidelines that I found stated that home businesses were allowed as long as we conform with the County rules. And that is the paper that I submitted in the package.

Mr. Kim: Yes I saw that.

Mrs. Gilason: I did not realize that further down into this nice big package that there were... there was an addendum to the package that I miss. And I do apologize.

Mr. Kim: Okay, thank you.

Mrs. Gilason: Sure.

Dr. Larson: Any other questions?

Mr. Ingalls: I have got one more.

Mrs. Gilason: Sure.

Mr. Ingalls: You have here about trade shows. How to you interact with a trade show?

Mrs. Gilason: We would just...

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Mr. Ingalls: You go to a trade show?

Mrs. Gilason: We would go to a trade show, maybe have business cards saying if you are ever in need of an FFL we are here. But that is it. There is no... we are not planning on selling any items at a trade show.

Mr. Ingalls: Do you have a booth or anything at a trade show or do you just hand out cards to people?

Mrs. Gilason: To be honest we have not even looked that far into it yet. We are kind of taking it one step at a time. So we wanted to get past this and see if they even allow for a booth to be set up at a trade show or if you just kind of walk around and introduce ourselves.

Mr. Ingalls: I am assuming that you must have some familiarity with firearms and firearm rules and regulation.

Mrs. Gilason: A little bit, my family and I do, yes.

Mr. Ingalls: Could you tell me how... I mean what you... are you experienced in this and why? Are you a policeman or are you...

Mrs. Gilason: No, no, no, no, no.

Mr. Ingalls: ... a federal agent or what?

Mrs. Gilason: No, I am really just a layperson, our family just enjoys kind of collecting guns, and as purchasing firearms in the past have run across this issue of the lack of FFL. And also people purchasing items from other people and not knowing who is on the other end. And we see that as a big concern and want to insure that does not happen. That this becomes as safe as possible.

Mr. Ingalls: It basically sounds to me like you have to deal with people that live within a reasonable distance of where you are.

Mrs. Gilason: It does not have to be. I mean people can travel for hours, they can travel across states, it is really up to them.

Mr. Ingalls: I don't know why they would...

Mrs. Gilason: It doesn't matter to us.

Mr. Ingalls: I don't know how many they would pass by that did your same thing to get to you, but okay. Thank you again.

Dr. Larson: Any other questions for the applicant?

Mr. Grimes: I have just 2 I guess.

Mrs. Gilason: Sure.

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Mr. Grimes: Quite often I have seen FFL transfer dealers also then offer ammunition sales, accessories, slings, holsters...

Mrs. Gilason: No sir.

Mr. Grimes: ... you don't plan on doing any retail sales at all?

Mrs. Gilason: No sir.

Mr. Grimes: Strictly the transfer?

Mrs. Gilason: Correct.

Mr. Grimes: Thank you.

Dr. Larson: I have a couple of things for you.

Mrs. Gilason: Sure.

Dr. Larson: The question that Mr. Ingalls asked earlier, deals with retail sales on your premises. And the County Code expressly forbids retail sales on your premises.

Mrs. Gilason: Correct.

Dr. Larson: We have gone through this before and as I recall the County has interpreted internet sales as not being a retail sale on the premises. So contrary to what this paragraph here says, I think that may be a left over from one of the previous ones. I think we sorted all of that out last time that you could do this type of thing in the home because they are not conducting retail sales... as long as you don't take money or a credit card or, you know the exchange of money takes place on the internet rather than in your house then we concluded based on County precedent that that was not a retail at the house.

Mrs. Musante: To my knowledge that was not a staff interpretation, it was the BZA's decision at the last hearing.

Dr. Larson: Okay, I will have to look back at the minutes. I thought the staff had historically said that.

Mrs. Musante: No.

Dr. Larson: Okay. In any case even given that, the question is do you plan on taking any money in any form at your house to sell something, an item?

Mrs. Gilason: For items, no.

Dr. Larson: Merchandise.

Mrs. Gilason: No sir.

Mr. Kim: It would be more of a service.

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Mrs. Gilason: For service, correct.

Mr. Kim: Yes. Thank you.

Dr. Larson: What kind of security will you have in your house?

Mrs. Gilason: Our home is pretty much occupied 24/7, there is always someone there. We do have a very large safe that we would store any of the transfers.

Dr. Larson: Do you have a house alarm?

Mrs. Gilason: We do not.

Dr. Larson: Thank you. Any other questions for the applicant?

Mr. Grimes: Just a follow up to that last question in reference to the safe and security system. When the firearm is drop shipped to your house, how long do you expect to have it there?

Mrs. Gilason: As minimally as possible. We would give a call to whomever purchased it the day we receive it and hopefully within a day or two they would come out. We would do the transfer and it would be out of our hands.

Mr. Grimes: So it will be stored at your house until it is picked up and it probably won't be picked up the same day you receive it.

Mrs. Gilason: I don't want to say it won't, but I don't know at this point.

Mr. Ingalls: Will you have ammunition at your house to fit these items?

Mrs. Gilason: No, Sir.

Mr. Ingalls: So you don't have any... you wouldn't have... no reason to store 5,000 rounds of ammunition.

Mrs. Gilason: No, Sir.

Dr. Larson: Any other questions for the applicant? Thank you, Ms. Gilason.

Mrs. Gilason: Thank you.

Dr. Larson: Does any member of the public wish to speak in support of the application. If so, please come forward. Seeing none, does any member of the public wish to speak in opposition to the application. If so, please come forward.

Mr. Leavy: Good evening. My name is Douglas Leavy. I'm an attorney with the law firm of Reese Broome. Our law firm represents the Willows Community Association Incorporated, which is the home owner association in which the applicant's property lies. I have been asked by the association's Board of Directors, which is the governing body of the association, to come tonight and speak to the Board here about the Board of Directors and the community's opposition to this application. To give you a

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little bit of knowledge about the Community Association, this is an about an approximately 100 home association. It's a very quiet, peaceful neighborhood. The applicant's home is surrounded by other residences to the left and the right and other homes in the immediate vicinity. The applicant has not at this time submitted, I believe as the Board knows and was told, has not submitted an application to the association's Board of Directors for approval of this proposed business and the association's recorded covenants that run with the land, specifically it's an amendment to the declaration to the covenants conditions and restrictions that the property is subject to. It has in it a provision, that any business trade is prohibited within the association, unless it's approved by the Board of Directors. Additionally it has in there that any business cannot be conducted so long as, and it has a number of conditions that would need to be met in order for the Board to approve any application. Among those characteristics or those conditions are: The activity must conform to all zoning requirements for the property. The activity does not involve the regular visitation of the lot by clients, customers, suppliers or other business invitees or door to door solicitations of residents of the properties, and the activity is consistent with the residential character of the properties and does not create a nuisance, or a hazardous, or offensive use, or threaten the security or safety of other residents of the properties, as may be determined in the sole discretion of the Board of Directors. Again, these are conditions that the applicant would need to meet in applying to the Board of Directors for approval of this business. Now at this time, again, because an application has not been submitted, the Board of Directors of the association has not voted on the matter, because the application hasn't been submitted, but I can tell you that the there is a strong sentiment among the Board of Directors and among the community members, the residents who live in this association, who have come to the Board after learning about this application, all of it just happened within the past week, that the sentiment is very strongly one sided against this application. The nature of this proposed business is one that does not at all fit within the characteristics of this type of neighborhood. What we're essentially talking about is people driving into a subdivision, obtaining a fire arm and leaving, going back through that subdivision. Is that something we really want to be happening within a subdivision with houses on the left, on the right and 100 homes and families throughout the neighborhood? Is this something that we really want to be happening in that type of environment? And I think the community, those residents who have come forward to the Board thus far and expressed how they feel, very much say "no". They don't like this idea. They feel that this is just not something that comports to the type of community they bought into, the neighborhood they bought into. This is not something they would want to see going on under their...across the street from them or down the road from them. There are a number of safety and security concerns that members of the community have expressed to the association's Board of Directors about why they're opposed to this. It just seems to invite the potential for danger, the potential for disruption of the safety and wellbeing of the community. We definitely have to keep in mind, I think, as well that if we're talking about the proposed business hours being 3 to 6 p.m., that is a time when all the kids are coming home from school. Is that really when we want someone coming down the road to obtain that firearm that they've applied for. I think we have to, when we consider this type of application. I think the applicant has in mind the best case scenarios, well I think the Board needs to also consider the worst case scenarios. What happens if somebody is denied the transfer and they're face to face with the applicant and suddenly find out they're not approved? What's going to happen? I think those are things we're going to have to think about in advance, not in hind side. What's going to happen if they come in and they do obtain the fire farm and they did say that they're not selling the ammunitions, but nothing, I guess, prohibits them from providing their own ammunition or coming with it. It's just a general concern I think that anything could happen. And I think, when you're talking about that in the context of a peaceful, residential neighborhood, this is out of line with what the residents of the community would want to see going on.

Dr. Larson: Any questions from the Board?

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Dr. Ackermann: Does the home owners association have any idea of how many people in the subdivision are already gun owners?

Mr. Leavy: Uhm, I don't think they do. I don't think they do.

Dr. Ackermann: And you obviously don't know if any are gun collectors either.

Mr. Leavy: I don't think they would know that. No.

Mr. Kim: May I as a question, Mr. Chairman?

Dr. Larson: Absolutely.

Mr. Kim: The question I have is, how many are against it? Did anyone come forward for it? I don't need the exact numbers, but 20/30 for and 50 against.

Mr. Leavy: None have come forward in favor of it to the Board of Directors. I believe the number that had come up against it, about 4 or 5.

Mr. Kim: 4 or 5?

Mr. Leavy: Yes.

Mr. Kim: Okay, thank you.

Mr. Poss: I've got a question. Are there any businesses operating in the neighborhood right now that have either been approved or disapproved by the HOA.

Mr. Leavy: I believe the answer to that is no. It's a matter I discussed earlier with the Board and its representatives, there's no approved business at this time within the neighborhood.

Mr. Kim: May I ask a quick question? Were they raising their hand for against, or...

Several members from the audience: Against!

Mr. Kim: Against. Okay. Thank you.

Dr. Larson: Any other questions for Mr. Leavy? Thank you, Sir.

Mr. Leavy: Thank you.

Dr. Larson: I understand you want to speak against as well, Sir?

Mr. Connell: Yes, Sir, I do. My name is Joseph Connell. I am the President of the Board of Directors for the Willows Community Association. A couple of things that I want to say and first of, I don't know if this is the forum to bring it up or not, but I wanted to plant a seed with the Zoning Board that one of the issues and challenges that we've had with the request from the Gilasons, who I have not met. I've been President of the Board for about almost 2 years, is that there was a notification, I'll use the wrong words, either to adjoining or abutting properties about this business request. However, the only way that

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the Board of Directors and the property management company found out about this was through an email from one of our homeowners who received this notification requesting that the Boards intervene and that they stated their position that they were very concerned. So just to put somewhere for notice, I think there needs to be a way to figure out if indeed homeowners need to come and get permission from the Board to conduct a home business asking for this special waiver. There probably needs to be someone to think through, okay, if they're going to be involved in this process, we probably need to figure out who they are and who's responsible, whether it's a property management company. I'm just trying to throw that out, because it has created a very short suspense. I was notified of this on Tuesday of last week while I was on my way to Indiana for a business trip and have been working this ever since. I am a retired Air Force Colonel. I am a former Vice President in the Aerospace and Defense industry, so I believe I have an understanding and I'm qualified to speak about business and also how you expect to treat people that I look at as the Board is charged to make sure are living in a safe and secure environment. My concern here was enough to where I drafted the letter and asked the community management association, Landmark Real Estate, to ensure that the Gilasons received prior to this meeting. So with the Easter holiday they sent it out on Monday after they signed it and they received it today. There were no surprises in that letter. The letter, I feel, is very straight forward, but what I did do last week, was, I did reach out to each of the Board members over email. I said we have received this express concern, what I need to know is, do either of you have a concern for or a concern against and what would be the position going forward so that we might be able to tell the Planning Commission and indicate to the Gilasons where the Board may end up voting on this issue. Every Board member has come back to me, I have a Vice President, a Treasurer, a Secretary and a Director at large, every one of those individuals have come back to me and said "We are not in favor of this business request, nor if it were to come up before the Board, would we vote to approve it." I just wanted to make that clear, but I also wanted to make you all understand that I feel it's very important as the Board President, that we are communicating with everybody within the Willows, not just the folks that are talking to us all the time. Everyone. It is unfortunate that clearly stated in the bylaws was to approach the Board and come to the meeting. It's unfortunate that didn't happen, but I have a basic idea where this is going to go, as soon as our residents come to the Board. But I just want to make that clear and I thank you for your time and I appreciate what you're doing. Thank you.

Mr. Ackermann: So the opposition to this by the Board and you have of course the right to make any decision you like, is based on the nature of the business not necessarily...I mean if it were a, if I were, if she were selling or a middle person for selling knitting supplies, you would not have an objection.

Mr. Connell: I do not believe so. What the Board has come back to me with is, that in the covenants it talks about concerns over the safety and security of the safety of the residents of the Willows. One thing I'd like to tag on to that is, we have had 3 reported break-ins in our community in 15 month. I know 1 break-in is too many; 3 in a community like ours in 15 month; it's a very safe community to be in, however we have had some problems with break-ins and we have had some community homeowners that have gone to alarmed residences. But I did want to make that aware that it isn't just the transfer of the firearms it's also the issues of we have had folks breaking in to homes and I think that the announcement of a business like this in our development only entices those who are up to no good to possibly see what they might get out of it. But again it is the safety and security issue that the Board has raised with the business. So again, a knitting business, um, once again, the Board would have to vote on that, but I see that as a totally different issue.

Dr. Ackermann: Personally I share your concerns, however, also being on this Board we see a lot of different situations and I mean it might be possible for the applicant to provide some justification to the Board that your concerns may not be as well-founded as you think they are.

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Mr. Connell: I would not argue with you at all, Sir.

Dr. Larson: And I might add to that, I would suggest that your Board, they can form preliminary opinions, but I would suggest that they not make decisions until they've heard the applicants.

Mr. Connell: Yes, Mr. Larson, and again, the Board has not taken this onto the agenda nor have they conducted a formal vote. My question was to the seriousness of the response and how should we come prepared to talk to, to present to the Gilasons our concerns.

Dr. Larson: Thank you. Any other questions?

Mr. Kim: Can I actually ask staff? The case that we had last month, is this the same neighborhood? Was it Willows?

Mrs. Musante: No, that gentleman lived on a private, on a regular...

Mr. Kim: No HOA. Okay. Great. Thank you.

Mr. Poss: Would you please clarify your process for approval? As I understand it, you would only approve it after this Board approved it? Or is there a sequence?

Mr. Connell: Well, it clearly states in the covenants and the bylaws of the HOA that you must come to the Board for any home based business and inform the Board, tell them what it's about, give the details and then the Board would determine whether they were going to, for lack of a better...authorize you to have that home based business or to move forward in the process to get whatever you need done to conduct a home based business. I can't tell you as to how the sequence should be, I just know somewhere in the sequence the Board needs to be brought into the process. We have quarterly Board meetings and we have an annual Board meeting here in about 2 weeks, on the 8th of May. And those are published on our website and those postcards are sent out to each one of the residents approximately 14 to 30 days prior to the Board meeting. So we make sure everyone's aware.

Mr. Poss: Thank you.

Mr. Connell: Yes, Sir.

Mr. Ingalls: Mr. Chairman, couple of comments. I think it's important, you know, this hearing with this case was advertised in the paper for the last 30 days twice or three times and I'm sure it's on the County website, so we are trying to reach as many people as possible. Our Ordinance tells us what we have to do in terms of notifying. Sometimes you have to notify 5 or 6 property owners just because that's how many people are adjacent to it, that's including across the road, so you got 5 or 6 with one application, so I think you have an opportunity of those people who are most impacted, usually, by these things, if they had a concern to go to the HOA and I guess the second big thing is, this Board has not authority to over HOAs. HOA, you are an independent, County doesn't govern you. We don't have any right to tell you what to do, what not to do. So we can only listen to what you say, but we have no authority to do anything with your HOA. That's up to you and your residents and so forth. We can't, just because the HOA approves or disapproves either way, that only may just be one piece of information that we use, it's not something that is a...okay...well, if the HOA doesn't approve it... Because we have, in the past, we've approved home businesses and the HOAs have...they didn't approve them and now it's up to you if you want to stop it. You have to do whatever you have to do. The County does not get involved.

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Mr. Connell: Yes, Sir. I don't mean to be rude. I hope I didn't say something that has made you feel like we weren't going to...

Mr. Ingalls: No, no, but I just wanted to make sure that everybody understands that we can't do anything with your HOA, that you're independent. Like I said, we'll listen to what everybody says and like my colleague, we're here to gather information.

Mr. Connell: Yes, Sir. No argument. Thank you very much.

Dr. Larson: If I could add too; we do normally however add among our conditions for a special exception that the applicant must comply with state, federal and local codes and regulations and that probably falls under you. The other...so we would require that they follow local rules and regulations. The other...I understand your concern about communication and the fact that you got the word at a late date. I sympathize with that. Just an addendum to what Mr. Ingalls was saying; there is no way for us to know what your covenants say. There is so many HOAs in County, there's absolutely no way that we would be cognizant of the fact that you had an addendum that had this requirement, so I'm not sure how to address. I agree with your concern. I'm not exactly sure how the right way to address it would be though.

Mr. Connell: Right. I guess and I don't want to take all this time, but I guess my question was that on the application there was an identification that the property was bordered by a common area, which technically is inaccurate, but we'll go past that. If it's bordered by a common area that's a property and I was just trying to figure out who would be notified because of that common area property. Is that just ignored or because it's not considered a residence, there is no notification? That was my only directive for the question.

Dr. Larson: Good question.

Mrs. Musante: When it states "common area" when we're doing the adjacent property owners, we send the notification to who is listed on the tax record. Now we understand that you do not get a tax bill per se, but there should be an accurate address and I should have that information on where we sent it to.

Mr. Connell: And that would be great for us to know. And I would be happy to get that information afterwards. It could end up being the actual developer who for some of the areas was not allowed to develop those lots, but this particular common area is actually where our dry and wet runoff areas and drainage areas are. So I don't know what that address is.

Dr. Larson: I guess I didn't realize that that common area was adjacent to the property.

Mr. Connell: It is. There is a residence, but the front of the residence actually runs in front of the common area. So it is actually a residence that is there across the street.

Mrs. Musante: The common area was not a part of the adjacent properties. That was the general vicinity areas. So if it's not directly across the street, to the side or directly behind, they would not have gotten notified.

Dr. Larson: Okay, but my understanding of the process is, if they were directly across the street or adjacent, the holder of tax record would have been notified.

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Mrs. Musante: That is correct.

Dr. Larson: Thank you. Any other questions for this gentleman? Thank you.

Mr. Connell: Thank you very much.

Dr. Larson: Does the applicant wish to respond with any additional information to basically what's been said?

Mrs. Gilason: Can my husband speak?

Dr. Larson: Did he...you raise your hand at the beginning?

Mrs. Gilason: He did.

Dr. Larson: Yes, Sir. Go ahead and speak.

Mr. Gilason: Good evening. My name is Lance Gilason. We certainly understand the HOA's concerns about safety and the types of businesses that they could allow into the neighborhood. Unfortunately the poorly worded package got sent out late. We didn't have time to amend or ask for changes to the package that was sent out. It wouldn't have gotten changed and back to everyone involved in time. As far as our HOA is concerned, the document is quite large, but it is tabled and within that document we followed, what we thought we followed, was defining a home based business and we had included that in the package. Unfortunately we weren't aware of the addendum. Lisa from the HOA office or Mr. Connell's letter informed us of that stipulation that we had to get Board approval and we weren't aware of that. And we regret that. And we're sorry for any concern that that caused Mr. Connell and the Home Owners Association. Thank you.

Dr. Larson: Mr. Gilason, I have a question while you're at the podium. Do you intend to allow any weapon testing on your property?

Mr. Gilason: No, Sir. I think that'd be quite silly. I don't think that someone that you don't know would come over to your house and discharge you firearms. No, Sir, not at all. Totally out of the question.

Dr. Larson: Any other questions for this witness?

Mr. Gilason: A lot of folks in the neighborhood do discharge firearms. It does get quite noisy there, but I certainly wouldn't allow someone I don't know to do so on my property, our property.

Mr. Kim: I'm sorry, you guys can discharge firearms in the neighborhood?

Several members from the audience: No.

Mr. Kim: Okay thank you.

Dr. Larson: Other questions? Thank you, Sir.

Mr. Gilason: Thank you.

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Dr. Larson: Okay. We will now close the public hearing and bring...I'm sorry, was there a question?

Mr. Ingalls: I assume he was for the project or was he speaking as the applicant?

Dr. Larson: I think he was speaking as the applicant. Is there anybody else that wants to speak in...well...in opposition to the application? Okay. Sir?

Mr. Mennick: My name is Donald Mennick. So a couple of things have come up and some things that we were concerned about had been brought up as well. I'm a past president of the Willows Home Owners Association, I'm also a Board member of the Architectural Review Committee, so I keep my hand on the pulse with things that are going on in our neighborhood and see things that are concerned and we bring things to Landmark and they help us out as our management company. I think that the Gilasons being new members of our neighborhood, don't really have a good handle on what the Willows is, what the neighborhood has historically been, what we're all about, why we moved into that neighborhood and things of that nature. We do like the seclusion of the neighborhood. We're a group of 105 single family homes on 3 acre lots. It's a subdivision and it's governed by the Home Owners Association Act. And so as such there are things that we have to do and rules that we have to abide by for the state of Virginia and things of that nature. But we've been charged by the members of our community to guide the norms of what our neighborhood looks like, how businesses are supposed to come about if there are going to be any businesses in our neighborhood. And I can tell you, for the 9 years that I sat as President of the Home Owners Association, I never had a business case come forward to me for a business. So we do not have any businesses currently that are in the Willows and this is really kind of a litmus test. This is the very first one that we've had come across our desks. We just feel that the business case of having a firearms transfer within our community, of having people drive through basically residential homes to get back to where their house is, which is half way back through our development and then having to drive back out, all the way back out to Truslow Road and take those with them, just presents a safety hazard. I can't think of really anything that could possibly happen, but if something did, then it could be quite catastrophic. We have children playing all over the place. We're going to have people driving into our neighborhood that have 25 miles an hour speed limits that may not comply with those speed limits because they might be in a hurry, they want to go pick up their gun. We already had a rather serious collision at one of our stop signs just a couple of weeks ago. This sort of thing doesn't happen in our neighborhood. It was because somebody ran one of our stop signs and got t-boned by somebody who was speeding coming the opposite way. One person was not a member of the community and the other person was a member of the community, but fire and rescue had to be called and people had to be taken to the hospital because of that. Now what if one of those people were carrying firearms? That would not be a good situation that I can see at all. I am one of those who fully believe in first amendment rights. I am a gun owner and I have my guns in my house. I'm a hunter. I go out, actually, in and around Stafford County and hunt in places there. There are people who hunt all around our neighborhood because the land is basically not developed, all the way from Potomac Creek all the way down to Abel Lake and there are hunt clubs that lease that, so maybe Mr. Gilason was referring to having heard some shots back over the tops of some of our houses and back in that Potomac Creek area, but to be honest with you, I'm not sure when they moved in, but they haven't been there real long to understand that. We hear gunfire from Quantico. We hear gunfire from a local firearms range. I believe that's on the other side of route 17, but they are not people in our neighborhood who are shooting weapons. We have a lot of residents in our community who are law enforcement. We have DEA agents, we have FBI agents and folks that own firearms because that is part of the nature of what they do, but we've never had anybody come forward and ask that they be a point of transfer for firearms within our community which is a very, very quiet and peaceful community where people move to because they wanted that, not because they wanted people coming into our neighborhood and grabbing

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guns and going. That's all I really wanted to say tonight as a homeowner I am opposed to this and I'll be attending the Board meetings to voice my disapproval there as well.

Dr. Larson: Thank you, Mr. Mennick. Any questions for this witness? Thank you, Sir.

Mr. Mennick: Thank you very much.

Dr. Larson: Anybody else want to speak in opposition? Sir?

Mr. Crauly: Bob Crauly. Prior to moving to the Willows, we moved to the Willows about 6 years ago, I was a resident of England Run Subdivision, which is about a mile and a half, two miles further to the south. We knew the Mennicks at that time. They were residents of England Run. At that time I was president of England Run Subdivision for a couple of years. I just want to state my opposition to the proposed business for families, for children in an area that is dealing with gun transfer. It is not a business for residents, communities with families and children. That's all I wanted to say.

Dr. Larson: Any questions for this witness? Thank you. Anybody else want to oppose the application? Does the applicant want to respond to the last two speakers that have spoken?

Mrs. Gilason: Thank you and obviously we have children. This is our youngest and I wouldn't be doing anything that I felt it was unsafe. We actually think that we're making the County and the world a little safer by implementing what the gun control act wants us to do; to ensure the safe transfer of firearms. Again, they're not loaded firearms. The number of people that will be coming to do these transfers would be less than we'd have FedEx coming to our house giving us Amazon deliveries on a weekly basis. It shouldn't be much traffic. We think it's going to be very safe. We understand their concerns and we will discuss it, I'm sure, some more after this meeting. But we thank you for giving us the opportunity to come and speak before you. Thank you.

Dr. Larson: Questions for the applicant? Thank you. Okay. Now I'll close the public hearing. Bring the matter back to the Board. I would like to, before we start discussing things on the Board, I want to clarify something with the County, with the staff. In the minutes from February 25th on line 233 my question to the County was: Has it been the County's interpretation that internet sales are not retail sales? And the answer was: Yes. And I said historically. And the answer was yes. And I said thank you.

Mrs. Musante: I don't remember you just asking the question about internet sales. I think you said retail sales in the question previously today.

Dr. Larson: Okay, so, but the question was, has it been the County's interpretation historically that internet sales are not retail sales?

Mrs. Musante: Prior to the presentation that the ATF gave us in December, I'm sorry, November of 2012, the answer is yes. We did not look at the way the ATF set...

Dr. Larson: Ah, yes, I remember the misunderstanding with the ATF. Just for everybody's clarification including Board members who weren't here. The ATF gave us the wrong impression during the last hearing until right at the end we discovered what they really wanted was foot traffic in the home. They weren't even talking about retail sales, although they explicitly said they were earlier in the briefing. So I explicitly clarified that with the ATF representative. So we're good as far as internet sales are not

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retail sales. That's not an issue right, I don't think. Okay. So Melody agrees. Okay, Board members is there a motion?

Mr. Kim: Can I ask one quick question? I felt we determined after talking to the ATF representative that the FFL is there for transfer, so it's not really sales, because it's...I mean we talked very extensively on this last meeting, but I thought it was a transfer, so it's like a service, like a massage, because they're not getting money for the gun. They're basically charging 30 / 40 dollars whatever for the fee of doing the process of clearing.

Mrs. Musante: For transfers, correct. But they are also, the prior applicant was asking for gun shows and...

Mr. Kim: Oh, okay.

Dr. Larson: He was also asking for ammunition sales.

Mr. Kim: That's right. Okay. Thank you. But wait, in this case it wouldn't be sales it would be more of a service right?

Mrs. Musante: Their application does state: tradeshow and the internet will be used to sell products away from my home. It is in their application.

Mr. Kim: I interpreted that to taking, if they purchase guns, and taking it to the shows.

Mrs. Musante: That is not selling them from their home.

Mr. Kim: They're not selling it from their home. Okay. Great. Thank you.

Dr. Larson: If we could ask the applicant to step up just for one more time I hope just to again, I know I asked you this before, I just want to hear it again, do you intend to literally sell merchandise of any kind at your home?

Mrs. Gilson: No, Sir.

Dr. Larson: Thank you. Is there a motion from the Board?

Mr. Grimes: I would move to approve the special exception, but I think that I'd like to add one more line item to here and I may have overlooked it, but their suggested development conditions, there are 12 of them that were provided by the County very similar to the qualifications that we had on the previous application, but what is on here is, there's "retail sales not allowed" is not listed.

Dr. Larson: Number 5, it says "business cannot engage in retail sales of merchandise on the premises, meaning all merchandise must be paid for online".

Mr. Grimes: There we go. Thank you. So with that clarification I would move to approve SE14-01/1400115 with the suggested development conditions as provided by the County.

Dr. Larson: Is there a second?

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Mr. Poss: I'll second that.

Dr. Larson: Alright. More discussion?

Dr. Ackermann: I have a question. So, the suggested development condition 11, it says "must comply with all state, federal and local codes and regulations". So that means that we will grant the special exception, but it does not come into force until the HOA approves the business?

Dr. Larson: What I would suggest, number 11, just to be crystal clear, because I would not try to undermine the HOA in any way, on item 11 where it says "must comply with all state, federal and local codes and regulations" I would say "including the Home Owners Association".

Mr. Kim: Can I get a clarification on something? We are separate from the Home Owners Association obviously. So should we determine our vote solely based on what the HOA says or what they will do, or should we base our vote on what we do as a BZA, as a Board of Zoning Appeals and go by our by-laws and then it goes to the next step of the Gilasons going to the HOA? I don't want to step on any toes of any HOA, but I just want clarification on...I mean, we're definitely not an HOA, we're the BZA, so should we put that in consideration with our votes or should it not be consideration when we have had plenty of opposition, so I'm kind of torn on this one.

Mr. Grimes: I respect the HOA and their position 100 percent, but I feel like that we have to approach this from the by-laws and the legislation that we have. Any action that's taken after this, whether it's approval by the ATF, approval by the HOA, is for that business to continue that process. We're simply allowing, as we see it from the County's perspective and our perspective as the BZA – is this allowed?

Dr. Larson: I think if perhaps this wasn't an addendum to the covenants the applicants may have seen it sooner and the whole HOA conversation may have taken place before it came here. You can vote however you want to vote and explain, if you wish, how you voted. Whatever your conscious dictates in that regard. I think we've added on item 11 that we explicitly call out the HOA, so that's a condition of the special exception. Any other discussion on the motion?

Mr. Ingalls: I guess I have some concern. When you start throwing in the HOA, that's a private citizens...we like to hear from them and we do take their opinions and so forth into account, but to put them at the same level as state, federal and Stafford County, I get a little concerned, because I think we're looking...I wonder whether it would even be legal for us to say, okay, you have to have the HOA. There got to be some time...maybe they wouldn't approve a knitting in a house, I don't know, and we may say that'll be perfectly legal for us and to the County. So I don't want to...it's a slippery slope I'm afraid we might get on and I would be a little hesitant...

Dr. Larson: So would you take out the added words, the HOA words?

Mr. Ingalls: Yes, I would not...I don't think I could support that.

Dr. Larson: Okay. That's a substitute motion so we're going to have to have 2 votes.

Mr. Ingalls: While I'm speaking, there another...I would also, number 10 application, must be stored in cans with no more than 5,000 rounds. The applicant stated she's not going to have any ammunition there. You know. And I would assume that we change that to "no ammunition shall be stored on site,

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except personal". They may be hunters or somebody and may have a couple of boxes of shells, but if they've already stated they're not going to have it, let's not give them the opportunity to have it.

Dr. Larson: Okay. They added, the HOA words that were added were not part of a motion yet. Does somebody want to move to put the HOA wording in? If not, they're not in yet. Okay, not hearing a motion. It's not in. Having been an HOA President myself for many years, I strongly urge the candidate or the applicant to get their HOAs approval for that. Any other discussion on the motion?

Mr. Davis: Yes.

Dr. Larson: Go ahead.

Mr. Davis: Item 6 on the suggested development conditions indicates that firearms can only be purchased by special order. I think there was an indication that it would only be by internet? There are sales?

Dr. Larson: Maybe the correct word there would be "transferred" by special order. Does that make sense?

Mr. Davis: Transferred period.

Dr. Larson: Firearms can only be transferred at the residence.

Mr. Davis: They can be transferred at a gun show.

Dr. Larson: Okay, so what do you suggest?

Mr. Davis: Just add "be transferred" and delete "by special order". And a comment I'd like to make is, a couple of years ago the IRS code was changed to say that if an organization had a business of some sort, it didn't have to be the one that you're buying something from, but if you buy something on the internet and they ship it to Virginia and say there's a warehouse in Virginia, we have to collect sales tax, Virginia sales tax. I'm wondering how that would affect this business.

Mr. Kim: My understanding is, if it is sold from, if it is transferred from someone that has a tax ID code in Virginia and is transferred in Virginia, you need to collect sales tax, but if the transfer is from a person from Maryland to Virginia then there will be no sales tax required, if that's the question you're asking.

Mr. Grimes: More or less, but this is a business. It's not a person.

Mr. Kim: Business or not, even businesses, if you bought something from, let's say Best Buy and there's not Best Buys in Virginia where they don't have a tax code. I mean obviously there's Best Buys all over the place in Virginia, but if there were not Best Buys in Virginia and you bought something from Best Buy West Virginia and they sent it over, there will be no sales tax.

Mr. Kim: And the sales tax is collected by the retailer where the firearm is purchased from. The business that's proposed is simply a transfer. So the firearm is purchased from some vendor, whoever that vendor happens to be, the applicant is proposing to provide transfer of ownership from that vendor

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to the person who bought it. They don't actually do any of the sale there so they would not be responsible for collecting any sales tax associated with that.

Mr. Davis: I think we have changed the purpose and that there is an indication. Can't find it right now, but there is an indication that other items will be sold.

Mr. Kim: I think that was at the tradeshows if I read that correctly. That's my interpretation of it.

Mr. Davis: The application specifically says "shipping address for the item and will not be used as a point of retail sales".

Dr. Larson: We also said the business can't engage in retail sales of merchandise on the premises. So all merchandise must be paid for online. Any other discussion? I'd like just a second here to look something up. Under "granting of special exceptions", item A says "the Board of Zoning Appeals may grant special exceptions under this chapter upon finding that the use will not be detrimental to the character and development of adjacent land and will be in harmony with the purpose and intent of this chapter". So what I throw out to the Board is, is this detrimental to the character and development of the adjacent land?

Dr. Ackermann: Do you want us to determine that or do we use that when we make our vote.

Dr. Larson: I think we're discussing it now.

Mr. Ingalls: Well I think when we made a decision at our last meeting, we seemed to think that this granting a special exception for this type of business in a house where the zoning was not detrimental to the neighborhood. Of course the Home Owners Association, and there is a number of people here who have a different opinion. So I don't know if we're going to, and I appreciate their opinion very much, but I think, what effect it has on the neighborhood has a lot to do with what the people in the neighborhood think. I mean that's the way, I think, a lot of us, even if we live in places where we don't have Home Owners Associations. So, is it detrimental? That's a difficult thing to say. I think there are people in the neighborhood who think it'll be that way and that's specific to that neighborhood. I think we often make decisions on things that are somewhat independent of specific cases. When we vote, I assume that each of us have decided the 6 requirements of a special exception have been met and that is one of them. In my vote I'm stating, basically, I agree that this proposal either does or does not meet those 6 requirements for a special exception.

Dr. Larson: I just wanted to discuss that one in particular. Any other discussion on that topic?

Mr. Grimes: Just one observation on that topic is that, that business operating out of that home with no signage, no advertising, nobody will know they're there. People that travel in and out of the neighborhood would have to comply with state laws in travelling the neighborhood. I'm not sure what the detrimental impact is on a business that's operating out of a home in this zoning, when there's no signage, there's no advertising, there's no regularly scheduled meeting, sales, pampered chef parties for example that happen every Tuesday once a month. This is not the case. Somebody is going to make an appointment, come conduct their business, finish their business and leave the neighborhood.

Dr. Larson: I think I'd like to add something too. I think a lot of the concerns expressed by the homeowners deal with the fact that there is a weapon in somebody's car in the neighborhood. And I think one of the residents also mentioned that there are ATF and other federal employees living in the

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area that, in fact, they live all over the place up here. They live in my neighborhood. I think they're required to carry weapons. So I didn't hear any...in fact, I think they're required to carry loaded weapons, so I'm not sure I heard anything from the Home Owners Association from the safety stand point that wouldn't equally apply to anybody carrying a weapon in their car. I'll leave it to the Home Owners Association to sort that one out, but I think it's true. I think I'm agreeing with what you're saying, is that I don't see an over detriment by having...allowing the transport of a weapon through a neighborhood, because I think it's a done routine. I'm sure it's done in my neighborhood. Any other discussion on the motion?

Mr. Davis: I'd like to make a statement.

Dr. Larson: Go ahead.

Mr. Davis: ATF law enforcement, all those people that are required to carry loaded weapons are trained. We don't know that these people will be.

Dr. Larson: Statement. But if they have an accident and they're incapacitated, they still have a loaded weapon in the car. So that concern doesn't go away. Any other discussion? Okay, there's a motion on the floor. I believe we're following the suggested development condition as listed by the staff, with the exception that number 5 "the business cannot engage in retail sales of merchandise on the premises", meaning add the word "all merchandise must be paid for online". Item 6 "firearms can only transferred", item 10 "no ammunition, except for personal use"...no ammunition stored on the site, except for personal use". And I'll remind everybody that item 11 must comply with all state, federal and local codes and regulations. I might disagree with Mr. Ingalls on this. I believe that does apply to the HOA. What about a home alarm system?

Mr. Grimes: I think item number 7 "applicant must maintain professionally monitored security system".

Dr. Larson: Yes, I didn't see that. Thank you. And I think that those are the conditions. Oh, Melody, would you read all the conditions all the way through and we'll see if we have everything.

Mrs. Musante: Number 1: Days and hours of operation: Monday through Friday 3:00 PM to 6:00 PM, Saturday and Sunday 3:00 PM to 5:00 PM. Number 2: Provide 4 off street parking spaces for clients. Number 3: Customers by appointment only. Number 4: The applicant must have a safe or secured container for his or her weapons. Number 5: The business cannot engage in the retail sales of merchandise on the premises, meaning all merchandise must be paid for online. Number 6: Firearms can only be transferred. Number 7: Applicant must maintain professionally monitored security system. Number 8: No sign. Number 9: Discharging of firearms on site shall be prohibited by customers. Number 10: No ammunition will be stored on site, except for personal use. Number 11: Must comply with all State, Federal and local codes and regulations. Number 12: This approval may be revoked for noncompliance of the conditions imposed by the Board of Zoning Appeals.

Dr. Larson: Thank you. Any other discussion?

Dr. Ackermann: I was just thinking, number 9, should it be discharging of firearms by customers on site shall be prohibited? How about "discharging firearms on site should be prohibited"?

Dr. Larson: You got that, Melody?

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Mrs. Musante: Discharging of firearms on site shall be prohibited period.

Dr. Larson: Any other discussion? Those in favor say aye.

Dr. Larson: Aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Dr. Ackermann: Aye.

Mr. Ingalls: Aye.

Mr. Poss: Aye.

Dr. Larson: Any opposed?

Mr. Davis: Opposed.

Dr. Larson: Okay, any other opposed? Just Mr. Davis. Motion passed. Thank you ladies and gentlemen. We'll take a 5 minute recess and reconvene at 8:35.

2. **SE14-02/1400123 - George Weidner** - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards," A-1, Agricultural, to allow internet and expo show firearm and ammunition sales as a Rural Home Business on Assessor's Parcel 17C-14. The property is A-1, Agricultural, located at 12 Barrington Woods Boulevard, Barrington Woods Subdivision.

Dr. Larson: I call the meeting back to order. Staff read the next case please.

Mrs. Musante: Case SE14-02/1400123, applicant George Weidner request a special exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards," A-1, Agricultural, to allow internet and expo show firearm and ammunition sales as a Rural Home Business on Assessor's Parcel 17C-14. The property is A-1, Agricultural, located at 12 Barrington Woods Boulevard, Barrington Woods Subdivision. You have the application, the application affidavits and owners consent form, plat of the property, diagram of area for the business and the rural home business standards. The applicant is requesting a Special Exception to conduct internet order, gun show and ammunition sales as a rural home business. Requested days and hours of operation are Tuesday through Friday 9:00 AM to 5:00 PM, with no Saturday and Sunday hours. The applicant indicates he will provide seven off-street parking spaces but does not expect daily traffic. A large percentage of the accessories and paraphernalia (Sighting equipment, straps, parts, reloading equipment, holsters, targets, sights, lasers, powder, novelty related things like tiny shotgun shaped lighters or a gun shape cigar box, artillery shape coffee thermoset. videos hunting equipment training DVDs) will be drop shipped and sent directly to the customer from the distributor's warehouse. The applicant states the majority of the sales are intended to be ammunition and reloading supplies/equipment. The house currently has a vault in the basement which will be utilized for the storage of the weapons and ammunition. The current ADT monitoring system will be expanded to include the office and vault areas. Rural Home Business standards allow for 25% of the gross floor area to be utilized for the business. The applicant has indicated 401 square feet

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will be used for the business which meets this requirement as the gross floor area of the dwelling is 5,777 square feet. In 2012, the ATF gave a presentation to local zoning officials explaining their permit process. According to their regulations “an applicant must have a premise from which he conducts business or from which he intends to conduct business.” This business may be out of a private residence as long as it is open to the public and the actual sale transaction must be conducted in person in order to validate identification. Staff was unaware of these requirements and had issued home occupation permits for what was called “internet” gun sales, believing that the sale transaction did not occur at the home but over the internet and did not represent a retail sale. This was critical since the Zoning Ordinance does not allow retail sales as a home occupation, home business or rural home business. Neither the Gun Control Act nor the Zoning Ordinance provides a definition for retail sales. The Merriam-Webster Dictionary defines retail as “the business of selling things directly to customers for their own use.” Per this definition, it appears that the requirements of the ATF gun sale permit is in conflict with the regulations for a home occupation concerning retail sales and such businesses cannot be conducted within a single-family home. This type of business could be considered a retail by-right use in the Commercial Districts.

Dr. Larson: And if I might just add for clarification that based on historical county enforcement of internet sales not being considered retail sales and after clarification from the ATF in our last BZA meeting, the Board has concluded that sales conducted over the internet are not considered retail sales at the residence, but the applicant should be aware that no retail sales are permitted at the residence, which means no exchange of merchandise for money at the residence or in any form is allowed for any merchandise. I hope that’s clear. Any questions for staff? Will the applicant and/or his or her representative please come forward and present their case?

Mr. Weidner: Hello. I’m George Weidner. I’m applying for a special exception as Melody just read. I previously had a business with my brother in law out of Manassas and due to a conflict of interest on the direction we were heading I’m wishing to split up and start my own company out of my own house now. 95 percent or so of my business was done at gun shows, gun expos, trade shows or through internet sales and shipped out. The reason I’m applying for DBA from the County is to get an FFL permit from the ATF which is required for me to get back into contact with several of my...is that better? Did you hear what I said or should I repeat it all. Okay. Several of my vendors and contacts require that I have an FFL to deal with them at all, regardless of whether I was buying or transferring a fire arm. I wish to only have firearms on the site that are being worked on for either modification purposes, being repaired or an antic being refinished or brought back to life. I had one concern I saw earlier that you had was such things as an alarm system and I thought the Board would like to know that if the ATF approves any FFL, it’s required by law from the ATF that you have to have a security system on any part of the house that is related to the company or to the business of the firearms. I have a section in the house, in the basement area that is, we refer to it as the vault. It is, I want to say, 18 by 18 of cement walls. The floor on the top is a cement wall with steel reinforced, rebar reinforced and then obviously a cement floor. We’ll put a vault style locking key door on it with a...I have a thing here, the advertisement for the type of lock that we’ll put on. If anybody goes to touch it or even come near it, it takes a picture and video of them and then uploads it to our cloud system. So if anybody tries to break into it, one, they need a hydro cutter to get through the steel, and two, we automatically know who it is and when they tried. The office is going to be used mostly as a location of origin for anything that is being shipped in, shipped out, to house my gunsmithing and gun modification company which will then also intel things such as painting or other things like turning a firearm into a class 3, once the ATF gives me approval for such. I do not intend to do anything with FFL, as far as firearm transferring or such to person on site ever, if I do, it’ll be minimalist to a friend or family and it would be conducted at either a show or an expo off site where it is permitted by the ATF. The majority of my intended business and previous business was

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ammunition sales through shows and expos I said, but also through bulk orders such as, we had a contract with the Quantico shooting club where they would have a competition coming up and let's say they'll give me two weeks' notice and say they'll need 40,000 rounds, or 50,000 rounds of a certain round, then I would show up at the shoot with it and bring it to them or meet them at a designated location and offload it to them and such, because I don't want people coming to my house for pickups or anything like that. So I intend to keep it that way and receipts be sent through emails, through credit card system or through whatever necessary technology is needed. If you have any questions I'd be happy to answer them for you.

Dr. Larson: Your first name is Brian?

Mr. Weidner: George. Brian is my father.

Dr. Larson: I see. So you live in your father's and mother's house? Is that how that works?

Mr. Weidner: 6 or 7 years ago we added what is considered an in-law suite onto the house where you have two separate houses that are joined together. I live in one half of it and they live on the other half. It's a very unusual setup.

Dr. Larson: Okay. And you mentioned ammunition sales. Do you understand what I said earlier about retail sales?

Mr. Weidner: Yes, I do.

Dr. Larson: So you know you can't accept money or credit card or anything for the ammunition at your house?

Mr. Weidner: Yes, I do.

Dr. Larson: Any other questions for the applicant?

Dr. Ackermann: Mr. Chairman? So who does the repair or gunsmithing?

Mr. Weidner: I do.

Dr. Ackermann: So you will do that on site?

Mr. Weidner: Yes, I will.

Dr. Ackermann: And then how does that seem to you to fall under retail sales, or what's the...

Mr. Weidner: From what I understand, it's not the same as a retail sale, it's the same as a service, such as a difference of, if you bought a car from a dealer, versus you brought your car to them to have it repaired by the shop. I do not intend to sell them any new gun, but to just give them back the same gun that they gave to me with whatever is requested, such as an either repair or modification, to be offering a service from the house.

Dr. Ackermann: So you're not going to sell gun parts?

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Mr. Weidner: The parts would be included in the service fees.

Mr. Kim: So if someone saw your cigar bullet case that you have, you wouldn't sell it to them as "oh, how much is that?" I mean, would you sell it to them on site?

Mr. Weidner: The best I would be able to do would be give them a loop whole of, like have a computer nearby that they can buy, run the transaction through the credit card system, but the only way that anytime that anybody comes over, I will not have any stock visible to them. It would only be, everything will be locked away in the one vault room. The only thing that'll be out visible is whatever they're coming there specifically for. Because we have two separate rooms divided by, via finished off bathroom, so the office front area will just have my office supplies, such as desk, computers and a table for just whatever they have coming to them.

Mr. Kim: But I would imagine you would have some type of literature stating this is the supplies I have, or this is the items I have for sale.

Mr. Weidner: Yes, such as a catalog. Showing, this is...with a demonstration of the type of things and, you know, access to my website, flyers of my weekly special or whatever.

Mr. Kim: And that would be...so if someone picked up a catalog and said "Ooh, you have this. Can I get it from you now?" You're going to...

Mr. Weidner: I'd have to, under the current rules, I'd have to say you have to buy it online or through the internet or through the mail or something like that, if I even have it in stock, which I don't plan to keep much in stock, except for the shows.

Mr. Kim: Okay, thank you.

Mr. Weidner: Of course.

Dr. Larson: Other questions?

Mr. Poss: Yes, so just to clarify. You have really two businesses, one that's gun show related that you would be doing off premises at a gun show and the primary business you'll be doing at your home is repair and gunsmithing?

Mr. Weidner: Correct.

Mr. Kim: What was your business in Manassas?

Mr. Weidner: It was 2 Armed Bears Incorporated.

Mr. Kim: 2 Armed Bears? So you did the same kind of work with your brother in law.

Mr. Weidner: Correct, they did the same thing. He wanted to go off into doing new guns and I wanted to stick more with modifications, ammunition and paraphernalia of items.

Mr. Kim: Okay. Thank you.

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Dr. Larson: Any other questions for the applicant?

Mr. Grimes: I have one. You said that you have been contracted in the past to purchase or, I guess it's purchased and delivered to you, bulk ammunition?

Mr. Weidner: Correct.

Mr. Grimes: You said up to 40,000 rounds?

Mr. Weidner: That was actually a smaller one. We had one, we were processing, there's going to be a surplus of 120,000 rounds.

Mr. Grimes: And how long does that stay at your residence before you transfer it?

Mr. Weidner: Sometimes a matter of hours, sometimes a couple of days. I don't like...I try to keep everything at my residence as shortly as possible.

Mr. Grimes: Okay. Thank you.

Dr. Larson: Any other questions? Does any member of the public wish to speak in support of the application? If so, please come forward. Seeing none, does any member of the public wish to speak in opposition to the application, if so, please come forward. Seeing none. Okay, we'll close the Public Hearing and bring it back to the Board for consideration.

Mr. Grimes: I'd like to discuss the suggested development conditions that had been offered by the County to the Board.

Dr. Larson: Please do.

Mr. Grimes: On number 5, if we can clarify that. "Business cannot engage in retail sales of merchandise on the premises" meaning "all merchandise". Adding the word "all" to that. On item number 6 "Firearms can only be transferred". Number 9 "Discharge of firearms shall be prohibited" – that may be up for discussion. Would it be acceptable if I have the applicant come up and answer one more question?

Dr. Larson: Would you mind coming to the podium again, Sir?

Mr. Grimes: Thank you, I'm sorry I didn't ask this previously.

Mr. Weidner: No problem, Sir.

Mr. Grimes: Doing the smithing that you do, do you test the firearms on site?

Mr. Weidner: I have a designated range. I'm friends with the owner. It's an indoor range that has a better supply of reloaded ammunition as well as a sufficient back stop for any size firearms I need to test.

Mr. Grimes: Okay, so you don't discharge any firearms at the residence for testing purposes.

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Mr. Weidner: Correct.

Mr. Grimes: Okay, thank you.

Dr. Larson: Any other questions for the applicant? I just wanted to make a note for you. The special exception, if it gets passed, applies to the property, so if you move, it doesn't go with you.

Mr. Weidner: Yes, Sir. My end goal is to eventually have a storefront retail, such as a place like on 610 in a strip mall or something like that, as I gain enough capital to move, at which point I will need to get a whole new permit system.

Dr. Larson: Alright.

Mr. Grimes: Back to the suggested development conditions. Number 10; ammunition must be stored in cans with no more than 5,000 rounds. Obviously the business presented to us would have trouble operating with those conditions. I'm kind of at a loss as a suggestion, because it sounds like 40,000 was a small order. It seems if we put any kind of limitation on this, it could potentially affect this gentleman's ability to operate his business. I would offer that the ammunition must be stored in the safe when on site, as an amended version of number 10.

Mr. Davis: Safe or vault?

Mr. Grimes: I think that's a great clarification. In the vault. I think number 11 stands as is and number 12 would also stand as is.

Dr. Larson: Mr. Weidner, if I can ask you one more question, I'm sorry, I may have been reading something if you covered this. Forty thousand rounds? What kind of customer deals with 40,000 rounds of ammunition?

Mr. Weidner: That was for a shooting competition, where they had 11 people that were going to be engaging in a shoot off where they had multiple targets to engage, multiple different scenarios and it was the supply for the entire club.

Dr. Larson: Do you typically supply that number of rounds, or...what is your typical supply of rounds?

Mr. Weidner: For a gun show, when I bring...most people will buy 100 or so rounds at a time, but I'll bring roughly a quarter million rounds to the show with me and of that I bring home maybe 20 or 30,000. My goal is to try and sell out at every show.

Dr. Larson: Thank you. Any other questions for the applicant?

Dr. Ackermann: So if you got 250,000 rounds you order them and store them in the vault, I guess is where they would be?

Mr. Weidner: Correct.

Dr. Ackermann: Okay and then transfer them by your vehicle. What kind of vehicle do you use to transport? Do you have like a trailer to do this? I have no idea what size.

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Mr. Weidner: I use a 2010 Ford Expedition at the extended length with an air ride suspension to handle the weight.

Dr. Ackermann: Okay. Thanks.

Mr. Davis: Question. We've changed item 9 to discharging of firearms shall be prohibited. Does that interfere with your personal use?

Mr. Weidner: If it was for personal use, we have hunters that come on the land and for the neighbors and such like that. I don't intend to discharge any firearms. If the committee would allow me to it'd be appreciated, but if not, I'm not going to fight over it.

Mr. Ingalls: It seems to me, like somebody's pointed out, there are really two things going on here. One is his gun repair, modification and gun repair, is that...

Mr. Weidner: Yes, gunsmithing is just the general term for the ATF.

Mr. Ingalls: I assume that's part of this, of what we would be approving. In granting of a special exception, the proposed use of internet order and sale of guns, ammunition and shows will not change...that's...I guess I just don't see, I just want to make sure we give him what he needs. Is that...on his application he says internet and expo show, ammunition, gun sales and then it is, the description, he talks about his smaller items and so forth. So is that all covered as part of what we're talking about, to be sure that we're giving him what he's really asking for and that's to do repair and modification and sell these other items, including ammunition. It sounds to me like you're not selling guns.

Mr. Weidner: No, Sir, I'm not much of a gun salesman.

Mr. Ingalls: You're not going to do firearm sales, but for some reason you want that license.

Mr. Weidner: I need the license for...it's ridiculous...Duracoat is one of the foremost leaders in gun paint, but they will not give you a direct link to them to buy whole sale or buy retail unless you have an FFL. Don't ask why...for paint.

Mr. Ingalls: I understand, everybody understands that we're giving him what he's asked for. I don't have a problem.

Dr. Larson: Does the FFL include refurbishment of weapons?

Mr. Weidner: There are multiple classes of an FFL. The class 1 is for transfers of firearms from one person to another. Class 3 is for things as fully automatics and explosives. A class 6 FFL is for gunsmithing, which is one of the FFLs I'll be applying for.

Dr. Larson: Thank you. Any other questions for the applicant?

Mr. Grimes: One of them, or the only one that you're going to apply for.

Mr. Weidner: That's the first one that I'm going to apply for. I plan to apply for more down the road as I grow bigger, but, like I said, hopefully I plan to be at a retail store front by that point.

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Mr. Kim: Okay, so what would the other FFL class be you would be trying to obtain?

Mr. Weidner: Well, the class 1 FFL, which is the one with transfers, which is the one required for most vendors.

Mr. Kim: Okay, thank you.

Mr. Weidner: And possibly a class 3 for personal use. That would not be for sales. That's just because if I have it's a lot easier for me to have it through my shop than it is for me to obtain it as a person.

Dr. Larson: Any questions while the applicant is up?

Mr. Grimes: So if your vendors didn't require you to obtain the FFL, you wouldn't be applying for it and you would simply be looking to operate this as a normal home business?

Mr. Weidner: Correct.

Dr. Larson: Other questions? Thank you, Mr. Weidner. We were discussing conditions and I don't think we came up with a number for item number 10.

Mr. Grimes: I think you're correct.

Dr. Ackermann: (Inaudible) excuse me, the reason for putting them in cans is... What's the reason for putting them in cans? So that they don't spontaneously combust or something?

Mr. Weidner: The ATF requests that at any time it will be stored in individual things outside of shipment boxes and cans, so that way, in case of a fire, when they go to explode, they can be contained inside of a metal casing.

Dr. Ackermann: But if they're in the vault...

Mr. Davis: I would think, in a hot fire, if they're stored in cans, that the cans could melt and the ammunition would explode. In the vault there's less chance of a fire I would think.

Mr. Weidner: The vault is a fireproof room.

Dr. Larson: Yes, I assume...doesn't the ATF license requirements deal with fire?

Mr. Weidner: Yes, it does. The ATF licensing requires that it be stored in, what is a fire resistant room. They don't require any fire suppressants. They only require that it be in an area where it's less likely to catch fire or if a fire occurs somewhere else in the house, be less likely for it to travel into such room.

Dr. Larson: Does the ATF licensing requirement state anything about numbers of rounds stored in...

Mr. Weidner: No they do not.

Dr. Larson: So there's not a different class of license for a quarter of a million rounds as opposed to 10,000 rounds.

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Mr. Weidner: No, the ATF for the State of Virginia does not have any...does not regulate ammunition.

Dr. Larson: Thank you.

Mr. Weidner: Like I said, the vault is going to be a fire proof room, where nothing flammable of any kind will be in there. All racks will be stainless steel or aluminum. All containers will be either steel, aluminum or something fire proof to prevent...

Mr. Grimes: I imagine that would be prudent for you to do that, because that would be...

Mr. Weidner: It would be a time when the fire department shows up and says "let it burn, boys, let it burn".

Dr. Larson: So what are we doing about item 10?

Mr. Grimes: I would offer that 10 just be modified: ammunition must be stored in the vault when on site. Eliminate the rounds requirement. The cans, that's fine.

Mr. Weidner: Well, because that's just the FFL regulations.

Mr. Grimes: Again, that's a requirement by the ATF, therefore I don't know if we would need to repeat it from the County's perspective. And the same with the quantity. If the quantity is regulated by someone else and if he wasn't obtaining a FFL, he probably wouldn't be seeking a special exception. He would simply have applied for a home business and there would have been no regulations put on where that ammo is stored or how it was stored.

Dr. Larson: I think I would like to see item 10 say something like: ammunition must be stored in a vault, in cans. And maybe add "as specified by the ATF". I think I would like to have it in the special exception.

Mr. Grimes: I think that would be a great compromise on that.

Dr. Larson: Ms. Musante, do you have all of those changes?

Mrs. Musante: Can I repeat that one for you please, to make sure that we have a correct...Ammunition must be stored in the vault, in cans, when on site per the ATF.

Dr. Larson: As directed by the ATF. Is there a motion for the special exception?

Dr. Ackermann: Mr. Chairman, I would like to make the motion that we approve the special exception in case...I don't see the case number right here, but whatever that case is...case, yes, SE14-02/1400123, subject to the suggested development conditions that were stated here.

Dr. Larson: Melody, would you please read all of the development conditions now, please?

Mrs. Musante: Days and hours of operation: Tuesday through Friday 9:00 AM to 5:00 PM, No Saturday or Sunday hours. Provide 7 off street parking spaces for clients as shown on the plat provided. Customers by appointment only. The applicant must have a safe or secured container for his or her weapons. The business cannot engage in the retail sales of merchandise on the premises, meaning

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merchandise must be paid for online. Firearms can only be transferred. Applicant must maintain a professionally monitored security system for the premises. No signage will be posted relating to this use. Discharging of firearms shall be prohibited. Ammunition must be stored in the vault in cans when on site, as directed by the ATF. Must comply with all State, Federal and local codes and regulations. This approval may be revoked for noncompliance of the conditions imposed by the Board of Zoning Appeals.

Dr. Ackermann: I make the motion, because I think it's very similar to other special exceptions that we have approved recently. Also I think the presentation by Mr. Weidner gave us lots of information about his capability to carry out this business according to the conditions that we put on it.

Dr. Larson: Is there a second to the motion?

Mr. Poss: Second.

Dr. Larson: Okay, Mr. Poss has seconded. Any other discussion on the motion? Okay, those in favor say aye.

Dr. Larson: Aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Dr. Ackermann: Aye.

Mr. Ingalls: Aye.

Mr. Poss: Aye.

Mr. Davis: Aye.

Dr. Larson: Any opposed? None opposed. Okay. Will the secretary please read the next case, if you're ready. Are you ready?

3. **A14-03/1400081 – H. Clark Leming, Leming & Healy, PC for Abruzzi Group, LLC** - Appeal of a notice of violation dated January 8, 2014, of Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standards," regarding Motor Vehicle Rental on Assessor's Parcel 39-4. The property is zoned B-3, Office, located at 2023 Jefferson Davis Highway.

Mrs. Musante: You have the application and the owner's consent form, copy of the violation notice dated January 8th, 2014, copy of the reclassification and plat of the property. The applicant is appealing a notice of violation dated January 8, 2014 of Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standards," regarding Motor Vehicle Rental on Assessor's Parcel 39-4. Tax Map 39 Parcel 4 (The Property) was rezoned from A-1, Agricultural to M-1, Light Industrial on May 15, 1984. According to county records, the existing mini warehouses that are currently on the site were developed in the mid-1980s. On March 18, 2008, the Stafford County Board of Supervisors reclassified Tax Map 39 Parcel 4 to B-3, Office. This action by the Board established the existing legal use of the mini-warehouses to be non-conforming, since the use is not a permitted use in the B-3, Office District. The mini-warehouses are a legal non-conforming use and are not part of the notice of violation or this

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appeal. According to the applicant, the rental truck business was started on the property in July 2013. According to county records, there was no certificate of use applied for or issued for such use. Staff became aware of the use through a complaint. An inspection was made of the property to validate the complaint and the use violation was discovered. A motor vehicle rental operation is a use listed in other zoning districts but not in the B-3 Office District. Therefore, a notice of violation was issued to the applicant for a use on the property that is not listed as a permitted use in the zoning district in which it is located. Staff's response to the appeal justification: The applicant stated: The County erred in issuing Abruzzi a notice of violation because Abruzzi's rental truck leasing services constitute a low intensity commercial retail use that is permitted by-right in the B-3, Zoning District. Staff's response: According to the documents submitted in the appeal package, the applicant believes this use, a motor vehicle rental operation, is a low intensity commercial retail use that is allowed as a by-right use in this district. A motor vehicle rental operation is listed as a specific use within the zoning ordinance; therefore, it is not included in the general category of low intensity commercial retail uses. A general use category is designed to include uses that are not specifically listed elsewhere in the ordinance. You have an additional handout tonight that gives the definition of low intensity, commercial retail. A motor vehicle rental facility as well as the B-2 zoning district that lists the motor vehicle rental as a conditional use permit and you'll see in the B-3 office, motor vehicle rental is not listed at all.

Dr. Larson: Any questions for staff?

Mr. Grimes: Yes, I have a couple. The other zoning that allows this use by-right, as defined, is M-1, correct?

Mrs. Musante: That is correct.

Mr. Grimes: It is also listed as a conditional use with approval in RBC and B-2.

Mrs. Musante: That is correct.

Mr. Grimes: Those are the only places that it's listed specifically as motor vehicle rental.

Mrs. Musante: Correct.

Mr. Grimes: Okay, thank you.

Dr. Larson: Any other questions for staff? I have one, and I'm sure I've seen at, but okay, in the B-2 zoning, where is motor vehicle listed? I just can't find it. Or is it?

Mrs. Musante: I'm sorry, what are you asking?

Dr. Larson: In the B-2...wasn't it...ah, here it is, okay, it's under conditional use permit, okay. So I note that under the B-2, urban commercial district the low intensity commercial retail, it says lot, but I'm sure that's a typo, low intensity commercial retail is listed separately from motor vehicle rental.

Mrs. Musante: That is correct.

Dr. Larson: I'm assuming that's why staff assumes that these are different things. Is that correct?

Mrs. Musante: That is correct.

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Dr. Larson: Any other questions for staff? Will the applicant or his representative, his or her representative please come forward to present their case. Mr. Leming, I'm sorry, I don't think you were here for the swearing in.

Mr. Leming: Yes, you swore me in. I was in the back.

Dr. Larson: Okay.

Mr. Leming: We just decided to move down at the last minute here. This a pretty straight forward issue and I have some handouts for you also. And as a conclusion, you're either going to except my logic, or you're not. You accept the County's logic. But, there is a compelling case that I think we're going to make here. The staff has handed some things out to you and I have some things to hand out also. And at risk of being redundant, what I have done is to provide you also with the low intensity, commercial retail definition that appears in the definition section of the ordinance. I have also included the B-3 Ordinance which list low intensity, commercial retail. And I don't think there's particularly any dispute about that. And I don't think that staff disagrees that, notwithstanding what they have pointed out about how they believe the ordinance is organized, that this is a low intensity, commercial retail activity. It meets the IT definition. We've given you three different ways to calculate that. So I don't think that's what they're contesting. There's no question, I think, that otherwise this would meet the definition of low intensity, commercial retail. Now what I would point out about the ordinance is that there is a section in the ordinance that staff contends that essentially, they have figured out that, because it's not specifically spelled out here, inferentially, because of how it's treated in other parts of the ordinance, that, if it's not listed here, that it can't be included within this definition. In response to that, a couple of things: Number 1: You have the facial definition of it. I mean what you have is a by-right use listed. And I don't think there's any question, but that this activity meets the definition of low intensity commercial retail. We've provided the calculations for you, so, notwithstanding the argument that the staff has made, I don't think there's any question that facially this meets the definition of the ordinance. There is a section of the Zoning Ordinance entitled "Definitions and Construction". The purpose of this section is to help us understand how to interpret the ordinance and how the County wants the ordinance to be interpreted. There is nothing along the lines in this section, as suggested by staff, as how you treat these things where you may have alternative interpretations or things listed specifically in one place and generally in another place. In fact, the only thing that it says is "all provisions, terms, phrases and expressions contained in this chapter shall be liberally construed in order to carry out the purposes set forth herein". So we have definition on its face, this activity meets the definition. Now, beyond that, the County has suggested that you can inferentially decide that that's not what that means in this particular place in the ordinance, that because it's specifically listed somewhere else, you can infer that that's not what it means here. There's nothing else in the ordinance that directs you to that conclusion, but maybe that's a logical inference. Here's what I would suggest in response to that. The B-3 zoning district is a pretty unusual zoning district in Stafford County and until this 2008 down-zoning, which is what this was, this was all zoned M-1. Incidentally this would have been permitted in the M-1 district, but the County down-zoned a large portion of the area. Originally the idea was for this to be B-2, but the majority of the Board of Supervisors decided to go with B-3 instead of B-2. It is what it is. It is zoned B-3. There is no question about that. Before this time, there were only a few other B-3 zoning districts in the whole County. One of them being my first office and that was all that was necessary, so that's what I did. But another one was a small shopping center on Route 610 at the intersection of 610, Furnace Road and Tech Parkway. Some of you may be familiar with that location. There's some large, new office buildings, a number of contractors, the FBI is back there and out in front of it there is a commercial center. Not a big one, about 16,000 square feet. That was originally zoned B-3 and the idea

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was that this was going to provide some businesses and service for the office. It really didn't develop that way and is still largely vacant. I represented the owner of that shopping center and in 2009 the first business came in there. It was a beauty salon that came in there and we went in for our occupancy permit and it went through a zoning review and the County came back and said the same thing they said here. You can't do this here, because low intensity commercial retail means if it's not listed somewhere else in the ordinance and beauty salons, barber shops, things like that are specifically spelled out in other locations in the ordinance. So I went and investigated the ordinance and came upon something that hasn't been handed out to you. This comes out of the M-1 portion of the ordinance. I don't mean to make you get up again. This is the second page of the M-1 listings and here, I'll wait till she hands it out, under conditional use permit you'll notice there's listed low intensity commercial retail and then the phrase "not otherwise listed", followed by medium intensity commercial retail not otherwise listed. Now that's what the staff is indicating this means over in the B-3 portion of the ordinance, but when the ordinance was drafted and when this was included, they specifically spelled out "not otherwise included". Now what I would submit to you is that, while all this may attributed to confusion and maybe should have been or has been corrected, when the County wants, when the Board of Supervisors who adopts these things, wants to spell out "not otherwise listed, which is what the staff wants you to read in here. They write it into the ordinance. And that's exactly what they did here. So there is no confusion about this subject and we don't have parallel interpretations. Now I went back to the County staff at that time. This is was in February of 2009, I hoped to bring you the email to that effect, but my storage only goes back 5 years and I'm not sure exactly what I do to go back beyond that point. But, the business was permitted and the staff said, you know, that's right, there's a distinction there and permitted the beauty salon to come in there as, in the B-3 district, as a low intensity commercial use. I don't think there are too many other examples of this kind of thing out there, because the B-3 district is so unusual. That's the only one that I'm aware of. Staff may be aware of some others, but in this particular case my position is simply that, we meet the definition of low intensity commercial retail use. There is no question about that. We've met the ITE counts. That's what this is. Number 1. Number 2; There's nothing in the ordinance, nothing on the face of the ordinance and this rules of construction section that says, if you got this general definition and a specific one, the general one can't refer to anything that's listed specifically somewhere else. That's a rule of construction. That's where it ought to be, but number 3, the County's past interpretation of the same issue has gone in the way that I'm suggesting that it should go. When the County wants to say "a use not otherwise listed", that's what it says and that simply is not the case in the B-3 ordinance. Now, maybe it's something that needs to be clarified, maybe it's something that should be clarified, but it's not and the landowner in this particular case should not be penalized by the County's ambiguity here. We think it's clear and for that reason we ask you to overturn this violation. The County's found him in violation of the Zoning Ordinance, notwithstanding this contrary interpretation and the past application on this very issue that's been inconsistent. So I don't think it rises to the level of a violation. The County is certainly free to go and amend its ordinance and clarify this so we're not talking about "not otherwise listed" ordinances, but that's not what they've done here. So on that ground I'm asking that you overturn the violation. That's something that the County may need to address in its ordinance and make clear, but the landowner should not be found in violation, based on these particular circumstances. I'll be happy to answer any questions that you may have.

Dr. Larson: I just have a question to lead off. Mr. Leming, as far as the applicant's other businesses on the property, storage I believe it is, right?

Mr. Leming: Yes.

Dr. Larson: How many trips are generated daily for that?

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Mr. Leming: I don't know. Do you have any idea? Why don't you come up here? You may want to swear him in if you want him to speak, Mr. Chairman.

Dr. Larson: Yes, let me do that. Get the right words. Do you hereby swear and affirm that all your testimony before this Board shall be nothing but the truth?

Mr. Leone: I do.

Dr. Larson: Could you state your name and address please?

Mr. Leone: My name is Frank Leone. I live in Delaware now.

Dr. Larson: But you're the owner of the business.

Mr. Leone: I have a business in Stafford. I was formerly into land development business and I purchased a property about 10 years ago and I think the trips per day, per month might be...well for the month of January, February, March I think we have 15 new customers approximately.

Dr. Larson: Is that...each new customer would constitute a trip. What about existing customers? Do they...

Mr. Leone: We might get 3 a day, 4 a day, 5 a day, sometimes none a day. It varies. People store household goods and then might come Christmas, time to pick some decorations up or something like that.

Dr. Larson: What's the most you've ever seen in one day?

Mr. Leone: We have a couple of commercial accounts. We have an attorney here in Stafford. They may come in twice a week, 3 times a week. We have 3 customers that come in every day, make one trip, commercial accounts, but...

Dr. Larson: So I think what I'm hearing is, a dozen would be a lot of traffic.

Mr. Leone: A lot, yes, yes.

Dr. Larson: Okay, thank you.

Mr. Leone: Thank you.

Mr. Kim: May I ask one question? With the truck rental, are you still in the low intensity definition? How many would you get with truck rentals?

Mr. Leming: We cover that in our justification and what we tried to do, and I'll spend just a moment covering that, we tried to calculate this...note that the definition, the low intensity commercial retail is defined by ITE trip generation. Low intensity commercial lot less than 50 average daily trips per day per 100,000 square feet of gross floor area. So we did it that way and if you look at the second page of our appeal, what we did was to go to the current edition of ITE trip generation and there are two criteria, there are two standards that can be utilized. One, 23 trips per day per dedicated employ. We have one. And secondly, 42 trips per 1,000 square feet of gross floor area. And what we've indicated to you, we

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did that two ways, we used simply the office, which is 550 square feet of gross floor area, so we're well under the threshold there, but even if we used the whole building, including all the mini storage, that comes to...which I'm not saying this is the legitimate way to calculate this, but I don't know, I guess if you followed Dr. Larson's question to the extreme, you run them all together, I don't think that's correct, I think they're separate, but if you did run them all together, that's 1,158 square feet and that still falls below the 50 daily trip ceiling. It comes closer. It would be 48.6 daily trips based on that square footage. So that's how we utilize the ITE.

Mr. Kim: That was the clarification that I wanted. Was that for the storage or was that a combined storage and rental?

Mr. Leming: The last one would be combined, because it's the total floor area. There's just one employ for the storage and the rental.

Mr. Kim: That's the part that was unclear in here, that's why I asked.

Mr. Leming: Mr. Leone was giving you really anecdotal information about what he actually sees, but this is the way that you would calculate it under the definition of the ordinance in utilizing the ITE.

Mr. Grimes: So the 6 buildings and the office on the site total 1,158 square feet?

Mr. Leming: Well, the entire building in which the operation is located, the mini storage is out from that.

Mr. Grimes: That's the office, not the actual storage units.

Mr. Leming: That's correct, isn't it, Frank?

Mr. Leone: That's just the office.

Mr. Leming: Yes, that's the office building and then the storage is out from that.

Mr. Grimes: Alright and so how many square feet of storage do you have on site?

Mr. Leming: Do you know how many?

Mr. Leone: Probably about 20,000 square feet.

Mr. Leming: 20,000. I would emphasize that the mini storage is a lawful non-conforming use and the County concedes that. That's not what's before you. The issue is whether the truck rental operation violates the ordinance.

Mr. Grimes: But I would clarify that the ITE trip generation is based on the number of vehicles coming and going from the business location.

Mr. Leming: What it is, it's based on what it is for that particular business. You can have multiple businesses at this particular location. You wouldn't calculate all of the trips coming to other businesses on that location.

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Dr. Larson: But that's why I asked the question, to bound the problem. I think what we've done is, even in the worst case scenario, we bounded the problem below the requirement for low intensity commercial.

Mr. Leming: I'm not sure I understand what you're saying.

Dr. Larson: Okay. I'm not arguing, although I suppose you could, but I'm not arguing that low intensity commercial retail should include everything, but to bound the problem I ask the question implying to include everything and even including everything, it still meets the definition.

Mr. Leming: Right. Well, remember you have two standards here. One is the number of employs per day, which is one way to calculate. The other is based on the square footage of the gross floor area.

Dr. Larson: Right, and it meets both.

Mr. Leming: Well, to go to his question though, if you factored in all of the storage units, then you would exceed. If you use simply the office which is where the employ works and where all of the rental operations occur, if you use that entire facility, then that figure is 1,158 square feet. Now if you're taking the position that all 20,000 feet comes into this calculation, which I would contest, then you're over the ITE.

Dr. Larson: Just for clarification. The code says that the low intensity commercial use is defined as uses that generate less than 50 average trips per 1,000 square feet of gross area.

Mr. Leming: Correct.

Dr. Larson: Didn't you say the office was 1,000 square feet?

Mr. Leming: Yes.

Dr. Larson: Okay. So you can leave everything outside of it. 12 is less than 50. And then the ITE argument is how...the estimates for trips, the trip generation done by the business, that's what I was asking Mr. Leone, based on his experience, what does he estimate the trips to be.

Mr. Leming: As I read the definition, we're talking about 50 average trips per 1,000 square feet of gross floor area for that low intensity commercial retail use.

Dr. Larson: Yes.

Mr. Leming: That's what before you, is that low intensity commercial retail use, which is the motor vehicle rental.

Dr. Larson: I'm saying, we don't have to argue that.

Mr. Leming: Okay. Alright. I'll stop arguing then.

Dr. Larson: If you include all uses, you still meet the requirement.

Mr. Leming: I'm glad we agree.

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Dr. Larson: Any other questions for Mr. Leming?

Mr. Ingalls: I guess I'm going to take the opposite view, is that the County is correct. There are two ways of figuring a low intensity use and one is about the use, not total of trips. The ordinance is set up, if you read the little definitions, what is the theme of the B-1 and the B-2 and the B-3, you know, each of them have a little paragraph and they talk about B-3 is a transition between commercial and residential. That's the premise of the B-3 zoning and if I take that case, I say, I'm going to look at the ordinance and say, okay, what does the County establish as a low intensity use for this district. Well, vehicle rentals is not one, but it is allowed in other zones. So obviously they said, yes it may be a low intensity use, but it is permitted in other zones. If I were to use what you're telling me, and that sentence "low intensity use" is probably used almost in every commercial and industrial zone, either by-right or by conditional use in the ordinance. You can go through and probably pick it out 7/8 times in different ones. What you're saying is, this would allow anything that was by vehicular count only, that's all we had to look at, we didn't have to look at what is the real use and how does it fit to the zone. I mean, I can put a vehicle repair shop in there. Maybe I could do a mulch yard. As long as I, according to your definition, met the 50 vehicles a day. And I think the intend of the ordinance is to make sure we have this transition between one zone to another zone, to another zone and it's set up by the uses and this one is a use that is allowed so it's not a general use, like you want to make it out, it's a specific use that the County has said: Here's where this particular use belongs. This is the zoning it belongs in. Regardless whether it's got low intensity or not. It doesn't have to be a low intensity if it's in there. It may or may not be.

Mr. Leming: You may be arguing what the County wanted the ordinance to say. My argument is simply that that's not what the ordinance does say. And if you look at the preamble to your B-3 office zoning district, it doesn't say anything about that. It says the purpose of the B-3 district is provide areas in the county for location of professional offices and office parks and then gives the uses.

Dr. Ackermann: It also says (inaudible) should be located (inaudible).

Mr. Leming: Yes, between commercial and residential. Right. But the definition of low intensity commercial use is how the ordinance defines what's actually on the list.

Dr. Larson: Yes, I think there are two things that we need to consider here. I was only considering one of them. One is, would they meet the definition of low intensity use. The other is, is the use of rental trucks included in low intensity use. That's actually absolutely the most key issue, which is something, I think, the County understands too. So that's something we need to figure out. Mr. Leming's argument is, is what's written in the Code clear enough to convey what you're saying. That's what we need to determine. Any other questions for Mr. Leming?

Mr. Leming: Alright. Thank you.

Mr. Kim: I have a question. Now we're going off of...I want to understand the staff's point of view a little more. Is there something in our book, in the code book that would state, that would contradict or state the reason why you sent out a violation notice?

Mrs. Musante: One other section of the code that talks about permitted uses is section 28-36, which states "uses shown as permitted by-right in table 3.1 shall be permitted by-right only in the respective districts as shown".

Mr. Apicella: What section was that?

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Mrs. Musante: I'm sorry, that was Section 28-36, permitted and conditional uses.

Dr. Larson: Where is table 3.1?

Mrs. Musante: Table 3.1 is your districts that lists what's allowed by-right in each zoning district as well as what's required by conditional use permit.

Dr. Larson: Okay. This whole thing is a table. Seems to me we have a choice between two interpretations. Because we have the County's interpretation that, since rental trucks are explicitly drawn out in some places, in some zoned districts and is not drawn out in the B-3 zone district that it's not permitted. And we have the applicant's interpretation which says that since in the M-1 district...what's the wording...for low intensity commercial retail uses not otherwise listed. Since it's explicitly drawn out in the M-1 district and not stated explicitly in the B-3 district then it's not intended in the B-3 district, but it seems to me it's not as clear as black and white. There are actually two interpretations and we have to figure out which one is...

Dr. Ackermann: Mr. Chairman, is the public hearing open or closed?

Dr. Larson: I haven't closed it yet. Would you like to ask a question?

Dr. Ackermann: No, no. I just wondered, since we're discussing this, it's almost like we're...we've closed the public hearing. Maybe I'm incorrect.

Dr. Larson: No, we haven't closed it yet. Does anybody else have questions for the applicant? Alright. I'll close the public hearing.

Dr. Ackermann: Thank you.

Mr. Ingalls: 28-36 clears it up even more for me. 28-36 says if you have uses shown as permitted by-right in table 3.1, which all those uses all through there are table 3.1, shall be permitted by-right only in the respective districts as shown. So vehicular sales or rental, vehicle rental is shown by-right in a number of different zones and that's what it says. That's the only place you can have those. It's not a, oh well they can maybe downsize and move into here or upsize and move over here. It says that use, that's a use, can only be used where it is called for in the ordinance. Even though, yes, it may be a low intensity use, but it's a low intensity use put in the Code at certain zones.

Dr. Ackermann: Following up with your argument, Mr. Ingalls, why do we even list any particular things by-right in the certain zones, if we just said low-intensity use, all someone would have to do is show that that operation was a low intensity use and so they could do it, no matter what. They're listed because I guess we would like to have these things zoned in particular regions.

Mr. Ingalls: I had not read that, but that one makes it even more clear that the Ordinance...that's the intent of the Ordinance and that's what the Ordinance says. Not only is it the intent, it's what the Ordinance says. It is maybe a low intensity use, but in this particular case it is called out as being in certain zones and the Ordinance says, that's the only place they can be allowed.

Mr. Grimes: I would add to that that 28-37 kind of builds on that statement a little bit. If a use is not specifically permitted anywhere in table 3.1 an application may be made by the property owner, therefore it's basically saying you have to seek a conditional use permit if it's not specifically listed.

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Therefore it is listed as a use in some of the zones. So that would automatically...it's not in the zone that you're looking for, you have to seek a conditional use permit.

Dr. Larson: Is there a motion?

Mr. Leming: May I say one thing?

Dr. Ackermann: Isn't that out of order, Mr. Chairman?

Dr. Larson: Actually it is.

Mr. Leming: Well, if you ask me a question...

Dr. Larson: Mr. Leming, may I ask you a question? What is it you would like to say?

Mr. Leming: Thank you. I just want to say that, with regards to these other Code section, our position is simply that low intensity commercial use is a by-right use listed. That's what this is talking about here. Uses shown as permitted by-right, that's what a low intensity commercial use is in the B-3 district. It is one of those things by-right. So, it's not my ordinance and I think that the applicant is entitled to clarity in the ordinance and if there is any ambiguity in the ordinance, I think that's resolved against the County, not by finding the landowner in violation of an ambiguous ordinance.

Dr. Ackermann: I'd like to make a motion that we, in this case, uphold the County's violation of the Ordinance.

Mr. Kim: Sec...

Mr. Ackermann: I think it... go ahead.

Mr. Kim: No, I was just going to second that, but I thought you were done sir.

Mr. Ackermann: I think it's appropriate that we uphold the County's reading of the Code... certainly matches with my reading and my understanding of it as we've had these rather long discussions.

Mr. Kim: I second that.

Dr. Larson: Any other discussion? I think that I'm going to support the motion, because if the County... I think if the County intended, and I think a reasonable person should come to this conclusion too, if the County intended everything to fall under low, medium or high intensity uses, which by the way everything does. If you look at the definition, the high intensity is generate more than 100, medium is between 50 and 100 and low is below 100 [50]. So everything is included in those categories then they would only have those categories and there wouldn't be any other uses listed because there wouldn't be a need, but the County didn't intend that and I'm persuaded by the wording of section 28-36, which says uses shown as permitted by-right in table 3.1 which talks about the uses under each zoning category...shall be permitted by-right only in the respective districts as shown. So I'm persuaded that it's not only the intent of the ordinance, but I think it's written explicitly that that's what the ordinance says. Any other discussion?

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Mr. Ingalls: I agree with what you're saying. I think section 28-36 is implicit. That's what the Ordinance says. There is not ambiguity to it. It is the ordinance and that's how the ordinance is put together and to me it's very, very clear if you have a use that is named, it tells you what zone it is. It doesn't tell you whether it's low intensity, high intensity, medium intensity, could be any of those, but it's a use that is permitted only certain zones. So I'm going to support the motion.

Dr. Larson: Further more I don't think it would take much imagination to dream up low intensity uses that you would never want to have in any zoning district, that satisfy the 50 trip or less per day requirement. Any other discussion? Okay, those in favor of the motion, which is to uphold the Zoning Administrator's determination in this case say aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Dr. Ackermann: Aye.

Mr. Ingalls: Aye.

Mr. Poss: Aye.

Mr. Davis: Aye.

Dr. Larson: Aye. Any opposed? Okay, motion carries. Thank you.

UNFINISHED BUSINESS

Dr. Larson: Okay, we have no unfinished business. Is there any other business? Okay let's go to the minutes.

OTHER BUSINESS

ADOPTION OF MINUTES

February 25, 2014

Dr. Larson: Corrections to the minutes? I have a few, did you have something? Line 788, something I said, it is just incorrect English. I may have actually said that but what I meant to say was those are all of my questions. Line 1140, Dr. Ackermann I want you to tell me whether you said this, but it says but it does not do us any good to, I am thinking you meant approve instead of improve.

Dr. Ackermann: Yes, I would think so, yes.

Dr. Larson: Okay. Line 1725, no never mind, 1738, and they're not beholdng to us rather than the us. Line 1774...

Ms. Knighting: (Inaudible).

Dr. Larson: I am sorry.

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Ms. Knighting: You are going too fast.

Dr. Larson: Too fast, okay.

Ms. Knighting: 1738.

Dr. Larson: 1738, we're appointed by the court and they're not beholden to us rather than the us, on that line. Line 1774, replace the term imaginations with estimations. Okay, just for clarity again, I may have said this but I don't recall. But on 1792, delete the words 'deputies who was an' and for the word attorney just say attorneys, so I was talking to one of the attorneys for the County. And then on line 1794, the first complete sentence that starts with 'why' just say "He asked why and then delete the words 'do you', so 'why have a lawyer there if you're not going to take his advice?'

Ms. Knighting: (Inaudible).

Dr. Larson: Do you want me to say that again? 1794, the sentence that starts with 'why', start it with 'He asked why have a lawyer' so delete the 'do you' part.

Mrs. Musante: Mr. Chair, we do verbatim minutes.

Dr. Larson: Yes, I am just trying to make it clear.

Mrs. Musante: Right, but...

Ms. Knighting: But you wouldn't state "he asked".

Dr. Larson: Yeah I would.

Ms. Knighting: (Inaudible) say he asked why have a lawyer.

Dr. Larson: But that is what he did. I didn't ask why, he did.

Ms. Knighting: But what I am saying is, I would not say he asked why have a lawyer, I would say why have a lawyer.

Mr. Davis: The minutes should reflect what was actually said.

Dr. Larson: So if it is said wrongly we can't clarify what we are saying.

Mr. Davis: Unless you make a note (inaudible).

Dr. Larson: Well do that then. So you need to make brackets or add it after or something for clarity. I am not changing any meaning. I am making it clearer what was in the minutes. Line 1815, If the attorney is, it should be an independent attorney. Okay so I won't change that other one. Okay those are the only changes I have.

Ms. Knighting: (Inaudible).

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Dr. Larson: An attorney not and. Any other corrections to the minutes? Okay do I hear a motion to adopt?

Dr. Ackermann: I make a motion we approve the minutes as corrected.

Dr. Larson: Is there a second?

Mr. Grimes: I second.

Dr. Larson: Those in favor say aye.

Mr. Kim: Aye.

Dr. Ackermann: Aye.

Mr. Grimes: Aye.

Mr. Poss: Aye.

Dr. Larson: Aye. Any opposed?

Mr. Ingalls: I abstain. I wasn't here.

Dr. Larson: That is true.

Mr. Davis: (Inaudible).

Dr. Larson: Okay two abstentions. Any opposed. Okay that is approved.

The motion passed 5-0-2 (Mr. Davis and Mr. Ingalls abstained).

Dr. Larson: Zoning Administrators Report.

ZONING ADMINISTRATOR'S REPORT

Mrs. Blackburn: Yes sir, I have a report today.

Dr. Larson: Oh.

Mrs. Blackburn: I am passing out copies of your by-laws, and there is a yellow highlighted portion towards the very end and it is concerning deferrals. And I know (inaudible – away from microphone) and when applicants call in and want to defer their cases you and Melody talk about it and it gets done. But according to our by-laws it is the Board that has to make that decision. And I don't want anybody coming along and accusing you all of not following your by-laws. So it is my understanding we can either go with... leave it as it is, which means they would have to come to the meeting and ask for a deferral. And the Board would have to vote on it or it is also my understanding that you can give... well no. Yes you can give the power to the Chairman. I have to do a little more research on that. I would strongly suggest that you act as a Board on these deferral matters. I think that would be safer for all of you and it would be safer for the procedures of the Board. There would be less, and not to say that this

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would ever happen, but it would be less room for criticism or favoritism or anything like that, that could possibly... someone could accuse someone of doing.

Dr. Ackermann: May I ask you a question?

Mrs. Blackburn: And that is the extent of it.

Dr. Ackermann: Can we act as a Board without having an advertised meeting?

Mrs. Blackburn: No.

Dr. Ackermann: So if this is the way this is then someone would have to request a deferral at our meeting.

Mrs. Blackburn: Yes, they would have to come to the meeting and you all would have to vote on it.

Dr. Ackermann: And of course...

Mrs. Blackburn: And this is something we don't have to decide this tonight. I wanted to let you know that this was in here and I am going to do some more research on it. Make sure if you all can give the authority to the Chairman to make these decisions. Again that if you can do that and you all vote on that, so be it. I just would strongly suggest that the Board do the voting....

Dr. Ackermann: So...

Mrs. Blackburn: ...and not the Chairman.

Dr. Larson: I think the cut off in my mind has always been has the ad gone out. If it is prior to the ad, the public doesn't know anything about the case therefore nobody would show up expecting to speak and that kind of thing. And I think in the past that's the way... I mean Melody and I have talked about deferrals and those cases and done them. I would... I am sort of resistant to have a deferral before the Board after that because you may have members of the public that want to show up and talk.

Mrs. Blackburn: Yes.

Dr. Larson: Which is why the last part of it is in there that the Chair can allow public comment anyway. So that is, not that I am disagreeing with anything you said, I am just saying that's been the line...

Mrs. Blackburn: And I know there has been no militant on any of it. I am just concerned that someone may accuse you all of that, and I don't want that to happen.

Mr. Poss: What is currently happening now when we have a deferral?

Mrs. Blackburn: Go ahead.

Mrs. Musante: Normally what happens is, like for instance, we... there was a gentleman in the audience tonight that had originally applied for a special exception. He ended up having to go out of town so he... he has since withdrawn it and reapplied. But he had to go out of town so he put his on hold. We did nothing. Staff had not worked on the application, we had not advertised it. So at that point, I said

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okay, I did not even take that to Dr. Larson, I did it within the office. But when we have one that has come to us, like an appeal of a notice, I will discuss it with Dr. Larson, do you want to accept their deferral. We have worked on it, 9 times out of 10 we have the ad ready to go to the paper but it is before it has gone and it has been before it has been advertised.

Mr. Kim: And once it goes to paper then there is no more deferral, right?

Mrs. Musante: They can come in front of you and request a deferral.

Dr. Larson: (Inaudible – microphone not on).

Mrs. Musante: Yes.

Dr. Larson: (Inaudible – microphone not on).

Mr. Kim: I do too.

Dr. Ackermann: Really. I am shocked.

Dr. Larson: (Inaudible – microphone not on).

Mrs. Blackburn: And... right. And I can do more research. But I wanted to bring this forward that this is something that I am going to look into to protect you all and that was that. I will have more information on the next report. And also do think about what you all want to do, any thoughts you have on the subject. And I understand before it is advertised it is a convenience to them, why do they have to come here. Yes, I understand that. I am just very concerned someone reads that something was submitted, because we put this out on the web, and then it is not heard, where did it go?

Dr. Larson: (Inaudible – microphone not on).

Mrs. Blackburn: Yes, yes.

Dr. Larson: (Inaudible – microphone not on).

Mrs. Blackburn: Yes, yes.

Dr. Ackermann: How happy would we be to come up for one case and they ask for a deferral? I mean it would be prejudice against the person asking for the deferral, I would think.

Mr. Kim: So you are suggesting that we take a vote instead of letting the Chairman decide...

Dr. Ackermann: I don't know if the Chair could...

Mrs. Blackburn: Well I am going to do some more research. We don't have to do it... What?

Mr. Kim: Oh I am sorry.

Dr. Ackermann: We have to have a meeting to vote.

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Mr. Kim: That is what I am saying, if we are at the meeting and they ask for a deferral as they come...

Dr. Larson: Whenever that happens...

Mrs. Blackburn: Yes.

Mr. Grimes: But I mean... and deferrals are at the digression of the Board. I mean if we prepare for the case we don't have to, as the Board, grant the deferral.

Mrs. Blackburn: You don't have to...

Mr. Grimes: So the person...

Mrs. Blackburn: You are exactly right.

Mr. Grimes: ... applying has to be ready, just like we have prepared and it is really up to us to make that decision at that time. I also see it insulating the Chairman specifically. If there would have been a deferral granted on that case we heard not too long ago in reference to the violation and somebody had found out that you said oh yea we understand and it had already been delayed 6 months through the process, I would not doubt that somebody would come looking to you going why was this deferred? Why didn't the Board take that action? So I appreciate that you are trying to protect the Board and specific folks on the Board because it has been the Chairman and Melody doing this.

Mr. Kim: The case that we are talking about, I don't want to bring it up but people were coming to me saying hey, why isn't that up yet? It's got to be next month and then it is going to be next month, so...

Dr. Larson: (Inaudible – microphone not on).

Mrs. Blackburn: Oh, oh yeah.

Dr. Larson: (Inaudible – microphone not on).

Mrs. Musante: Right.

Dr. Larson: (Inaudible – microphone not on).

Mrs. Blackburn: Oh I totally understand. But unfortunately sometimes what we would love to do for the public is not always the process in our best interest. If someone wants to not be as kind and generous as you are.

Dr. Larson: (Inaudible – microphone not on).

Mr. Kim: (Inaudible – microphone not on) refer to the case as it is fresh in staff's mind.

Mrs. Blackburn: Right.

Mr. Kim: (Inaudible – microphone not on) because I wasn't really sure why you guys sent a violation and you were able to refer back quickly as to why. And that clarified everything (inaudible – microphone not on) staff's workload put into each case.

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(Inaudible – microphone not on)

Mrs. Blackburn: Lately it has been a lot.

(Inaudible – microphone not on).

Mrs. Musante: I would say 5.

Mrs. Blackburn: But this year we had a lot of them.

Mrs. Musante: And 9 times out of 10, and I apologize for slurring, I am tired, they are appeals. That is normally what our deferrals are on.

Mr. Ingalls: That is the one thing that (inaudible – microphone not on).

Mrs. Musante: Right.

Mrs. Blackburn: Right.

Mr. Ingalls: (Inaudible – microphone not on) keep deferring that violation...

Mrs. Musante: Right.

Mr. Ingalls: ... somebody is getting (inaudible – microphone not on). And if we are the ones (inaudible – microphone not on) we need some protection.

Mrs. Musante: Well Denise was saying too, one thing the Planning Commission has done, which you might think about as well is you can open the public hearing, allow the public to speak and keep the public hearing open instead of closing it. It saves us from advertising fees, we don't have to go through the whole process again.

Dr. Larson: (Inaudible – microphone not on).

Mrs. Musante: I like that.

Dr. Larson: (Inaudible – microphone not on).

Mr. Kim: Can I ask staff, with the amount of work that you guys do, how do you feel about deferrals? I mean is it going to be more of a backlog (inaudible – microphone not on) that you guys have. Is it something that you guys would be more efficient (inaudible – microphone not on) go through case as... like in the case where you said someone asked for a deferral but you guys did nothing, there was nothing printed...

Mrs. Musante: I don't mind a deferral if we have only gotten to the ad part, you know where we are ready to submit the ad to the paper. Because normally by then the only thing I have done is the ad. I have not put in the staff report and all of the time that goes into that. I have worked strictly on what their request is. And then once it goes to the paper is when I start working on the background part of it.

(Inaudible – microphone not on).

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Dr. Larson: I really think the advertising is the (inaudible – microphone not on).

Mrs. Musante: I do too.

Mrs. Blackburn: Well the advertisement is also set up for when you do not give refunds if you withdraw. And it may have just become more concerning because of what has happened over this past year. We have meeting dates, the people know when they submit for a case this is when the meeting is going to be. And oh I can't make it, oh I am just not going to or... you know. And Melody and I talked about it a little bit, it's almost disrespectful to you all.

Dr. Larson: Well I think again...

Mrs. Blackburn: That you know...

Dr. Larson: (Inaudible – microphone not on).

Mrs. Blackburn: Yes, yes. And hopefully we won't have those again.

Dr. Larson: (Inaudible – microphone not on) there is no reason to (inaudible – microphone not on). Once it is advertised (inaudible – microphone not on).

Mrs. Musante: With the exception of appeals. We have got to remember that once they appeal you all have 90 days to hear it and take action. So we have to be careful with that. So technically they can only request 1 deferral before the ad goes to the paper. Where is if an applicant is coming in for a special exception for a home business, he could request a deferral for 6 months as long as I have not sent that ad to the paper.

Mr. Kim: Appeal (inaudible – microphone not on).

Dr. Larson: (Inaudible – microphone not on).

Mrs. Blackburn: And once that process starts it stays all action on that particular situation if it happens to be an appeal of a notice of violation, then nothing can be done until you all hear the case.

Dr. Larson: Yes, I still think (inaudible – microphone not on).

Mrs. Blackburn: Well thank you gentlemen for listening to that. And the only other thing I have to offer is the Board of Supervisors has approved for the definition portion of the Zoning and Subdivision Ordinances to be sent to the Planning Commission for review, hopefully changes and recommendations to go back to the Board. We are going to start the process of rewriting the Zoning and Subdivision Ordinances.

Dr. Larson: (Inaudible – microphone not on).

Mrs. Blackburn: No, exactly. We are starting with the definitions. One of the first things we are going to do is have them be the same in both the Zoning Ordinance and the Subdivision Ordinance, and not have things changed somewhat as it got amended and all this kind of stuff. We are also going to have the definitions come in line with the State Code, the recent changes in the State Code, whatever they

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may be. And also going to try and discuss removing some of the regulations out of the definitions and put them in the special regulations section of the code so you are not having to go to the definitions to see exactly how it is handled. It's just the definition, only what it is. And to also put into the code that if there is a question we will go to Webster's, which is not listed in the Ordinance at all. So we are starting the process and it may take a while. And as we get things approved, we are going to do it in sections, then you will get new additions to your Zoning Ordinances. And hope and striving to have it be more easily read and more easily understood.

Dr. Larson: (Inaudible – microphone not on).

Mrs. Musante: We could potentially have 5 cases for next month.

Mr. Grimes: All FFLs.

Mrs. Musante: They are not actually, only 1. We have 1 FFL, we have a microbrewery...

Mr. Kim: I was going to say microbrewery.

Mrs. Musante: ... we have just a regular office and then we have 2 appeals.

Dr. Larson: (Inaudible – microphone not on) not going to be here next month.

Dr. Ackermann: Sounds good.

Mr. Poss: Actually I am not sure I am going to be here next month.

Mrs. Musante: Mr. Ingalls you are definitely not going to be here next month, correct.

Mr. Ingalls: I probably will be here.

Mrs. Musante: You will be here. You were just fooling me. This is going to be good.

Mr. Kim: It's going to be interesting.

Dr. Larson: (Inaudible – microphone not on). Motion to adjourn?

ADJOURNMENT

Mr. Ackermann: So moved.

Mr. Grimes: Second.

Dr. Larson: Those in favor.

Mr. Kim: Aye.

Dr. Ackermann: Aye.

Mr. Grimes: Aye.

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Mr. Poss: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mr. Davis: Aye.

The motion passed 7-0.

With no further business to discuss the meeting was adjourned at 10:18 p.m.