STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
October 28, 2014

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, October 28, 2014, was called to order with the determination of a quorum at 7:01 p.m. by Chairman Dean Larson in the Board of Supervisors Chambers of the George L. Gordon, Jr., Government Center.

MEMBERS PRESENT: Dean Larson, Robert Grimes, Larry Ingalls, Gregory Poss, Ray Davis, and Steven Apicella

MEMBERS ABSENT: Danny Kim, Ernest Ackermann, and Heather Stefl

STAFF PRESENT: Jeff Harvey, Melody Musante, and Denise Knighting

DETERMINATION OF QUORUM

Dr. Larson: 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 whose members are volunteers appointed by the Circuit Court of Stafford County. The purpose of the BZA is to hear and decide appeals from any order, requirement, decision or determination made by the Zoning Administrator. Hear and decide upon requests for Variance from the Zoning Ordinance, when a literal enforcement of the ordinance would result in unnecessary hardship to the owners of a property. And hear and decide on requests for Special Exceptions where the zoning ordinance allows for Special Exceptions. The Board consists of seven regular members and two alternate members. An alternate member may be called upon to participate when a regular member is unable to hear a case. Let the record reflect that we have six members of the Board here tonight. On my left Mr. Greg Poss, Mr. Larry Ingalls and then to my right Mr. Robert Grimes, Mr. Ray Davis and Mr. Steven Apicella. We also have Mr. Jeff Harvey over here on the end representing the County, he is the Director of Planning and Zoning. And we also have over on this side Melody Musante, the Zoning Manager and Denise Knighting, the 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 limit [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 the additional material. Members of the

public and/or staff may also submit relevant material during the hearing. The applicant should be aware that tonight we have six voting members present, and you must have four affirmative votes to approve an application. If you do not think, that there are enough members present tonight that will enable you to receive a fair hearing, then you have a right to defer the hearing until another meeting. However, you may defer the hearing for this reason only once in any twelve month period. Deferral requests are granted at the sole discretion 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 previous twelve months. Any person or persons who do not agree with the decision of this Board shall have thirty 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 one year from the date of our decision. I now ask that anybody who has a cell phone, pager, or other electronic device, to please silence it. Thank you. It is the custom of the Board to require that any person who wishes to speak before the Board be administered an oath. Therefore, I ask that anyone who wishes to speak tonight, to stand and raise your right hand.

(Members of the audience stood)

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

(Members of the audience responded)

Dr. Larson: Thank you, be seated. The Chair asks that when you come down to the podium please first give your name and address clearly into the microphone so that our recording secretary can have accurate record of the speakers. I would like to remind everybody to speak clearly into the microphone when you are talking. Also, please sign the form on the table at the back of the room. Thank you very much. Are there any changes or additions to the advertised agenda?

Mrs. Musante: There are no changes.

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 tonight?

DECLARATIONS OF DISQUALIFICATION

Mr. Ingalls: Mr. Chairman, I visited the second case tonight, A14-06. I did not speak to anyone while I was on the site.

Dr. Larson: Thank you. Anybody else?

Mr. Davis: I assume Ms. Karnes is here representing Mr. Liming. Is that true?

Ms. Karnes: Peter Basanti will be presenting the case.

Mr. Davis: Pardon?

Ms. Karnes: Peter Basanti will be presenting the case. He is an associate of the law firm.

Dr. Larson: Anybody else? Thank you, I will now ask the secretary to read the first case.

PUBLIC HEARINGS

1. SE14-07/ZON14150362 – Matthew D. Gish - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards," A-1, Agricultural, to allow firearm transfers and gunsmithing as a Rural Home Business on Assessor's Parcel 24A-5-109. The property is zoned A-1, Agricultural, located at 60 Lady Jane Lane, Kings Grant Subdivision.

Mrs. Musante: Case SE14-07/ZON14150362, applicant Matthew D. Gish requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards," A-1, Agricultural, to allow firearm transfers and gunsmithing as a Rural Home Business on Assessor's Parcel 24A-5-109. The property is zoned A-1, Agricultural, located at 60 Lady Jane Lane, Kings Grant Subdivision. You have the application, application affidavit, plat of property, diagram of area for the business and Rural Home Business Standards. The applicant is requesting a Special Exception to conduct firearm transfer services and gunsmithing as a Rural Home Business. Firearm transfer services is a method of transferring a weapon from the seller to the buyer through an intermediary firearms dealer. This service is used most often when a weapon sale crosses state line. The weapon is purchased and sent by the seller to the local Federal Firearms Licensee. The local FFL completes the transaction paperwork, verifies the identification of the buyer and hands over the firearm. The applicant stated agents will leave their firearm in his possession to be serviced. He will not be selling weapons or advertising via the internet. He will be handling transfers of weapons for the agents only, there will be no business conducted with the general public. The applicant has stated that the transfers and gunsmithing will by appointment only during the days and hours of Monday through Friday from 5:00 p.m. to 9:00 p.m., Saturday 10:00 a.m. to 3:00 p.m. and no Sunday hours. All firearms and supplies will be securely stored inside the premises. Rural Home Business standards allow for 25% 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 2,794 square feet. The Bureau of Alcohol, Tobacco, Firearms and Explosives gave a presentation to local zoning officials explaining their permit process. According to their regulations the applicant must have a premise from which he conducts business or from which he intends to conduct business. The business may be located in a private residence but must be open to the public for a person to person transfer. Due to this requirement, the applicant must apply for a Special Exception for a Rural Home Business through the Board of Zoning Appeals. Suggested development conditions, Days and hours of operation, Monday through Friday 5:00 p.m. to 9:00 p.m., Saturday 10:00 a.m. to 3:00 p.m., no Sunday hours. Provide at least four off-street parking spaces for clients. 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 merchandise must be paid for online. Firearms can only be purchased by special order. Applicant must maintain professionally monitored security system. No sign indicating a business is being conducted on the premises. Discharging of firearms on site shall be prohibited by customers. Ammunition must be stored in cans with no more than 5,000 rounds. 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. Larson: Are there any questions for staff?

Mr. Ingalls: I have one. On the days and hours of operation, you have Monday through Friday from 5:00 p.m. to 9:00 p.m. And the application looks like he requested 5:00 to 8:00. Is there a reason for that?

Mrs. Musante: It could be a typo.

Mr. Ingalls: Typo, okay. So that should be 5:00 to 8:00 p.m.?

Mrs. Musante: Correct.

Dr. Larson: Any other questions?

Mr. Apicella: Mr. Chairman, just one question. Is this the same standard set of conditions that we've thus far established for other gun transfers?

Mrs. Musante: Yes they are.

Mr. Apicella: Okay, thank you.

Dr. Larson: I have one question. On the first paragraph under applicable background, toward the end, second to the last sentence or basically the last sentence. He will be handling transfers of weapons for agents only. There will be no business conducted with the general public. Can you explain to me what he is talking about, agents and general public.

Mrs. Musante: Mr. Gish is going to have explain that to you. It deals with what he does currently in his positon.

Dr. Larson: Okay. Any other question for staff?

Mr. Ingalls: I have one more. Have we put a condition on time limits for these Special Exceptions for this type of operation? Or any similar type? Like five years or seven years?

Mrs. Musante: We have put conditions on Special Exceptions. I am not aware of putting conditions on the Special Exceptions for FFLs.

Mr. Ingalls: Okay, thank you.

Dr. Larson: Any other question for staff? Hearing none, will the applicant or his or her representative please come forward and present their case?

Mr. Gish: Matthew D. Gish. Basically the question that you did have, I do work for an agency here in Virginia. So most of my work is done for agents. That is what that sentence is for.

Dr. Larson: So members of the agency you work for?

Mr. Gish: Yes.

Dr. Larson: Okay.

Mr. Ingalls: You said most. Does that mean it is not going to be limited to those?

Mr. Gish: There are some cases where they could be retired or it could be private.

Mr. Ingalls: Individual?

Mr. Gish: Yes.

Mr. Ingalls: Okay.

Mr. Gish: But I do not do advertising, I am not per se open for the general public business.

Dr. Larson: But you are not intending to limit it just to the people that you work with. Is that correct?

Mr. Gish: Yes.

Dr. Larson: You would be open to what we would think of as general public?

Mr. Gish: Yes.

Dr. Larson: Okay, thank you. Please continue.

Mr. Gish: Pretty much what Melanie [Melody] described is what I am asking for. The main reason I have had a Federal Firearms License before. It was up for renewal so this is why I am going through this now, because I learned that this has just become… I don't know when this passed, but I was contacted by the BATF that I needed to do this when my license came up for renewal.

Dr. Larson: Any questions for the applicant?

Mr. Ingalls: Is Lady Jane Lane Road, is that a private road?

Mr. Gish: Yes.

Mr. Ingalls: Is it paved?

Mr. Gish: Yes.

Mr. Ingalls: It is paved. Who maintains it?

Mr. Gish: The homeowners association.

Mr. Ingalls: The homeowners association. Thank you.

Dr. Larson: Do you have any homeowners association covenants that might come in question here?

Mr. Gish: No.

Dr. Larson: Okay. Any other question for the applicant?

Mr. Poss: I have one. You say you have been doing this before and the BATF contacted you that you needed to go through this process for the renewal?

Mr. Gish: Yes.

Mr. Poss: How long have you been doing this?

Mr. Gish: Since I moved here, five years ago.

Mr. Poss: Okay, thank you.

Mr. Ingalls: So you have been operating legally?

Mr. Gish: Yes.

Mr. Ingalls: For five years?

Mr. Gish: Yes.

Mr. Ingalls: Until the county changed this…

Mr. Gish: Yes.

Mr. Ingalls: … rule about you having to have a Rural Home Occupation?

Mr. Gish: Yes. When I sent my application in for my renewal for my license, the BATF contacted me. The process was done on their side and that is when they contacted me and said that I needed the permit to move forward with renewal for my license.

Mr. Ingalls: Do you know of any complaints or issues that…

Mr. Gish: No.

Mr. Ingalls: … in the past five years?

Mr. Gish: I just received tonight… Melanie [Melody] showed me a letter but it wasn't signed and no one in my neighborhood has said anything to me the five years that I have been there and up until now.

Mr. Ingalls: Did they know you were doing it?

Mr. Gish: Yes.

Mr. Ingalls: They did?

Mr. Gish: Yep, I have a gentleman here that's from our neighborhood that knows, if you want to ask him. But some probably don't. I won't say everybody does because I don't advertise, I don't… the only advertisement basically is the BATF actually publicizes that I have Federal Firearms License. So that is where a lot of people find out.

Mr. Ingalls: Most of us don't read that.

Mr. Gish: Not from me.

Dr. Larson: Any other questions for the applicant? I have one. I think your application mentions gunsmithing.

Mr. Gish: Yes.

Dr. Larson: Do you test the weapon after you work on it?

Mr. Gish: Yes.

Dr. Larson: And where do you do that?

Mr. Gish: On my property.

Dr. Larson: Ahh. Okay, thank you. Any other questions for the applicant? Okay thank you Mr. Gish. Are there any members of the public who wish to speak in support of the application? If so please come forward. Seeing none, is there any member of the public who wish to speak in opposition to the application? If so please come forward.

Mr. Enfield: Sam Enfield, I live in the subdivision. As you started to get into here, there are covenants for this subdivision and they do prohibit businesses. The covenants specifically the lots are for residential farmette use only and no commercial enterprises. Any changes to the covenants are supposed to be approved by 80% of the homeowners. As far as I know this has not been brought up for any kind of change to the covenants. So in my view it's not appropriate for a zoning change or request. It is more appropriate for the homeowners association to discuss this and vote on it before it comes here. From a… that would be from a legal point of view. From a practical point of view, as you pointed out, we have got private roads back there, four miles of private roads which we pay to maintain. So now if we have a business we are going to have increased traffic on those roads and that means we are going to have to pay more to maintain the roads to support this business. It also means that we have more traffic which will endanger our residents who jog and walk and play on the roads. And of course it is going to increase pollution. I don't have any objection to firing weapons on a person's private property. But it would seem to me that if somebody picks up a weapon from somebody else, they are going to want to test fire it. So we have that potential problem. So in summary, I think the key thing here is the covenants. We have a violation of the covenants and I don't see that you have the… really have the authority to overrule the covenants. Thank you.

Dr. Larson: Before you step down. I think everybody on this Board would agree that we don't have the authority to overrule your covenants. But we also don't address covenants here. Is your homeowners association… have they been engaged at all with Mr. Gish?

Mr. Enfield: You will have to ask him, he's on the Board.

Dr. Larson: Well.

Mr. Enfield: I don't know.

Dr. Larson: That would be between the homeowners association and the property owner. If they… the covenants… they… the property owners have to abide by the covenants and they can be taken to court to enforce that. But we don't… this is not the venue to either defend or overrule covenants. We just don't do that here. So you are right.

Mr. Enfield: Yeah, but you would be knowingly approving something which is in violation of the covenants. That would seem to me to be wrong.

Dr. Larson: This… he would have to go through another step if there was a problem with the homeowners association. He would have to go through that additional step in order to function legally in his neighborhood. But this is one of the steps that he has to go through. It's independent of the covenants.

Mr. Enfield: I understand what you are saying, but he is in violation of the covenants if he has a business.

Dr. Larson: Okay. I don't think we are going to dispute that here.

Mr. Enfield: Okay.

Dr. Larson: Are there any other questions or comments for the witness?

Mr. Ingalls: How long have you lived in the subdivision?

Mr. Enfield: Twenty-five years.

Mr. Ingalls: Did you know the applicant had a business going on in there?

Mr. Enfield: No.

Mr. Ingalls: So he hadn't impact you at all over the last five years.

Mr. Enfield: Well he would only impact me as a member of the Board of Directors, but this issue hasn't impacted me.

Mr. Ingalls: Like I say, the business had no… you did not notice anything different? You weren't impacted by it? You didn't complain about the traffic?

Mr. Enfield: No.

Mr. Ingalls: Or wander what was going on? Obviously it was so low that you didn't notice.

Mr. Enfield: I haven't noticed anything about this business.

Mr. Ingalls: Okay. Thank you.

Dr. Larson: Any other questions for the witness? Thank you Mr. Enfield. Would anybody else like to speak in opposition to the application? If so please come forward.

Mr. Gray: Sir I am not here, and didn't have any idea this case was coming before you.

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

Mr. Gray: My name is James Gray. I worked for twenty-eight years in ordinance safety for the Navy at Dahlgren Virginia. The only questions I would present to you in my mind from hearing your case before you tonight is that I would like to ask is this percussion ordinance that he is going to be working with or is there any chance that it would be electronic ordinance… electrically fired ordinance that he would be working with? All percussion?

Dr. Larson: Sir if you could address your questions here [to the Board] we'll ask the applicant questions.

Mr. Gray: I am sorry. Percussion ordinance doesn't have much of an electromagnetic problem, but electrically fired ordinance does. And it's really dependent on the radio frequencies that are around the area that they are being opened in or used in. I just recently read that the County is involved in building a lot of cell phone towers and etcetera around the county. And these things are extremely dangerous if ordinance isn't sealed and properly certified containers. In actuality the fire department should know there is a home with ordinance being stored inside. Because of heat issues, I can personally attest that my mother's home burned down at 27 Ferry Road in Ferry Farms. And I had a brother who had stored 50-gallon containers of shotgun shells, rifle shells, all kinds of things and it actually drove the firemen away because they started to explode. So the Sheriff's department or the police department of our county and the fire department should be notified of these things. So I don't know if this has been done or not, but I think that you should be made aware that the government places stringent restrictions on this kind of thing. Thank you.

Dr. Larson: Any questions for this witness? Thank you sir. Would anybody else like to speak in opposition to the application? If so, please come forward. Seeing none, does the applicant wish to respond and/or add additional information?

Mr. Gish: (Inaudible, responding from the audience).

Dr. Larson: Please step up to the microphone sir.

Mr. Gish: I am not doing any type of electrically fired ordinance whatsoever, no.

Dr. Larson: Do you intend to store ordinance on your property?

Mr. Gish: No.

Dr. Larson: Any other questions for the applicant?

Mr. Ingalls: You are here because of the renewal of your… what is the time period for a license? How long does it go?

Mr. Gish: Now the Federal Firearms License is good for three years.

Mr. Ingalls: Three years. So every three years you need to…

Mr. Gish: Yes. Every three years I have to renew it.

Mr. Ingalls: You have to renew it?

Mr. Gish: Right.

Mr. Ingalls: Alright, thank you.

Dr. Larson: Any other questions for the applicant? Thank you sir. I will now close the public hearing for this application and bring the matter back to the Board for motions and decision.

Mr. Apicella: Mr. Chairman, may we ask another question or so of staff?

Dr. Larson: Yes.

Mr. Apicella: So there is a letter in front of us and also as implied by one of the folks who participated during the public hearing about shots being fired on the applicants property. I just want to clarify that nothing about this application, if it were approved, would entitle the applicant to have a shooting range and there is another part of the county code that deals with shooting ranges.

Mrs. Musante: That is correct.

Mr. Apicella: Okay. And normally with these kinds of applications the neighbors are notified.

Mrs. Musante: They are.

Mr. Apicella: Okay. Thank you.

Dr. Larson: Any other questions for staff?

Mr. Ingalls: Is the Sheriff's department notified about theses?

Mrs. Musante: The Sheriff's department is not notified.

Mr. Ingalls: They are not?

Mrs. Musante: They are not notified.

Mr. Ingalls: Okay.

Dr. Larson: Any other questions for staff? Is there a motion?

Mr. Apicella: Mr. Chairman before we go to a motion, may I ask if we may look at the conditions if this were approved. We got today an opinion from our counsel about whether or not gun transfers were retail sales or not. And I think it was a very good opinion. I don't know if you saw my email response or other members did as well, or not. But one of the items that is still a little unclear, and I think that the conditions are fairly good especially in light of the fact that they are consistent with what's been done in the past. But one thing we haven't really talked about is the number of visitors a person can have at any given moment. And that was sort of implied in the opinion that we got. So even though we have a proposed provision in the conditions to talk about setting up appointments, an appointment can be one person or it could be fifty people. We don't know. So I think as I pondered the opinion, that maybe we ought to have some boundaries about the number of people who might visit at any given time to mitigate the impacts on the surrounding neighbors. And I just thought, and I am not saying this is absolutely cast

in stone, but one way to kind of bound it is to say that when a person has an appointment, that they can have no more visitors then then number of parking spaces that are provided for as a way to kind of bound the number of people who might be visiting at any given time. I am not quite sure what the right words would be, but just again some kind of a… some kind of clarification about how many people can visit. The concern would be again that too many people might be visiting at a given time. I don't think that is the applicant's intent here. He certainly hasn't suggested it, but going forward, again as we try to frame these gun transfer conditions and try to ensure consistency, I think it is something we haven't really discussed in the past and it maybe something we want to clarify. Just my initial thought.

Dr. Larson: Thank you. Are there any reactions to…

Mr. Ingalls: Talking along those same lines, I hear what Steve is saying. I mean then would you say, customers by appointment only, maximum of X number of appointments per day.

Mr. Apicella: I am not suggesting the number of appointments, but because they could have fifteen minute appointments and I could see where that could be burdensome. And that might be another issue we want to speak to. But I am just saying within a given appointment, if the applicant is providing four parking spaces the hope and desire is those clients aren't also parking on the road that is not part of the individual's property. And a way to insure that from happening is to, again, limit the number of visitors per appointment to no greater than what is available in terms of the parking spaces provided. By the same token I hear what you are saying. If somebody had you know, in a five hour period multiple fifteen minute appointments, that could also be… it gets to the point where you start to wonder if that's getting close to the definition of retail sales. Just by virtue of the significant traffic.

Mr. Ingalls: The hours of operation on Monday through Friday is 5:00 to 8:00. He is only open for three hours Monday through Friday. And I would imagine an appointment is going to last anywhere from a half hour to an hour to make a complete transaction of what he is doing. I don't know.

Dr. Larson: May I suggest we ask Mr. Gish, since this is sort of a theoretical discussion right now? Mr. Gish how long does an appointment generally last?

Mr. Gish: It could take about a half hour, maybe forty-five minutes. Basically the process entails on a transfer, the person would show up. There is paperwork involved as far as a state form that is filled out, a federal form that is filled out and then you do a background check on the person. You can either do it by a computer or done by telephone. That can actually last, and get denied or what they call delayed. If that happens, the applicant usually will leave. But in my case, which is one of the problems that I know is coming up with me which is fine. I am not really a retail sales of things, so this is not exactly what I do either, because it's like I said, I work for an agency here and most of everything that I do is for agents of that agency. Be it POW guns or transfers as far as, I do training as far as gunsmithing for care and maintenance of their firearms, as far as the bureau and things of that nature. So I am not exactly in the realm of everything that you are trying. I understand, like he is saying, to figure out this, but the timeframe could last, like I said delayed, and that could be the next day for them to come back. Or if its computer generated it will come up within three minutes. It depends on the person's name, what their background is, I think is what takes the timeframe for that to come back as a response from the background check. So it could vary.

Dr. Larson: Let me clarify something on what we mean by retail sales. We mean the sales of merchandise on your premises where you have a piece of something, an article, and somebody gives you money for it in exchange for the article. That cannot take place on your property.

Mr. Gish: Right.

Dr. Larson: You are selling a service.

Mr. Gish: Right. That is where the difference, I think… like he was explaining to me, he is explaining more of retails sales, like you said. You have people coming to shop or to…

Dr. Larson: Well, I think Mr. Apicella concern was the number of people at any one time in your house. Which brings my following… next question. If you're attending to somebody in your FFL capacity, how many… are you the only person doing that in this business.

Mr. Gish: Yes.

Dr. Larson: How many people can you do simultaneously?

Mr. Gish: One.

Dr. Larson: Okay. So you will schedule your appointments to be sequential?

Mr. Gish: Yes.

Dr. Larson: So that might help in the discussion.

Mr. Apicella: I appreciate that Mr. Chairman, as I think Melody would tell you or Mr. Harvey would tell you, in the absence of clear conditions Mr. Gish's or anybody's business model can change. He can hire three people two years from now and he has a (inaudible) business and he's got four people visiting at the same time because that is what works for him.

Dr. Larson: Yeah, but that is not where I am going with this. What we just heard is practically speaking, he can only handle one at a time.

Mr. Apicella: He.

Dr. Larson: So we can make that a condition.

Mr. Apicella: Sure, we could.

Dr. Larson: And that would not affect his business.

Mr. Apicella: Right, that is another alternative.

Mr. Ingalls: How many people would you have on a busy day, come to your house?

Mr. Gish: One.

Mr. Ingalls: So two appointments a day would be a big day.

Mr. Gish: Yes.

Mr. Ingalls: Okay. Thank you.

Dr. Larson: Any other questions for the applicant while he's at the podium? Thank you Mr. Gish. Is there a motion?

Mr. Ingalls: Let me ask one other question about the conditions. I still like the idea of the Special Exceptions having a drop dead date, I think. Otherwise they go on forever. And forever is a long time and most of us aren't going to be here that long, so things are going to change. And we never know how they are going to change. So you know I don't have any problem with this applicant. I think he's presented a great case for what he has done. And actually he has been doing it and nobody else has complained. But, I would like to see it, well maybe in… if his renewal is every three years to say in six years he would have to come back and renew his Special Exception, to give him some… he is going to be going through the process of renewal anyway and it would be a good time again to go through this process. I know that's a burden, but it is a rural home business and things change.

Mr. Apicella: May I ask, what's the charge for a Special Exception?

Mrs. Musante: Six hundred dollars.

Mr. Apicella: Thank you.

Mr. Poss: Have we applied this type of time restraint on any of the other applicants that we have approved?

Mrs. Musante: I was thinking about that after Mr. Ingalls asked the question earlier and I do believe one of our FFL applicants, we did put a five years restraint on him. And that was the gentleman that lived in Aquia Harbour.

Dr. Larson: We have also put time constraints on other types of Special Exceptions…

Mrs. Musante: We have.

Dr. Larson: … If I remember correctly.

Mrs. Musante: That is correct.

Dr. Larson: It is not an unusual thing. Alright, so…

Mr. Ingalls: Because again, you have got to remember Special Exceptions run with the property, they don't run with this applicant. So that is another reason I think at the end of a certain number of years, we could have a different applicant standing before us, you know, because the applicant before us today sold the business or sold the house and moved on to someplace else. And somebody else who has taken over this business who maybe is not in the same situation as he is, I mean he is pretty well limited to what he wants to do and he knows his business. So he is not going to be that busy as maybe somebody else who says, well gee I would like to do this for the public. We have not prevented him from doing it from the public. So when I look at this applicant, yes I would not have a problem with him at all, but somebody else come in and take over his business. They may run it totally different, just like Steve said. I mean, the next person's business plan, who bought this piece of property, may be totally different than the applicant before. So, I think the expiration of Special Exceptions is a good thing. We used to be

able to put the person's name on them. The Special Exception ran with the applicant, but then the law said we couldn't do that. So then we knew, okay this is the person who is going to be running this business and when he moved the business went away. If you don't put a drop dead or expiration on these things anybody could keep… it could be a firearms transfer forever and ever and ever, as long as somebody wants it in that particular piece of property. It is not the applicant.

Mr. Gish: (Inaudible, responding from the audience) cannot transfer a firearms license, so if I do move or change or something they would not be able to run from that business. They would go through the same process that I am because they would have to apply for another Federal Firearms License. So that would keep them in front of you.

Mr. Ingalls: Well maybe or maybe not. If I don't know whether… maybe this person already has firearms license and… but… see the Special Exception is for your property, it is not for you. It is to be able to do this particular business on that particular piece of property. It doesn't pertain to you. So that is what I am concerned about. I am not concerned about you, but I am concerned that you could always do this operation on this piece of property.

Dr. Larson: Is there a motion for this application?

Mr. Davis: Yes. I move for approval of SE14-07/ZON14150362 and with regards to making a time limit, I think we are covered in requirement number twelve where it says the approval may be revoked for noncompliance. If somebody moves in and breaks the rules that we set forth, then they can be revoked. And I think it's an imposition for the applicant to have to pay six hundred dollars whether it is in three years or six years. And it is an unnecessary burden for staff and this Board.

Dr. Larson: So, if I understand right the motion is to approve using the conditions presented by staff, I mean their suggested development conditions?

Mr. Davis: Yes, with that one change in the time of 8:00 p.m.

Dr. Larson: I am sorry, that was the first item went to 8:00 p.m.

Mr. Apicella: Mr. Chairman, I don't know if it needs to be seconded first, but I would ask if Mr. Davis would consider one friendly amendment which is under number three. I think you were sort of going along these lines, but I could be wrong and you could help me if I am wrong. Under number three, customers by appointment only with no more than three appointments per day with a single client.

Dr. Larson: Yeah, technically there should be a second and a substitute motion, but considering there's twelve conditions and I think there's going to be some more discussion on the conditions if Mr. Davis would abide by a little bit more discussion on the conditions then we can… you can amend your own motion when we all sort of agree to that. I think that would save time rather than doing substitute motion after substitute motion. The condition number ten, ammunition must be stored in cans. The applicant has said he's not going to need to store ammunition. I suggest we just delete that condition.

Mr. Grimes: I think we would need to see clarification because the applicant did state that he will test the weapon on his property. So he is going to have some ammunition there. So whether it's his definition of stored or bulk ammunition verses ours, he is going to have some ammunition there and to be consistent with the other FFL that we have approved, I think that we should leave the storage

requirement in there. If we wanted to reduce it, that might be an option. But we have been trying to not limit the quantities of storage.

Dr. Larson: No you are right and I will withdraw that suggestion. There is a clarification I wanted to make with the applicant though. One of our conditions is discharging of firearms on site shall be prohibited by customers. Is there any issue with that from your perspective? So if you test a weapon after it has been serviced you test it yourself.

Mr. Gish: Yes and I don't test fire every weapon that is transferred or worked on. So yeah and no person that's doing the transfer would be shooting on my property.

Dr. Larson: Okay, thank you. Mr. Apicella, you had a concern earlier about simultaneous customer visits. Did you want to reword something to address that?

Mr. Apicella: Yeah, actually I was thinking about it again in the context of number three, so let me restate it, customers by appointment only with a single client and no more than three appointments per day. I think that's consistent with what the applicant indicated. I think they did say they probably thought there would be no more than two, but I would like to provide some additional flexibility beyond that.

Dr. Larson: Alright. Any other discussion on these conditions?

Mr. Ingalls: Number four, could I ask for a clarification? It says the applicant must have a safe or secure container for his or her weapons. I am assuming, I mean he has his own personal… it that his own personal weapons or is that for all the weapons that are on the site?

Dr. Larson: We can change it for all weapons on the site.

Mr. Ingalls: Yeah, I mean it just looked like it was for his or her weapons. Well somebody else's weapon that he is fixing or doing something with is not his or hers.

Dr. Larson: Any other discussion on the conditions?

Mr. Ingalls: Again I would like to add one, but I feel like I am barking up a wrong tree here.

Dr. Larson: Would you like to discuss the renew option one more time Mr. Davis. You don't want to say anything more about that?

Mr. Davis: I have heard enough.

Dr. Larson: Alright, well, Mr. Davis has allowed us to modify the conditions on his motion while we are discussing it. So thank you for your forbearance in the issue. Would you like to continue with your motion Mr. Davis? Based on what we discussed?

Mr. Davis: Yes.

Dr. Larson: Okay, so you move… can I read the conditions through for staff and the BZA to make sure we have everything right? Days and hours of operation, Monday through Friday, 5:00 p.m. to 8:00 p.m., Saturday, 10:00 a.m. to 3:00 p.m., no Sunday hours. Provide at least 4 off street parking spaces for

clients. Customers by appointment only with a single client and no more than 3 appointments per day. Applicant must have a safe of secured container for all weapons on site. The business cannot engage in retail sales of merchandise on the premises. Meaning merchandise must be paid for online. Firearms can only be purchased by special order. Applicant must maintain professionally monitored security system. No sign indicating a business is being conducted on the premises. Discharging of firearms on site shall be prohibited by customers. Ammunition must be stored in cans with no more than 5,000 rounds. Must comply with all State, Federal and Local codes and regulations. This approval may be revoked for non-compliance of the conditions imposed by the Board of Zoning Appeals.

Mr. Apicella: Mr. Chairman before we proceed, is it clear that the applicant would be able to do gunsmithing on his property? Because that was one the principal things he wanted to do. It is a service, but I just wanted to be sure that there is no ambiguity. And maybe there is not.

Dr. Larson: I think that is part of the application.

Mr. Apicella: Its part of the application, but it is not discussed in the conditions. And then maybe that is fine.

Dr. Larson: Yeah, I think if we vote to approve the application we have that covered.

Mr. Apicella: Alright. Thank you.

Dr. Larson: Okay Mr. Davis, are you good with these conditions on your motion?

Mr. Davis: I am.

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

Mr. Poss: I second the motion.

Dr. Larson: Any other discussion?

Mr. Ingalls: Mr. Chairman, I am inclined to oppose the motion because I still think that Special Exceptions, especially within residential or agricultural areas should have an expiration date. I think if it were a real business in a commercial area, and we were doing some type of real commercial Special Exception, maybe that is not appropriate. But in a residential area, where we don't know what things are and things are going to change. To make a piece of property forever and ever and ever a licenses transfer home business in that piece of property forever, just bothers me. Therefore I am probably going to oppose the motion.

Dr. Larson: Any other discussion? I am inclined to agree with you Mr. Ingalls. And with that I will oppose the motion as well, based on that. Any other discussion?

Mr. Davis: Yes.

(Alarm went off)

Mr. Poss: It's an Amber Alert.

Dr. Larson: That does not get silenced, does it? Mr. Davis did you have something?

Mr. Davis: I think at this point it's uncalled for that we would put an obligation, such as this on this one client. We have not done it in the past. I don't see any need for it. At one time we could do it by name, and for some reason the code was changed, and probably for a good reason, so that the applicants did not have to come back every 3 years or 6 years or whatever. I will continue to support the motion.

Mr. Poss: Mr. Chairman, I will continue to support also.

Dr. Larson: Very well. I will call for the vote, those in favor of the motion say aye.

Mr. Grimes: Aye.

Mr. Poss: Aye.

Mr. Davis: Aye.

Mr. Apicella: Aye.

Dr. Larson: Those opposed?

Mr. Ingalls: Nay.

Dr. Larson: Nay. Okay so it passes 4 to 2.

Mr. Ingalls: Mr. Chairman, I was not against this applicant. This is probably the best applicant we have had for one of these things to come through and have to not support him, I am sorry… but.

Dr. Larson: I agree, I just happen to agree with Mr. Ingalls that forever is a long time. Will the Secretary read the next case?

2. A14-06/ZON14150363 – H. Clark Leming, Agent for Michael Littlefield - Per Stafford County Code, Section 28-349, "Appeals to board generally," the applicant is challenging the issuance of building permit application number 1402352. The building permit was issued for Assessor's Parcel 54J-1J1-6A, located at 20 Wakefield Avenue within the Ferry Farm Subdivision.

Mrs. Musante: Case A14-06/ZON14150363. Applicant H. Clark Leming, Agent for Michael Littlefield. Per Stafford County Code, Section 28-349, "Appeals to the board generally," the applicant is challenging the issuance of building permit application number 1402352. The building permit was issued for Assessor's Parcel 54J-1J1-6A, located at 20 Wakefield Avenue within the Ferry Farm Subdivision. You have the application, the owner's consent form, deed with plat incorporated 1953, plat dated June 13, 2014 and a copy of building permit application. Home Investors of America Inc. purchased the subject lot and the adjacent property in 2012. They sold the adjacent property and submitted a building permit for a single-family dwelling on the lot on June 5, 2014. Staff received comments from adjacent property owners stating that the lot did not comply with the restrictive covenants or the zoning regulations for the zoning district. Because of this, they did not think it could be built on. At a May, 2014 meeting with the neighbors, County staff explained that the lot was created in 1953 before the adoption of the Subdivision Ordinance in 1962 or the Zoning Ordinance in 1964. Because the lot was a lot of record prior to the adoption of the Subdivision Ordinance, the Ordinance did

not apply to it. The neighbors were also advised that the County does not have the authority to enforce restrictive covenants in general, including these covenants. The enforcement of restrictive convents is a private legal matter between the private parties involved, the owners of the property subject to the document, not the County. This particular restrictive covenant expired in 1980. Therefore, since the lot was a lot of record, a dwelling could be built on it if constructed in compliance with all the applicable County regulations. The applicant, an adjacent property owner, appealed the issuance of the building permit and submitted that the plat included in the building permit was incorrect. Staff response to appeal justification, this appeal is not properly before the Board of Zoning Appeals because the BZA does not have the authority to hear, consider, and decide the merits of this appeal. The applicant is challenging the issuance of a building permit. This appeal should have been filed with the Board of Building Code Appeals, not the Board of Zoning Appeals. The applicant wrongly claims the Board of Zoning Appeals has the authority to review this matter of whether or not a building permit should be issued. The Board of Building Code Appeals, not the BZA, has the legal authority and is the proper body to hear, consider, and decide an appeal of the issuance of a building permit. According to the Zoning Ordinance, the Board of Zoning Appeals can hear appeals from any orders, requirements, or decisions in the administration or enforcement of this chapter, which is Chapter 28. Section 28-349 Appeals to board generally (a) The board of zoning appeals shall shear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this chapter. The County's building official, not the Zoning Administrator, issued the building permit. The Zoning Ordinance does not provide for the issuance of a building permit. The purpose of Chapter 28 is to promote the health, safety, and general welfare of the residents of Stafford County, Virginia, by ensuring that no building structure or land within the County be used, erected, changed in use developed, or occupied except in accordance with the regulation specified in this chapter. The Zoning Administrator reviewed the building permit application under the Zoning Ordinance, not the Virginia Uniform Statewide Building Code. The County's building official, not the Zoning Administrator, is responsible for the issuance of building permits under the Virginia Uniform Statewide Building Code. 13VAC5-63-100, 110 Permits. Section 101.1 Approval and issuance of permits. The building official shall examine or cause to be examined all application for permits or amendments to such application within a reasonable time after filing. If the application complies with the applicable requirement of this code, a permit shall be issued as soon as possible. The applicant is really challenging the issuance of the building permit, not the zoning review. The applicant cannot challenge one part of the building permit review process, rather than follow the proper process for challenging the issuance of a building permit, which is to appeal it to the Building Code Appeals Board. Otherwise, it would allow a party challenging the issuance of a building permit to challenge it before the BZA and the Building Code Appeals Board, in addition to being the incorrect appeals process. Therefore, the issuance of a building permit is not within the authority of the Zoning Ordinance. The Board of Zoning Appeals should not hear, consider, or decide the merits of this appeal because it is not within its authority to do so. Assuming that the BZA decides to hear and consider the merits of this appeal, staff's zoning review of Permit 1402352 was proper and correct. Staff's response to the merits of this appeal should not be considered a waiver of its position that the BZA should not hear or consider the merits of this appeal because it is not properly before it. The applicant is incorrect that staff's zoning review was erroneous. Assessor's Parcel 54J-1J1-6A was created in 1953 prior to the County's adoption of the Subdivision Ordinance and Zoning Ordinance. The Subdivision Ordinance was adopted in 1962 and the Zoning Ordinance was adopted in 1964. The County's Subdivision agent stated that the lot was a lot of record. It was created prior to County subdivision regulations, and was recorded with a deed and plat in the Clerk's Office. At the time it was created, the lot was subject to restrictive covenants, but the County does not have authority to enforce these covenants, or restrictive covenants in general. Restrictive convents are enforced by the owners of the property subject to the document. This particular covenant expired in 1980. Therefore, since the lot was a lot of record as determined by the Subdivision

agent, it could be built on if compliant with all the applicable County regulations could be met. Once a lot is determined to be a lot of record, and created prior to adoption of regulating ordinance within the jurisdiction, it is thought to be lawful. The Section 28-275 of the Zoning Ordinance addresses lawfully-created lots that do not comply with the current standards of development. A lawful nonconforming lot or parcel which does not meet the requirements of minimum lot width or area or both, may be utilized for a permitted use subject to the provision of this article, provided the yard and setback dimensions and other requirements shall conform to the regulations for the district on which the lot is located. Variance of yard and setback requirements shall be obtained only through the board of zoning appeals. This lot does not meet the current lot width requirement, but the structure proposed to be built on the lot meets the current yard and setback requirements for the zoning district in addition to the other applicable regulations of the district. Therefore it can be utilized for a permitted use in the zoning district. Assuming that the BZA decides to hear and consider the merits of this appeal, staff's zoning review of Permit 1402352 was proper and correct. Staff's response to the merits of this appeal should not be considered a waiver of its position that the BZA should not hear or consider the merits of this appeal because it is not properly before it. The applicant claims that the plat included in the application is inaccurate. The applicant is incorrect. Staff verified with the surveyor that the plat and boundary information is accurate and correct. According to the plat incorporated in the deed, which was part of the application, the bearings and dimensions of the front property line are north 29 degrees 30 feet west, 42.4 feet in length and north 37 degrees 22 feet west, 4.4 length as shown on the property line adjacent to Wakefield Avenue. The one dimension is written along the side property line. The two dimensions provide 46.8 feet of frontage. The survey included in the application package shows north 35 degrees 36 feet 40 inches west 7.6 feet and north 29 degrees 7 feet 29 inches west 40.19 feet for a total of 47.83 feet, which is a difference of 1.03 feet. Based on this difference, staff met with the surveyor who did the survey, dated August 29, 2012. The surveyor stated that the three property pins, two in the front of the property, one being a pinch pipe which is original, and one pin in the rear. The measurements were taken from the descriptions on the plat incorporated in the deed. The surveyor stated the difference in the measurements is due to the quality of equipment used in the past compared to today. The new equipment is more precise and accurate. Since the property pins were found, the actual boundary lines were not moved, the dimensions within the pins were calculated more precisely, and thus the difference in measurements. Staff is relying on the knowledge, training and requirements of licensing for a surveyor in the Commonwealth of Virginia that the survey is accurate.

Dr. Larson: Thank you Melody. Before I open the public hearing in this case, the BZA needs to decide whether we will consider the case. We have heard from staff and they clearly do not think that this is within the BZAs jurisdiction. So the only discussion that will happen right now is between the members of the Board and the staff. So I open the discussion to the Board.

Mr. Ingalls: I would like to have a question or two for the staff.

Dr. Larson: Go ahead.

Mr. Ingalls: Who determined what the zoning of this piece of property was?

Mrs. Musante: Mr. Ingalls, I am going to direct your questions all to Mr. Harvey. He will be answering the questions on this case.

Mr. Ingalls: Okay.

Mr. Harvey: Mr. Ingalls that was reviewed as part of the application for the building permit. One of the standard practices is to review the zoning of the property and verify what was put in the application

complies with requirements shown on the zoning map.

Mr. Ingalls: So who is that? I mean is that zoning?

Mr. Harvey: That is the zoning staff within our department.

Mr. Ingalls: They introduced you as your department of something and zoning.

Mr. Harvey: Planning and zoning, yes sir.

Mr. Ingalls: So zoning made a determination of what the zone was. This was a R-1 zone?

Mr. Harvey: R-1, that is correct.

Mr. Ingalls: And who determined that this was a lawful non-conforming lot?

Mr. Harvey: That was through discussion with myself acting as the subdivision agent. As indicated in the staff report. It was noted that this lot was created before the County had adopted subdivision regulations or zoning regulations. Subdivision regulations was the key in that discussion in that it was a lot of record prior to adoption of the Subdivision Ordinance.

Mr. Ingalls: Who determined what the setbacks were?

Mr. Harvey: Setbacks are required as part of the Zoning Ordinance as we exist today.

Mr. Ingalls: Do you have two or three hats you are wearing when you do these reviews? This time I am going to wear a zoning hat, then I am going to wear a planning hat and figure out what…

Mr. Harvey: Mr. Ingalls, in the case of again reviewing the building permit, a zoning technician usually does that extent of review and consults with the Zoning Administrator if there are any questions as far as compliance with the Zoning Ordinance.

Mr. Ingalls: So, it is a zoning function to answer the question that I just asked you?

Mr. Harvey: Related to the setbacks and the zoning of the property. With regard to whether it is a lot of record or not, that would be sent over to the subdivision agent, which I acted in that capacity.

Mr. Ingalls: So none of those things are a function of the building department.

Mr. Harvey: No sir.

Mr. Ingalls: The building department really, their bible is the Virginia Statewide Building Code or something like that. Is that correct?

Mr. Harvey: Yes.

Mr. Ingalls: Plus whatever other county ordinances we have. The Building Official, he has no, I would not say no knowledge, but he has knowledge of… cursory knowledge of zoning and stull like that. But he was not empowered to make determinations on zoning issues.

Mr. Harvey: That is correct.

Mr. Ingalls: Okay, thank you.

Mr. Apicella: Mr. Chairman.

Dr. Larson: Yes.

Mr. Apicella: So at some point during the review process Chapter 20… whether as the subdivision agent or as part of the zoning review, Chapter 28 was reviewed and considered as part of the building permit process in this case?

Mr. Harvey: Correct, yes.

Mr. Apicella: Mr. Chairman, I would just read part of the staff report again. It says the… under section 28-349, appeals to the Board generally. The Board of Zoning Appeals shall hear and decide appeals from any order, requirement, decision or determination made by an administrative officer, presumably Jeff and/or zoning staff are administrative officers, in the administration or enforcement of this chapter, which is Chapter 28. So it seems to me that… and I appreciate staff's perspective here, the building permit in my view was the trigger mechanism that would allow the applicant to appeal the decision, but at some point during this process, as Mr. Harvey just indicated, Chapter 28 was considered. And a lot determination was made under his or his staff's authority. So in my view, I think it… this matter is properly before the Board of Zoning Appeals. Just one members thoughts.

Dr. Larson: Any other discussion?

Mr. Grimes: I tend to agree with the staff's opinion on this that this is an issue of the building code and the application of the building code when we are reviewing the issue of whether or not a permit can be issued for the lot. This is not a zoning matter as it relates to set backs or the property itself. It's can a building permit be issued? The building code official is responsible for issuing those permits, therefore any appeal of that particular process would have to go through the building code official appeal process first. If that is then… takes the next step, that's when it would come in front of us. So we've got a logical kind of order of process here. You seek a building permit the building permit does touch on zoning, absolutely. There are facets of zoning that are part of that process to make sure that it is in compliance, that it is a lot. But it is the building code official that's issuing the building permit not the zoning office.

Dr. Larson: Mr. Harvey I am assuming that, let me bring this in the form of a question… are there zoning issues for any building permit?

Mr. Harvey: Mr. Chairman, all building permits are reviewed for zoning compliance. In this case we are looking at a new residential home. Sometimes we are looking at additions to buildings, it could be storage tank, a shed or some other things, but all permits have a zoning review. Unless it is strictly dealing with an existing interior renovation or interior permit or permits for something that is on an existing building. Then it would not necessarily come to zoning for those matters.

Dr. Larson: So in theory any building permit… if the BZA interpreted that a building permit was touched by the zoning administrator and therefore come under our purview, then in theory any building permit would come to this Board or could come to this Board, if we adopted that. Is that correct?

Mr. Harvey: Well Mr. Chairman you would as a Board look at it on a case by case basis, but that could set a precedence for how you would view future cases.

Dr. Larson: Right. Any other questions or discussion on this?

Mr. Ingalls: Would it be a fair statement to say that the Building Official could not issue a building permit on a parcel without approval of a zoning?

Mr. Harvey: Mr. Ingalls, I am not aware of anything in the code to prohibit the Building Official from issuing a permit without compliance with the Zoning Ordinance. But it would be certainly bad practice for that to happen. Similarly there are other codes that apply like the Utilities Ordinance and other things. So the Building Official is relying on the staff from various departments to determine whether or not it complies with the County Code.

Mr. Ingalls: I guess when I think of the Building Official and the Building Department, I think of structures, I think of, you know, is the footing designed correctly, is the flooring joist the same size as it should be, is the roof joist the same size, does the electrical meet the standards, the plumbing meet the standards? He is depending on somebody to tell him some of these other issues, and zoning isn't all of them, you know that. There's a lot of department putting input, you know, into this little site plan that is for this particular lot. There is a lot of people, I am sure erosion control gets involved and stuff like that. All of them get involved and the issuing of the building permit is just a final step after all these other issues are resolved. Would that be a fair statement?

Mr. Harvey: Yes it would.

Mr. Ingalls: Thank you.

Mr. Apicella: Mr. Chairman, back to my original point in the context of what is in front of us, the question is, and maybe not as artfully put forward in the application as it could have been, but the question is whether or not parcel number 54J-1J1-6A is in fact a lot, okay and that decision is made by again, Mr. Harvey and whether or not Section 28-275(a) was properly applied in this case, again both falling under the jurisdiction of Mr. Harvey and his role as Planning and Zoning Administrator. So I see that they're… I understand the concern that they're… someone might think there might be some precedence here, but the bottom line and core issue is whether or not a determination was properly made that this particular parcel is in fact a lot. That is not a decision that is made by the Building Official, it's a decision that's rendered by Mr. Harvey and that's the distinction here. And that is ultimately what the applicant is challenging, whether or not this is in fact a lot that can be built upon.

Dr. Larson: Any other discussion? Yeah, I agree that the appeal… the appeal says they are challenging the issuance of a building permit. But the basis of the challenge of the building permit is whether or not it is a buildable lot or a lot period. In other words a lot, and that determination has a basis in whether the lot is nonconforming or not and that would be a zoning issue. Is there any other discussion on this?

Mr. Ingalls: Mr. Chairman, based on my review and I think I have the same view that Steve has. The issuance of the building permit is what triggered the appeal. I mean, I don't know what you would have appealed with this lot just setting out there. I mean would anybody have appealed whether it's a… they could have I… I don't know. Whether that's a buildable lot and tried to solve it before it got that far, but the issuance of the building permit was the trigger. And like I say, the Building Official, he cannot approve, I don't think he ever would, like Jeff said whether there is a law that says he really can't. I guess he could always issue it in error and issue it if he really wanted to. But he can't really break County Code. If zoning has not approved it he cannot issue a building permit. And I think that is what we are saying, I think that is the applicant's… part of the applicant's, not all of his, but part of the applicant's appeal is that they made a decision. The zoning made a decision and that's… I say sending this to the building… I don't know what the building, whatever they call themselves, they are going to go around in circles worse than we are. I mean they are going to say well wait a minute, what's this got to do with us? We are here to determine things about buildings, we are not here to determine this. That's a zoning issue, go back to them. And it would be right back here before long. So I think we

are… it's in the right park right now.

Dr. Larson: Any other discussion? Would somebody like to make a motion?

Mr. Apicella: I make a motion, Mr. Chairman, that this matter is properly before the BZA and that we adjudicate it appropriately.

Dr. Larson: Is there a second?

Mr. Ingalls: I will second it.

Dr. Larson: Those in favor say aye.

Mr. Ingalls: Aye.

Mr. Poss: Aye.

Mr. Apicella: Aye.

Dr. Larson: Aye. Any opposed?

Mr. Davis: Nay.

Mr. Grimes: Nay.

Dr. Larson: Two opposed. Motion passes 4 to 2. So we will consider this case. Thank you ladies and gentlemen for going through that. Are there any further questions for staff?

Mr. Apicella: Mr. Chairman, as you may know I asked a number of questions to try to understand whether or not this matter was properly before us and how it was ultimately adjudicated. And if you don't mind I would like to kind of go through the questions and answers. What I will do is I will basically ask the question that I asked and I can either summarize or I can ask the staff to summarize, whichever the Board thinks is appropriate.

Dr. Larson: I think that is a good idea, proceed.

Mr. Apicella: Mr. Chairman, my first question was basically asking what the role of the Zoning Administrator and staff is in this particular kind of a matter and determining if a parcel can be built upon or in the issuance of a building permit and who makes the final call on behalf of the County as to whether or not specific parcel meets the minimum requirements, whether that is the Zoning Administrator, the Building Official or some other County official.

Mrs. Musante: The answer to that is the subdivision agent, the Planning and Zoning Director, Jeff Harvey, determines if a piece of land is a lot. This piece of land was recorded as a lot in 1953 as stated in the staff report. Because the lot was recorded, the subdivision agent determined it was a lot of record. Therefore, since the lot was a lot of record as determined by the subdivision agent, it could be built on if compliance with all the applicable county regulation could be met. Section 28-275 outlines requirements for a nonconforming lot, if it does not meet the lot width or area or both, but can comply with other regulations such as setbacks and open space, it may be able to be built on. This is all part of a review for a building permit. The issuance is done by the Building Official or agent.

Mr. Apicella: Thank you. My next question was really about what the specific requirements are for setbacks etcetera on an R-1 zoning district lot.

Mrs. Musante: The setbacks for R-1, the front is thirty feet, its ten feet on each side and 35 feet from the rear. There is an open space requirement of 50 percent and a lot width requirement of 80 percent.

Dr. Larson: Those are the current requirements?

Mrs. Musante: I am sorry?

Dr. Larson: Those are the current requirements?

Mrs. Musante: These are current requirements.

Mr. Apicella: Mr. Chairman, my third question was really speaking to how the county determined that this particular parcel met the size requirements for a lot in this case.

Mrs. Musante: We relied on the expertise of the licensed surveyor which include the requirements of licensing for a surveyor in the Commonwealth of Virginia that the surveyor is accurate.

Mr. Apicella: I am sorry to be redundant I believe that staff responded to this question in their staff report. But just again to clarify for parcels that were in existence prior to the establishment of the first county subdivision ordinance in 1962 and the first zoning ordinance in 1964, what criteria is applied in determining if such lots or parcels, which are now nonconforming based on current subdivision and zoning ordinances, may be built upon?

Mrs. Musante: That is Section 28-275(a) of the Zoning Ordinance.

Mr. Apicella: And as you indicated that was applied in this case?

Mrs. Musante: Correct.

Mr. Apicella: I did have some questions about clarifying which lot was 6A and 6B, but that is not really… I mean we have a specific lot that we are looking at here. The other question I asked was about, there continues to be a dispute about the boundaries… the boundary lines of this lot. But ultimately I think… and I think I am answering the question, so staff can correct me if I am wrong… ultimately if the applicant thinks there is an issue with the boundaries, we have a survey in front of us, we… I don't want to say entitled, but we can go ahead a look at that survey as being right and appropriate. You have asked questions about the accuracy of it and why it's different than previous surveys. And so if there continues to be a dispute about the boundaries, that is something the applicant can pursue outside of the BZA in court. That's a private, private matter rather than being a matter in front of us since we have a proper survey in front of us tonight.

Mrs. Musante: That is correct.

Mr. Apicella: Thank you.

Dr. Larson: Thank you Mr. Apicella. I will now open the public hearing. Will the applicant or his or her representative please come forward to present their case?

Mr. Basanti: Good evening, I am Peter Basanti. I am representing the applicant. I did prepare a PowerPoint actually. You managed to steal a lot of my thunder because a lot of it was related to jurisdiction. I can move forward, I am not actually sure how to turn this on. I am just going to skip through the first, I think it might be the first 3 or 4 slides because that all relates to the jurisdictional issue that's just been decided.

Mr. Harvey: Ms. Knighting…

Mr. Basanti: Okay, I got it. Okay, yeah, there you go, okay. Now the one thing I would note with respect to jurisdiction is that this appeal is precautionary in nature as you are probably aware, actually I believe there was a vote to defer because we have sought an official zoning determination under County Code as to whether or not this is a buildable lot under County Code Chapter 28. I believe the Zoning Administrator, Mrs. Blackburn, is looking through that now. There has not been a determination but there is a possibility that, you know if she does decide that it is in fact a buildable lot, we will be here before you guys on this exact same issue in a month or two. The main reason we appealed here is obviously we feel as a party aggrieved, Mr. Littlefield is an adjacent property owner. He owns lot 6A, within Ferry Farms and also lot 5 within Ferry Farms. I believe we are a person aggrieved by the Zoning Determination that was in connection with the building permit issuance. So we filed our appeal pursuant to Virginia Code and have we had not done so it was a possibility that the permit holder could have alleged that we had waived our right to appear before you. So that is the only thing I have to say with respect to jurisdiction. In terms of the merits, as we know what we have here is, we've got a subdivision that was created in 1947, Ferry Farms. There is a plat and a dedication, this was not approved by the County because as we have established there was no Subdivision Ordinance at the time. There were however restrictive covenants. Covenant 4 read that the lots in the subdivision, as plated and recorded, shall not be subdivided in any manner. Covenant 8, while we discussed at length here that it is not the responsibility of the County to enforce restrictive covenants, at this time these were the plat restrictions and these were the only governing standards within this subdivision. And covenant 8 establishes that it is enforceable by any person aggrieved. It actually establishes that it was enforceable at law with damages or in equity. So, technically the County could have proceeded under that section if it had determined it was aggrieved. Moving on to 1953, when the lot, I am using that term loosely, was actually subdivided. Again, it was not approved, it lopped off lot 6 within Ferry Farms and created essentially 2 lots, 6A and 6B, and also gave lots to lot 5 and lot 7. Now this is recorded in Deed Book 82, Page 225. There is no survey but there is a sketch of what they did and in the actual document, the recorded document they do reference the restrictive covenants and then they go ahead and expressly violate them. So again at this time in 1953 this was not approved by the County, this is not something that there was an Ordinance that governed, so again what governed was the plat restrictions of the 1947 plat and it violated them pretty expressly. The one other thing I'd note was there was another covenant in the 1947 plat which actually established a 15 foot setback to adjacent lots. Now technically that wasn't violated here, but as a practical matter it rendered this lot unbuildable because the lot, as we discussed, is somewhere between 42 and 48 feet in width, which would mean that you could get a 12 to 18 foot wide house on the lot, which is pretty much impossible to do. It looks like the Commissioner of the Revenue understood this for decades and had actually accessed this lot and continues to access this lot as unbuildable. I do have a copy of the latest tax assessment which does establish… it provides that this lot was assessed at $5,000 and is currently unbuildable. Now the 1947 Ferry Farm Subdivision Plat and it Restrictive Covenants did expire in 1980. However, at that point we had a Zoning Ordinance in place and that was established in 1963 and this was still a R-1 lot and it still required under that Zoning Ordinance a minimum lot width of 80 feet. And again, regardless of whether or not you are looking at what is on record or what they submitted with the building permit application, we are not even close to 80 feet. Also at that time we had a Subdivision Ordinance that was established in 1973. This violated

that subdivision ordinance because that ordinance prohibited remnants of lots, which essentially meant if you subdivided and the lot didn't meet the size requirements. You would now have to add that to another lot as opposed to having it stand alone as its own unbuildable lot. That never happened in this case. And now, under Section 28-25, we do have a definition of a buildable lot. And what we have is says it's a lot that's lawfully buildable and duly recorded, and it either complies with the requirements… every requirement of the county's subdivision regulations at the time or every current requirement of the county zoning ordinance. Now as I have mentioned before this was not a lawfully recorded and created lot because it was recorded and created in direct contravention of the plat restrictions that created the original lot that was subdivided. And in 1980, yes those restrictions expired, but it wasn't even close to meeting the minimum width requirements of the affective zoning ordinance or… and it also expressly violated the remnant requirements of the subdivision ordinance. With respect to today's standards it does not meet the minimum width requirement for lots within the R-1 zoning district, which continues to be 80 feet for conventional subdivisions, 60 for cluster. So what we have here is a lot that was never lawful, so it could therefore never be lawfully non-conforming. So under 28-275(a), I don't know how the County can make a determination that this was ever lawful when it violated plat restrictions at the time of its origin and it has violated every single subsequent ordinance after those plat restrictions expired. It also… 28-275(b) is also no applicable because what we are doing is creating a new non-conformity. This has never been determined to be a buildable lot. It has never been built upon and it's been taxed as an unbuildable lot since its inception. Now, by essentially approving the zoning and allowing the issuance of a building permit, we have now created a new non-conformity on this lot, because again it does not meet the Zoning Ordinance requirements for the R-1 district. And really what we have here is a buyer beware situation. We all know Virginia is a buyer beware state, you've got existential diligence and we've got red flags all over the place here from the tax records, you know determining this is a non-buildable lot, the County Ordinances that it clearly doesn't meet, the Subdivision Ordinance it doesn't meet and in fact the record in the Circuit Court land records, which show that this was actually recorded and subdivided in contravention of the restrictions. There are other lots within Ferry Farms. Mr. Littlefield has one, its lot 6A, the adjacent lot which is still considered unbuildable for tax assessment purposes. I don't… I got that information second hand, there are other people here that could speak to what other lots may be out there within this subdivision that are still considered to be unbuildable. That is all I have.

Dr. Larson: Thank you Mr. Basanti. Are there any questions for the applicant?

Mr. Ingalls: Do you realize that any of these lots created prior to the subdivision and zoning ordinance. Which Ferry Farms was one of the first, probably one of the first biggest subdivisions around. We also have Tyler Town which is down off of Route 3. Which I bet you if I go in and look at that plat there are going 40 and 50 foot lots all through that. I go into Chatham Heights and look at some of those in there, there are going to be some 40s and 50 foot wide lots that were created then. Some of them have houses on them, some of them are vacant still. In fact this Board over the years, I know, in Chatham Heights we have had builders come before us and say I have this lot but it doesn't meet the standards and I need a Variance, they could not meet the setbacks. It just seems to me, and we all know what took place here. Back in 1953, the developer subdivided… he divided it. Evidently somebody said I would like to have half that lot and that is what they did. If you look at the… you said it wasn't a real plat, but it is a plat by R. L. L. Curtis, I believe it is, we called him long leg Curtis when I was in the business. But he did that little plat to subdivide… to change it to 3 half lots and the purpose of it was to give each lot half of that lot 6. And that was the purpose of it. And nobody ever thought of this situation, now days we are not allowed to do that. If we are going to do that, cut a lot in half and give half to half, we have to do what is called a consolidation plat on each side of it so that little parcel is consolidated with a main parcel so that lot goes away. And the County likes that, it gets rid of a house and children. So I guess I

am having a hard time… it's an unfortunate situation, I can understand that. But the legal side of it to me says that maybe this is… yes it was done for a different reason and it sat there and sat there and sat there. If you look at the lot, lot 5 and you look at the house on lot 5, it appears that maybe it has been expanded. I bet the right hand side of that house is if it's not on this property line between 5 and 6A it's over the property line. So when they go to sell that house one of the first things… if it's a good land use attorney on the buyer's side, he is going to say listen you've got to clean this up. You are going to have to consolidate 5 and 6A to be able to sell that house with a clean bill of health. Because right now I know it's in violation of the setback line on 5 because it's so close to 6A line, just by looking at it. If you look at the aerial photo that they gave up with the property lines on it you will see that that house is pretty close to the line. So they are not going to be able to subdivide that lot. They are not going to be able to build on their portion because their house is encroaching on it almost, if not. So they are going to need that lot to make their house legal. You have to be care…. the house on the right for some reason, they held it 10 or 15 feet off of the… on number 7. They held it 10 or 15 feet off, they did not utilize their portion of that half lot for some reason. And luckily so, I guess, for whoever had it. But it's just… I am having a hard time comprehending how we are going to treat all these lots that are still less than 80 feet that was created prior to the subdivision and zoning ordinance unbuildable. They are not unbuildable.

Mr. Basanti: Well I don't… I think the case here is distinguishable from just saying anything that predated the Zoning Ordinance. I wouldn't go as far as making that blanket statement, that anything that predates the Zoning Ordinance is unbuildable. Obviously that… I mean that would… there would be a lot of property rights that would have transgressed if that were set. But I think here what distinguishes this case is that the actual record plat violated the plat of record that established the lot to be subdivided to begin with. And we didn't have standards. I understand the County doesn't enforce plat restrictions, but the only governing restrictions at the time were these, the ones that were on record. And I don't know how a lot can be determined to be lawful when it was by the express terms of its creating document and no other guidance or standards from the county or no other approvals of the county happened. It's in violation of the covenants, there are no approvals, I don't know how it can be determined to be lawful in that circumstance.

Dr. Larson: So when you say in violation of the law or something at the time, you are referring to the covenants that are… okay. I had a question in that regard, so it's a good lead in. The referenced covenants, was there ever a challenge based on the covenants for the division of the lot?

Mr. Basanti: Not to my knowledge.

Dr. Larson: And then you mentioned violation of the subdivision ordinance, it was also in violation later on of a subdivision ordinance. Was there ever a challenge based on the subdivision ordinance of the division of the lot?

Mr. Basanti: Not to my knowledge.

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

Mr. Apicella: Mr. Chairman, I am sorry to be redundant and in some ways this question has been asked and answered. But I am going reiterate it because it's the sole point that the applicant is resting on. So on page 4 of 7 of the staff report, it says Assessor's Parcel 15J-1J1-6A was created in 1953 prior to the County's adoption of the Subdivision and Zoning Ordinance. The Subdivision Ordinance was adopted in 1962, the Zoning Ordinance was adopted in 1964, the county subdivision agent stated that the lot was

a lot of record, it was created prior to the County Subdivision regulations and was recorded with a deed and plat in the Clerk's Office. At the time it was created the lot was subject to restrictive covenants but the County does not have authority to enforce these covenants or restrictive covenants in general. Restrictive covenants are enforced by owners of the property subject to the document. The particular covenant expired in 1980, therefore since the lot was a lot of record as determined by the subdivision agent it can be built on if in compliance with all the other applicable County regulations could be met. I still have not heard from the applicant why that statement or this paragraph is in error. I can understand that you are trying to grapple or trying to somehow use covenants as your rational, but you… I am not convinced, I have not yet been convinced why it is our responsibility to take these covenants into consideration in making a determination here. In fact I think you, in an earlier response, said it's not. You agree that it's not the county's responsibility to enforce covenants in the plat or not in the plat. And if that is the basis for your request, again I don't see how we can use your thought process here because it is not germane. It is not appropriate.

Mr. Basanti: Well I think it goes back to what is lawful and what isn't. Here there were no ordinances in place, I understand, but the only governing standards that are enforceable, and they were enforceable at law, whether or not they were enforced, I know there were zoning violations that go on all the time, that doesn't make them lawful. And in this case, whether or not there were challenges, obviously express in the recorded document that created this lot prior to subdivision and the subdivided lots were subject to, said that you are in express violation by doing this and any aggrieved party can come after you, which makes it unlawful.

Dr. Larson: Can I say something here? I was the president of the Park Ridge Home Owners Association for 5 years, so I have some background in this. The covenants in our case were written by the builder. So builder came up with the first set of covenants which included if you want to change these covenants, you have to have a humongous amount of people agree, something like 80 or 90 percent, to change anything. So it is enforceable at law, because when you buy a house in the Park Ridge Association you sign a document you agree to those covenants. So when you violate the covenants the Home Owners Association can say "Aha, you just violated what is essentially a contract between you and the Home Owners Association." Then they can take you to Court and probably win, if you're violating a covenant. That's not a law of the County, like the Zoning Ordinance. They're not the same thing. That's why [I] keep saying here, and you've said it earlier, we don't enforce covenants because they're not our laws. They're sort of a contractual agreement between home owners and the Home Owners Association, which are enforceable at law, but not, it's not a County Ordinance. So what we're struggling with here is an argument based on covenant that is somehow morphing into something with perhaps maybe a little more umph to it, and we're not seeing that argument.

Mr. Basanti: I guess my response would just be, going back to just the term lawful and when we have the covenants that expired, why wouldn't the applicable Zoning and Subdivision Ordinance now kick in? Because, again, we don't have any determination from the County or anything that this was lawful. In fact we've got tax assessments that say this is unlawful. So we actually have a determination, not from the Zoning Administrator, but a determination of unlawfulness in terms of build-ability.

Dr. Larson: Let me ask Mr. Harvey a question, just bear with me for a second, what role does the County Treasurer have in the issuance of building permits?

Mr. Harvey: Mr. Chairman, the Treasurer's Office is involved in collecting fees for building permit applications.

Mr. Apicella: I think he meant the Commissioner of Revenue maybe.

Dr. Larson: I'm sorry, the Commissioner of Revenue. What role does the Commissioner of Revenue have in approving building permits?

Mr. Harvey: Mr. Chairman, they have no role in approving building permits.

Dr. Larson: Thank you.

Mr. Apicella: May I follow up with that, because one of the documents that the applicant circulated was the tax assessment. And I'm glad he did, because I did want to see it, but nonetheless, sort of the same question, in making the tax assessment it's not the same…the Commissioner of Revenue's perspective here on whether or not a lot is buildable is not really within his purview ultimately. Is that a correct statement?

Mr. Harvey: Yes.

Mr. Apicella: Thank you.

Dr. Larson: Well, I think it's within his purview when it comes to determining tax rates, but as far as…I see where you're going, which is the same place I was going, I don't think the Commissioner of Revenue as any authority in a zoning issue. And so his repeated statements that this is a non-buildable lot over the years doesn't really have a lot to do with the Zoning Ordinance. It has to do a lot with how much he charges in taxes, if I'm understanding this correctly.

Mr. Apicella: And ultimately once…if and once it's build upon, will be assessed at the market value or the assess value of the lot with a…an approved lot with a house on it. Again, the bottom line is, I think, we're kind of in the same mind set, that irrespective of what the tax assessment was and what the tax assessment document says about whether a lot is or is not unbuildable has no bearing on whether or not the Zoning Administrator ultimately determines whether a lot is or is not buildable based upon the Zoning Ordinance.

Mr. Basanti: I think more of the reason why I brought up the tax assessments is going back to the point that there was never a determination as to lawfulness or the build-ability of this lot between 1947 and now from the County, except for by the Commissioner of the Revenue and that goes back to the argument that I'm not sure how you can determine this to be lawful.

Mr. Apicella: Sorry, I disagree with you about whether it was lawful or not lawful. Again, it was recorded as a lot back in the 1950s and that was not appealed at that point in time. I don't know what the appeal process was, but at that point in time, this parcel was recorded as a lot and the Zoning Administrator or the Zoning staff reiterated that determination again during the building permit review process. The covenants you keep speaking to, you said it over and over again, have no bearing in this matter, whether they were put on the plat or not put on the plat, whether they expired in the past or whether they were still in place today, it's not a…in my view…it's not a material fact. We can keep talking about it, we can keep saying this parcel is unlawful, because it didn't meet the covenant requirements, but, again, I'm not convinced. I don't see where it has any bearing in this matter and I don't feel like I've not yet been persuaded otherwise.

Dr. Larson: Are there any other questions for the applicant? Thank you, Mr. Basanti.

Mr. Basanti: Can I just bring one thing to your attention?

Dr. Larson: Yes.

Mr. Basanti: This just goes back to the issue of the remnants of lots, and this is from the Ordinance that was in effect when the covenants did expire. It says: All remnants of lots and outlots below the minimum size remaining after subdividing a tract, must be added to adjacent lots, rather than allow to remain as unbuildable parcels. Now I don't recall in this Ordinance any lawful non-conforming use standards, so I'm wondering how this was lawful under the governing ordinance at the time the restrictions expired.

Dr. Larson: What you just read, you're calling it an ordinance. Was it a covenant?

Mr. Basanti: No, this is the Zoning Ordinance.

Dr. Larson: When is that dated?

Mr. Basanti: 1973. This was in effect when the restricted covenant had expired in 73.

Dr. Larson: 73. Okay. Any other questions for the applicant? Okay, thank you, Mr. Basanti. Any member of the public who wishes to speak in support of the application, please come forward. What that means is, that you support challenging the issuance of a building permit.

Ms. Wright: Good evening, my name is Robin Wright. I was raised in Ferry Farm and I still have family and friends in Ferry Farm to this day. I was surprised to find out that this structure was being built on what has always been considered an unbuildable lot.

Mrs. Musante: Excuse me, Ma'am, can you speak into the microphone please? Thank you.

Ms. Wright: The residents and property owners of Ferry Farm Subdivision respectfully ask you, the Stafford County Board of Zoning Appeals, to preserve this neighborhood by prohibiting the building of homes that have always been considered on lots that have been labeled unbuildable. At this time I want to present a petition signed by 3 home owners and property owners in Ferry Farm Subdivision. 77 residents have signed this petition that I would like to hand in. And I also want to take this time to say thank you very much for your time today.

Dr. Larson: Are there any questions for this witness? Ma'am are you speaking for the 77 members? Are you their representative?

Ms. Wright: Yes. I was given the petition to hand in.

Dr. Larson: Thank you.

Ms. Wright: Thank you.

Dr. Larson: Does any other member wish to speak in support of the application, so that would be against the building permit. Sir? For the applicant would be against the building permit, right, yes.

Mr. Gray: My name is James Gray. My parents built the fourth house in Ferry Farms. I'm 70 years old this New Year's Eve and I've lived in Ferry Farms all my life, except for one or two semesters away at college. I grew up playing softball and basketball on those two lots. One lot belongs to Mr. and Mrs. Sullivan, the other lot belongs to the gentleman whose son was in my class, the class of 62 in Stafford, and they were the original builders at that lot. It was always determined that that was a non-buildable lot. Mrs. Sullivan didn't know it was buildable, or they may have petitioned to build something on it. I think the County is being very unfair and I support all my other neighbors in the fact that this lot is so small. The home to be built on it would be so out of context with the rest of the community. That is just not right. So we appeal to you to help us with this situation. And I have the original covenants with dates and everything, that my parents have received for the establishment of Ferry Farms. And some of the dates are not exactly what I've heard today, but every one of them are in this document if you need it.

Dr. Larson: Thank you, Sir. Any questions for this witness? Would anybody else like to speak against the building permit?

Mr. Vining: Robert Vining, I live right around the corner from Ferry Farm. I've had some questions, basically, come up. I understand non-conforming, I understand that stuff. I build houses, I work Subdivisions, I've been through all these parts and it is my understanding once you start with zoning, you don't get a permit without zoning. It's a small lot. Part of your process this evening was to say that before you get to the permit it's been through all the other processes. We live in Ferry Farm, other people live in Ferry Farm, it's a subdivision in name only, not in modern parlance. A subdivision in modern parlance has swales, stormwater management. Ferry Farm has motes, Ferry Farm has large ditches, motes. Anybody who's uphill wins. People on the bottom, make sure you clean your ditches out when it rains. This is not a good neighborhood for rain water. This lot now has a house on it, foundation is in, that sits, oh I don't know, 4 feet above the house beside it and has 10 foot wide side yard. It probably has more roof area and siding area than the lot itself and I'm curious as to how you get a building permit, when…what are you doing for storm management. There's not even a ditch in front of the house. If the modern subdivision law applies, where is the curb and gutter and the apron? Where does his runoff go? There is no place to put it on site. There's not a swale. There's not an indentation. It is one more big piece of runoff in a neighborhood that doesn't need it on an intersection, on a corner with ditches that water will stand 6, 8, 10 inches deep on a good rainy day. So if all the parts were met, if R-1 requires 80 feet, how is this 40 feet without a hearing? If all these things, Chesapeake Bay Water Act, all the things that are in modern parlance for modern subdivisions are now what govern what can be built were in fact met, checked off, dotted, where is this rainwater going? Where is the roof water going? Where is this going to…this thing's 40 feet wide. The house is 20-something. There is not much room for any of this. It's a bad precedent to see happen in a neighborhood. Infill at its worst in my humble opinion. But really, where is this stuff going to go? What has been addressed in this process that would allow this house to be built? I couldn't go in and build a lot. I mean that's just…you can't do it. Where is that stuff going? I'm very, very curious how you can get from that initial zoning request and get to this point. And the people who bought the house and flipped the house it's in and kept this lot, knew full well, this would be an interesting process. They started online advertising for a house on this lot as soon as they bought the original space a year and a half ago. They didn't apply for permits till this year. It's dicey, but it got through, but how did it get through. My question why the review needs to happen through zoning, how did you get to a building permit, which is the last phase of this process and not have to address all the concerns I just raised. These are simple things. Where is the water going to go? You're 10 feet from your neighbor's house, 5 feet above now, because we built it up. We've got a nice thing here. What happens to all this stuff? How could this get through the process, all the way to permitting? It just doesn't make sense to me, therefore, I don't think it should be there. It hasn't

addressed, in my mind, any of this. They put a culvert pipe in next to the road, where there's no ditch. So what? It's a culvert pipe that's now full of gravel and it will be full of gravel on both ends. It's not like water coming down the street is going to go through it. There is no ditch. There is no improvement. Ferry Farm also suffers from…1947 was the last time things were improved, shall we say. My water in my house that the County comes and flushes every now and then, I have filters in my house just to keep it clean enough to do laundry. I don't drink it.

Dr. Larson: Excuse me, Sir.

Mr. Vining: So these are infrastructures.

Dr. Larson: I think your time has been expired for a little while. Did you want to sum up?

Mr. Vining: That's just, how did you go through the process? That's why I believe the applicants here and that's why I believe it should not be allowed to happen. It certainly shouldn't happen again.

Dr. Larson: Thank you. Would anybody else from the public like to speak in opposition to the building permit?

Mr. Schultz: Good evening. My name is Werner Schultz. I live just up the street, and I agree fully what the person in front of me said too. There is a big problem in this corner. When we have a long rain the ditch comes almost up, or the water comes up. There is no runoff for this building. Also, I cannot see and I'm just a stupid engineer, but you have houses all lengthwise, you put one kitty-corner in there, 20 feet wide. You have an ordinance that's 80. I mean, I cannot understand how you even allow something like this. So, from plans which I have seen before of buildings and so forth, they go through a different process. I need a permit if I put a shed down, if I want to put one in my backyard. And here you build a house right in front line, kitty-corner to all the other houses. Have you no feeling what the houses look like? What the people see when they come down the street? You have all the houses this way and one kitty-corner like this. I don't understand that either. Also, all the utilities up there in Ferry Farms are old. They're totally obsolete. My water was brown. For almost three weeks I had water running out of my line. And you build more stuff onto it. From what? It's too high for me to understand. So I definitely say you should think it over and don't approve that plan for that building. Thank you.

Dr. Larson: Questions for this witness? Thank you, Sir. Any other member wish to speak against a building permit? Seeing none, would any member of the public wish to speak in favor of the building permit?

Mr. Kristopher Angstadt: How you doing? My name is Kristopher Angstadt. I'm the owner of the lot in question at 20 Wakefield Avenue. I've heard all the oppositions that the neighbors have brought up. You all have made a great point. At the end of the day there's covenants in all neighborhoods that can date back 20-30 years. It's what's happening today. It's an infill lot. We do a lot of construction in the city of Fredericksburg. We've been building on these infill lots for many, many years. I've been constructing homes for 15 years and this is exactly the bread and butter that we build on. When this originally, this home originally became for sale and they brought up a good point. The Sullivans actually had the property. It was auctioned off by Nicholls Auction Company as an estate. It was offered as a home and a separate lot at the auction. So I find it questionable why no one realized that this was a buildable lot when it was sold as a buildable lot. And then once we actually bought the property, we renovated the home to the right of it, on lot 7, which is one of the neighbor's concerns now,

but we actually remodeled that home top to bottom and sold it to them. And then, at that point, we put the lot for sale. It was a buildable lot. It was for sale. Actually the neighbor that I sold 22 Wakefield, which is the home to the right, they wanted to buy the property, but they made a very lowball offer and I was unwilling to do that. At that point, I think, things started to unravel. The house was for sale, just like it was for me, they could have come to the auction, you can buy the property, but it is what it is. Today's ordinances, we followed everything, stormwater management. We actually went through a 90 day site plan approval process which is crazy and I wish Steve Hubble was here right now, but he's the Health Department acting Director. And I met with him, I sat down with him, my engineer, the surveyors. We had a heart to heart of what we needed to do. The big issue was, and he told me what it was, it was neighbor opposition. And we addressed so many things that we've never had to do. Super silt fence, swales, carrying the water to the front with a culvert pipe, which they are dressing now. We originally wanted to put, you know, a crock in the back. That was not acceptable. That wasn't going to satisfy the neighbor's issues. So I went back to Steve and I said, Steve, are you pressing me because of the neighbor opposition, or is this something you can ask for. Well, I can ask for it under the ordinance. Is it a normal thing? No. It's because of the neighbor opposition. So there's a little…you know…because we have built many homes, especially in the city. I've renovated at least a dozen homes in Ferry Farms. Those homes in there that look brand new, I've touched most of them. And if nothing else, we're increasing the value in the neighborhood. We're going to make all those other homes, I mean, it's going to be the nicest looking home on the street. Hands down. I mean my touch has been in the one that the neighbors live in right now and obviously loved it enough to buy it, so I appreciate you all are viewing things right now. It is what it is. And again, with the tax record. It doesn't mean anything. I've bought lots in the city that…they're not unbuildable, they're not built. And it keeps the tax assessments low. It keeps the people who own these unbuilt lots happy. You're not going to assess them 50,000 dollars for just a small infill lot, but it doesn't make them unbuildable. We met every ordinance. The permit was issued to me. We started construction. We put footers in the ground. We put walls up. Then all of a sudden an appeal comes up out of nowhere. I have, in a FOIA request, I have 375 pages of complaints that these neighbors have brought to the county. This goes all the way back, and Mr. Harvey can tell you, since…I have one email that came from him February 27 of the beginning of this year questioning the lot. Is it buildable? Is it this? Is it that? Can they build? What are the Ordinances? All these things. Every time the answer was yes, it is buildable as long as they meet today's ordinance. That's the way it has been. We move forward. I've got a stand still job and I never have ever had a permit issued and then get a stop work order, basically, put on something that's been issued with an appeal. Setting a bad precedence in the County of Stafford is when you give someone a permit and then you can turn around and encourage a neighbor to file an appeal because they don't like the color of the siding, or they don't like the color of the roof, or they don't like hip roof. Whatever it is. That's all they're getting here, is neighbor complaint, file the appeal, stop me from building, push me out. That's what this is.

Dr. Larson: Sir? I'm going to give you, tradition to this Board is when we have an opposition, an opposing faction that we give them equal time for the applicant. You have five more minutes if you need it.

Mr. Kristopher Angstadt: Okay, thank you. What I was saying is, that's all it comes down to. And I didn't even know that was even possible to file an appeal for a building permit after it's been issued, just because the neighbor doesn't like it. I haven't violated anything under the County Code. I've gotten all my inspections, my footer inspections, my wall checks, everything is done properly. We've addressed all the drainage issues. We've addressed any building concerns there were. We've also any Zoning questions. These folks have addressed it for the last 8 month, daily in some cases. Like I said, 375 emails, sitting down with Supervisors, these folks, not I, sitting down with Supervisors discussing things

with Mr. Harvey, Mrs. Blackburn. Everybody's been involved in this from day one. It's no surprise to anyone that this is a buildable lot and going off of the fact that maybe in 1954 this is the way it was…my question is, before you go out and retain and attorney to represent you as a neighborhood, why not go get a survey. If you're questioning that the lot that I own I'm saying it's larger than what you say, go get yourself a licensed surveyor, compare the two surveys and let's battle it out. Let's find out why one surveyor is wrong and the other one's right. All the equipment's about the same today. I've had two surveyors look at this property to take care of that issue where they were saying, oh, he's over 4 feet, he's over 5 feet and it just keeps growing. It's like, you know, you go out fishing and you catch a six inch fish and it turns into 3 feet. Now I've heard it's 8 feet that we've taken from the neighbor. It just keeps growing, and growing, and growing. But the reality is, I've had two surveyors go out there, both surveyors determined the same exact dimensions, the same exact measurements. They've gone all the way down the street. We've actually done a lot more…my surveyor's here tonight if you have survey questions, but he's a licensed surveyor, great standing, has done thousands of surveys, been around a long time. It's just…it's almost absurd that I'm even here tonight and to be honest with you, I appreciate you all's time, I think it's a, you know, I think it's really a waste of taxpayer time, waste of you all's time to even be here hearing this at this point, because it just makes no sense. So I do appreciate your time and I don't think there's anything else I can say and I'll be happy to answer any questions if you have any for me.

Dr. Larson: Any questions for this witness?

Mr. Ingalls: I'd just like to make a statement that the reason we're here is, State Law says, you had an appeal…

Mr. Kristopher Angstadt: I understood that after talking to the attorney.

Mr. Ingalls: That's why we're here.

Mr. Kristopher Angstadt: I know.

Mr. Ingalls: You know, that's the reason why everybody is here.

Mr. Kristopher Angstadt: And I'm sorry about that, because…

Mr. Ingalls: State Law allows them to make that appeal.

Mr. Kristopher Angstadt: The only thing I would say is, I think it…something's got to be a trigger in there, because for the fact that I could even file this appeal if I didn't like my neighbor's siding color, in all honesty, you would have to bring that person in here, you'd have to stop them from siding that house on a new construction home, put a stop to them, bring them in here, and you all would have to sit and discuss it, and whether or not you're going to hear it or not is another thing.

Mr. Ingalls: Right.

Dr. Larson: We wouldn't hear that case.

Mr. Kristopher Angstadt: Right, but you could file the appeal and you would stop the builder. That's the law I understand, unless I'm mistaking. But I did check with the attorney. He said, if the appeal was filed it puts a stay to the building permit.

Dr. Larson: If a deferral is granted, then there's a…well, there is an appeal process too that causes the stay, that's true.

Mr. Kristopher Angstadt: Right, so I mean you see how easy that is. It's really deceptive and I went to the Builder's Association, I said, guys, this can happen to any of us. You know, we got a lot of members.

Dr. Larson: Let me just make sure that everybody in the room understands what we're doing here. We're trying to determine whether the Zoning Administrator or any other administrative official in the County has followed the Zoning Ordinance in the application of the laws as they stand with respect to the building permit. That's all we're doing here. We can't adjudicate anything that is considered fair or unfair, we're just following the law.

Mr. Kristopher Angstadt: I understand that.

Dr. Larson: As we understand it.

Mr. Kristopher Angstadt: And it's a lot of record and it has been. It's a by-right lot to build on as long as we meet today's Ordinance and that's exactly what we did. So thank you for your time guys.

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

Mr. Kristopher Angstadt: Thank you.

Dr. Larson: Would anybody else like to speak in support of the building permit?

Mr. Keith Angstadt: Keith Angstadt. Kristopher Angstadt is my son. I'm not associated with the company, with Home Investors, I have no financial bearing into that company whatsoever, however, I am a citizen and a tax payer of Stafford County and this issue, concerning this building, this is scary, ladies and gentlemen. This is a scary situation. I understand the part of the Board of Zoning Appeals and I appreciate that very much, but we're talking about someone that has gone, let's take the steps here, someone that has filed for and has gotten a building permit legally and through the system starts a construction on a house after going through the whole process, drainage and everything else. I've looked at the plans that Kristopher had for this house. The County imposed some serious drainage issues here that he took care of. It cost almost 10,000 dollars more. I heard tonight, one of the witnesses here claiming that there was no drainage situation. There was. It was expensive and guess what, on that particular drawing it says to keep the drainage off the neighbor's property. That's what it was designed for and these folks made sure, going through Stafford County and reading through the documents that Kris was able to obtain through the freedom of information. And that's another thing. The County didn't tell him what was going on. But the County did the right thing, finally tonight we heard the truth and that's what it is. So as a tax payer I'm asking you to certainly deny this request that these people are making and at the same time, you pointed out Taylor Town, Chatham Heights, all these other things. You've got to realize, ladies and gentlemen, what are you doing if you go along with this. Thank you very much.

Dr. Larson: Any questions for this witness? Thank you, Sir. Would anybody else like to speak for the building permit? Okay, seeing none, does the applicant's representative wish to respond to or add any information?

Mr. Basanti: I've got a couple of points here and it goes back to the definition of what is a buildable lot under the Zoning Ordinance and it's essentially a duly recorded lot that's lawfully buildable or which complied with each and every requirement of the County's Subdivision Codes immediately or prior of the effective date of this Chapter. Now, even if one assumes that this was not unlawfully buildable when it violated covenants, when the covenants expired in 1980 we revert to the 1973 Subdivision Ordinance. The Subdivision Ordinance, as I said earlier, there is Section 22-34, which prohibited the type of remnants after subdivision that we have here. There is also a provision that says that if there are two lots that are under separate ownership and are divided, i.e. 6A and 6B in this situation, they shall be transferred to deed to single ownership simultaneously with recording of the final plat for those two lots under single ownership. That, again, never happened here and I think that contravenes the argument that this is a lawful lot of record because we never had the single ownership combined when this ordinance was in effect and it was in effect when this property had been recorded and subdivided into two lots. The other thing I'd like to note, and this was in the presentation earlier, was that we have requested an official zoning determination as to whether or not this constitutes a buildable lot under the zoning ordinance. So we would like to request a continuance here so that this can catch up, or I'm sorry, Ms. Blackburn's zoning determination can catch up with this appeal and we can consolidate it into one. And that's all.

Dr. Larson: Any questions for the witness? So, Mr. Basanti, am I to understand that you're requesting a deferral?

Mr. Basanti: Yes, we're requesting a deferral until we've heard…or determined an official zoning determination as we've applied for that under County Code and it's our understanding that it's in the process right now.

Dr. Larson: And tell me again, what exactly is under consideration by the Zoning Administrator.

Mr. Basanti: Whether or not this meets the definition of a buildable lot under Section 28-25 of the Zoning Ordinance.

Dr. Larson: Thank you. Any other questions? Does staff know the status of the determination just mentioned by the applicant?

Mrs. Musante: The determination came in about the same time as the appeal did. The Zoning Administrator has 90 days to make that determination. The first 30 days we are required by State Code to notify adjacent property owners, then that's when she starts her research, so it's probably going to be mid to late December before she makes that determination. I want to say the deadline is maybe December the 28th for the final determination.

Dr. Larson: Well, I think what we have before us tonight is an appeal as to whether the Zoning Administrator or any other administrative official of the County correctly applied the Zoning Ordinance in issuing the building permit. It sounds almost like the same issue that is being considered by the Zoning Administrator. Can you describe what the differences are? What is she determining that we haven't been discussing tonight?

Mrs. Musante: If you wish I can run up and get the application and basically tell you what the application says. I did not bring it with me. It'll take me two minutes.

Dr. Larson: Let's take a 10 minute recess and please do that.

Recess 02:20:48 – 02:30:05

Dr. Larson: I'll call the meeting back to order. There's been a request for a deferral based on an application that was submitted and the request being that this…the deferral would allow the two issues to catch up with one another since they're related. So I've asked the County staff to get the ["edit" removed] request [for Zoning Administrator determination] in question to read it to see exactly what relation it has to the case at hand. So, staff please.

Mrs. Musante: Mr. Chair, the application came in on September the 24th. It was for a request for a Zoning Administrator's determination on tax map 54J-1J1-6A.

Dr. Larson: Is your microphone on?

Mrs. Musante: It is. The purpose of this letter is to request a Zoning Administrator's determination as to whether Stafford County tax map 54J-1J1-6A constitutes a buildable lot upon which a single family detached dwelling may be constructed. Now I can go…it's four pages, I can read the entire thing maybe.

Dr. Larson: So, can you tell me what the difference is between that and what we're considering now?

Mrs. Musante: Truthfully I think…well, what they had to do is, they had to file the appeal because of the 30 day requirement. So the appeal…

Dr. Larson: This appeal?

Mrs. Musante: Correct. From the date of the issuance of the building permit. So they filed the appeal to stay all action and then submitted this at the same time, so they're basically the same request, but they had to submit the appeal to stay all actions, hoping that we would get this completed, but the Zoning Administrator has 90 days per State Code.

Dr. Larson: Okay, but we're hearing all the evidence now?

Mrs. Musante: Correct.

Dr. Larson: Would the applicant's representative come back to the podium please? Sir, do you have any additional evidence to give us for the appeal that was just read to us.

Mr. Basanti: In terms of documentation, well actually I think you have this, just more thing I'd point out. There's been a lot of references to this being a recorded lot. If you look at the 1953 recordation, this is referred to as a half-lot and it goes back to, and I gave you a copy of this earlier, this is the 1973 Subdivision Ordinance, and it goes back to the issue of if you had half-lots, you would have had to have gotten them under single ownership and had them put together, consolidated, recorded into a final plat, and that was not done here. It's section 22-35 of the 1973 Subdivision Ordinance. It's part of what I gave you earlier. I can give it to you again, and this actually…the actual 1953 conveyance is part of our application, but if you need one other copy I can get that to you too.

Dr. Larson: So is the idea then that, okay, first you're talking about 73 and this lot was divided in 53, right?

Mr. Basanti: 53. What I'm talking about is just what was in effect when these restrictive covenants had expired in 1980.

Dr. Larson: Okay.

Mr. Basanti: And what we're left with is essentially a lot that was illegal under the effective Subdivision, because it needed to be under single ownership and the remnants needed to have been consolidated into anther lot because it didn't meet the minimum size for R-1 residential lots. And that's all in the Subdivision Ordinance document that I gave you, the first two sections of that Subdivision Ordinance document.

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

Mr. Davis: I have one more question for staff. The appeal file to the Zoning Administrator, would that also create a stay on that permit?

Mrs. Musante: We did send the owner of the lot a letter requesting to stay all action on the building portion until this was taken care of. Does that answer your question?

Mr. Ingalls: So regardless of what we do tonight, there is a stay on continuing construction on that lot?

Mrs. Musante: There is.

Mr. Ingalls: Because of the separate appeal?

Mr. Apicella: Can we clarify, because when you say request, there is a difference between mandating a stay versus asking the applicant to by his or her good graces not to proceed forward. So, again, not quite sure how this is going to end up, the matter that's in front of us, but let's just say we take some decision tonight, the separate appeal to the Zoning Administrator, does that also formally stay the applicant from proceeding forward?

Mrs. Musante: Mr. Harvey is going to answer your question.

Mr. Harvey: Mr. Apicella, I'll answer both parts of your question. The first part is the stay in the County Ordinance stays all action from the County, so the County is not conducting any inspections out there, so if any work is being done, it's being done at the developers own risk. With regard to the most recent application, that's an application for a determination, so there's not an appeal on that, unless the applicant receives the determination and doesn't like the result. Then there'll be another appeal file. So you're currently dealing with one appeal situation. The stay would continue on until the appeal is adjudicated by the Board of Zoning Appeals. Once a decision is made then the stay is lifted.

Dr. Larson: Okay, so Melody, for this second case, you've said that it would take the Zoning Administrator about 90 days.

Mrs. Musante: That is correct.

Dr. Larson: And then she would make a determination and then if it was appealed then it would have to be appealed within 30 days, so then we're talking probably February or March before it makes it back to this Board.

Mrs. Musante: Correct.

Dr. Larson: We can't wait that long. We're under Ordinance to deliver decision within 60 days of this meeting.

Mrs. Musante: Correct.

Dr. Larson: So we can't defer. Okay. Thank you for that clarification.

Mr. Apicella: Mr. Chairman, can I just make a comment?

Dr. Larson: Yes.

Mr. Apicella: As I understand the matter before the Zoning Administrator, and I look at the appeal justification, if you can bear with me two sentences. Just reading what I saw on the appeal justification for this case in front of us tonight. It says: Lot B has never met the requirements to qualify as a lot for dwelling unit and does not provide the minimum lot width required by the Zoning Ordinance. That's in the first paragraph of the case, appeal justification. And in the summary it says: Lot 6B never qualified as a buildable lot pursuant to applicable Zoning Ordinance provisions. Again, it seems to me that these, just as staff has indicated, these two cases are virtually identical, just perhaps going down two different paths. So, I'm not quite sure what happens with the Zoning Administrator's determination, but I think we're still dealing with the same issue.

Dr. Larson: Well, I think that we can't defer. We have to decide this case within 60 days by Ordinance.

Mr. Apicella: Mr. Chairman, I'm not suggesting we do defer. I'm just…I'm not sure what bearing our decision here has on the Zoning Administrator's determination.

Dr. Larson: Don't know.

Mr. Apicella: I think the question has been asked twice, two different ways. That's all I'm trying to say.

Dr. Larson: I have a question for staff, Mr. Harvey, I think. When the building permit was issued it did not have the correct, I see there was a width requirement, right? 80 feet? Is that correct?

Mr. Harvey: Mr. Chairman, the current Zoning requirements for a R-1 zoned property to create a new lot is 80 feet.

Dr. Larson: To create a new lot.

Mr. Harvey: Or I should say that's what the lot width requirement is. So from the staff perspective, we looked at pursuant to the non-conformity requirements.

Dr. Larson: Yes, I understand. Any other questions for staff or witnesses before I close the public hearing? Alright. I'm closing the public hearing and I'd like to bring it back to the Board for a motion.

Mr. Apicella: Mr. Chairman, since a request was made, do we have to, at least by our bylaws, dispense with that request. There was a request to defer. I don't know if we have to take that up or not. Irrespective of what we think we need to do, do we at least need to consider the request?

Dr. Larson: Yes, let's go ahead and consider it. I would be voting against because I think it violates an ordinance, but motion to consider the deferral?

Mr. Apicella: Mr. Chairman, I would make a motion that we deny the request for a deferral.

Mr. Davis: I'll second that motion.

Dr. Larson: Any more discussion on this? Those in favor say aye.

Mr. Grimes: Aye.

Mr. Ingalls: Aye.

Mr. Poss: Aye.

Mr. Davis: Aye.

Mr. Apicella: Aye.

Dr. Larson: Aye. Any opposed? Okay, motion passes 6-0. Alright, is there a motion with respect to the case at hand which is dealing with the correctness or incorrectness of the application of the Zoning Ordinance in granting the building permit or this lot?

Mr. Davis: I motion to deny the appeal in the case of A14-06/ZON14150363.

Dr. Larson: Is there a second?

Mr. Grimes: I would second that.

Dr. Larson: Discussion? Ray, would you like to say why you made the motion?

Mr. Davis: I made the motion because I think the lot is in conformity based on the 1953 Subdivision Ordinance.

Dr. Larson: Any other discussion?

Mr. Apicella: Mr. Chairman, first let me say, I appreciate that there are different perspectives about this situation. I also appreciate that several of the neighbors did not want to see the outcome that would derive from a building of this size and scope on this particular lot. That being said, I think at the end of the day we have to make our decisions based on logic and the law and the applicant had an opportunity to make their case and to convince us that the Planning and Zoning staff made an erroneous decision, contrary to the requirements that were reviewed and those requirements were cited a couple of times by staff and by me, and I think Mr. Harvey as well. And I did not find that the applicant made a sufficient case for us to overturn the decision that was rendered in this situation.

Dr. Larson: I guess I have another question for staff. One of the speakers talked about drainage on the lot in question, and that was also…actually two speakers talked, one in favor, one opposed. Can you tell us anything about the drainage on the lot and how that's been addressed? No? Okay. Mr. Harvey, do you know anything about that?

Mr. Harvey: Yes, Sir. There is a diagram of the building permit application and on that diagram the builder is constructing two swales, one on either side of the house, to divert any runoff drainage towards the street.

Mr. Apicella: Mr. Chairman, while you're considering, again, I understand the concern that was raised, but that's what distinguishes this case from being heard by the building code official. In my view that would be something that they would look at, versus what is really in front of us which is whether or not a decision was properly made by the Planning and Zoning staff under the Zoning Ordinance.

Dr. Larson: I don't disagree.

Mr. Apicella: I just want to clarify and I appreciate that you asked the question. I just, for the records, want folks to understand that that's not something that's materially in front of us within the purview of our responsibility. Good that you asked it and good that I think have a perspective here, but it's not something that we need to or should adjudicate.

Dr. Larson: Well, there is a motion and a second on the floor. Is there any more discussion on the motion?

Mr. Ingalls: Mr. Chairman, I'm inclined to support the motion, because I believe that the Zoning Administrator that lot 6B met the applicable zoning requirements for one single family dwelling unit.

Dr. Larson: Any other discussion? I'm also inclined to support the motion. The covenants in force at the time do not apply here. They're not a County wide ordinance. The tax assessment of a property to determine how much to tax the property has no bearing on the zoning applying to that property and he has no authority to do that and I believe that we have to apply the law as we see it interpreted and I think in my mind it's fairly clear that this is…the Zoning Administrator was correct in her support for the building permit. Any other discussion? Okay, all those in favor of the motion say aye.

Mr. Grimes: Aye.

Mr. Ingalls: Aye.

Mr. Poss: Aye.

Mr. Davis: Aye.

Mr. Apicella: Aye.

Dr. Larson: Aye. Any opposed? Motion carries 6-0.

UNFINISHED BUSINESS

Dr. Larson: Okay we have no unfinished business shown.

OTHER BUSINESS

Minutes

Dr. Larson: Other Business, Minutes, and I noticed that you had minutes that we had passed in the package and I think I know why, but could you address that?

Mrs. Musante: Can you give me a second, because I wasn't actually at the meeting where this was discussed, so I want to make sure that what we're discussing is correct.

Dr. Larson: Okay.

Mrs. Musante: Mr. Chair?

Dr. Larson: Yes.

Mrs. Musante: From what I understand at the last meeting there was some discussion regarding verbatim minutes. In the April minutes, the reason why they're back in your package again is, you had stated and the numbers on the pages have been changed because we changed the margin, but it says here, if you look at the definition, the high intensity is to generate more than 100, medium is between 50 and 100, and low is below – we had 100. You actually said 50?

Dr. Larson: It should have been, I may have actually said 100, but it should have been 50.

Mrs. Musante: But we're going back to the issue of…I'm sorry, I'm tired, verbatim minutes. If they're verbatim we can't change.

Dr. Larson: Yes.

Mrs. Musante: What we can do is go in and put in parenthesis, brackets what was actually said.

Dr. Larson: And that's what I was going to discuss with the Board. One of my questions on that specific one was, there is the 50 and there's a 2 colon 48 colon 49.

Ms. Knighting: That's the time it was on the tape.

Dr. Larson: Oh.

Ms. Knighting: That's what that's there for, to let you know what time it was on the tape.

Dr. Larson: Can you make that smaller, or?

Ms. Knighting: I can take it out. It's just there for you all.

Dr. Larson: Yes, I would take it out. I think it's confusing.

Ms. Knighting: If I take it out it would just be the 50 in brackets.

Dr. Larson: Okay, the issue here folks, Gentlemen of the Board, was that the County wants to use verbatim minutes from our meeting and after thinking about it I thought that was reasonable, because we're not like a Home Owners Association here or some other, you know, informal gathering where you can just sort of write the minutes based on notes and be done with it. Our cases are many times taken to Court and so they really need to know what actually transpired, so from my personal opinion I had no objection to verbatim minutes, but the problem with that is, if they're verbatim, then the staff feels that what they hear from the tape is verbatim. My concern was that sometimes they don't hear the right thing, or in this particular instance, I misspoke. I said the wrong number. I meant 50. It makes no sense as it stands, so obviously I meant 50. So the question was well Robert's Rules allows us to correct and change the minutes before we approve them. But we want to give verbatim minutes for Court use. So the, sort of the compromise that I think the County Attorney thought was okay is, when we make a correction or addition, put it in brackets. So they know what was said and then they know what the BZA corrected it to. And then I would also add that the BZA corrections are a vote of the BZA. So again, it's not one person trying to make himself look good, it's what actually happened, what the BZA remembers what actually happened at the meeting. So I wanted to get the feeling from the rest of the Board on that process being, you know, using verbatim minutes and using brackets to show what we have changed when we update and amend the minutes. And I think before we start talking about it I would also add that Dr. Ackermann asked about places where it says mic was off, can't read what he was saying, yes, I think that if one or more of us cannot [can] remember what we thought we were saying, we could also add that in brackets as information. It's added after the fact. It's not verbatim, but it's what we recall happened. Frankly I don't remember that well. Sometimes I do, when there's a major point being made. So I think that is also a possibility for the brackets and I'm interested to hear what you guys think.

Mr. Grimes: Sorry. I like the idea of keeping the minutes as verbatim minutes. If we want to track the changes of the brackets, I think that's a good idea. I'm not too keen on going back and recreating what was inaudible. Our memories are what they are. If it's not in writing it's just that, it's a recall, and to try to get us to all agree that that's what you meant I think is a slippery slope when we start trying to make those changes to the minutes. So if it was inaudible, it was inaudible. There's probably questions in minutes before and after that help understand the context of what was being said. So I'd like to stay away from making those kind of changes to fix what couldn't be heard.

Dr. Larson: Anybody else?

Mr. Davis: I think when Robert says we can make corrections and changes to bylaws, you're making the change or correction if it is an error. I don't have any problems with putting something in brackets just to signify what you really meant.

Dr. Larson: Yes, I think… I'm not sure that I would go that far, but if I, for example if Robert has an inaudible and he said, you know, I made this really important point and basically the rest of us said, you know what, I remember you making that very important point. I think we can add that, because if we didn't, then when it came to the vote we can say: well, I'll approve the minutes except that I don't remember Robert's thing, so I'm not going to vote for that, or I'm not… I don't support that. So it would still have to be supported by a majority vote. It could be something… let me go further, if the Board as a majority supported something that you were thinking but didn't verbalize it, but it was obvious from what you were saying that that's what you meant and the majority of Board supported it, again, I think you could put that in brackets as something that was added after the fact.

Mr. Grimes: In that last example the public didn't hear that. The public never heard your intent. They heard what you said.

Dr. Larson: That's true.

Mr. Grimes: On the second part of that.

Dr. Larson: That's true.

Mr. Grimes: The first one, I, you know, I can be pulled one way or another, but I don't want to add intent to the meeting minutes, because that's not what the public heard and this is the public record. If it was an HOA, I wouldn't have any problem with that, because it's a more informal, it's not up for subpoena and record.

Mr. Apicella: I kind of had the same concern remembering the end in mind, or the potential end in mind which is anything that comes before us for the most part can end up in court and somebody could be recording themselves what's said during the meeting, and so if we have a version that says X and they have a version that says Y then we can't really substantiate X, because we changed it. I think that could be problematic. I think… I can see what you're saying. There may be limited circumstances where a goof or a gaff may have been… occurred and we might want to try to correct it or at least in the case that you mentioned, you meant to say X but you said Y, and it's clear that you really meant to say something, but I think we have to do set sparingly so that people don't comment or question how we're doing things and what we're saying and how we're trying to modify what we say.

Dr. Larson: Yes, I think the way we get around that is, the majority of the Board has to approve corrections to the minutes. So if one person wants to make a correction that nobody else remembers ever happening, then that correction wouldn't be approved. In the case we've been talking about where I said the number 100, but clearly meant 50, because 100 makes no sense and 50 does, it's still… somebody's recording would have 100 on it, but it still doesn't make any more sense on their recording than it did on ours. And I think that's the kind of thing we can put in brackets.

Mr. Apicella: I guess, I got to ask though, and I haven't looked at the specific section because I wasn't at that meeting so I quite frankly didn't pay that much attention to it, but changing it from 100 to 50, how much does it really… what does it get us?

Dr. Larson: It's a clarification which is what we're after when we're looking at errors and omissions.

Mr. Ingalls: If these are the minutes that come off the tape and you're asking me to approve or disapprove them, had I disapproved, because, unless there is an error, that you know that's an error…

Dr. Larson: They may hear something erroneously. They're trying to transcribe based on what they hear on the tape. I mean there are actually a couple of things where they may have heard it, but there are a couple of grammatical errors that we may have been guilty off, and they may have heard it, but they may not have heard it.

Mr. Poss: In those cases, is it possible to go back to the tape and…

Mr. Grimes: And I would remind everybody that, at least it's been in my experience in the last year for the cases that we've had subpoenaed, they get the meeting minutes and the tape.

Mrs. Musante: They do.

Mr. Grimes: So we're changing something that's said verbatim when they can clearly listen to the tape and check it against it. So again…

Dr. Larson: I'm not suggesting we change everything that's said. All I'm saying is that there will be times when there are errors and omissions in the minutes and we're allowed to make those changes and we can make them by brackets, after the fact, and so we're telling them that it's after the fact and if they listen to the recording and hear 100 and they say, oh, here's 100 but in brackets they have 50. Oh, 100 doesn't make sense but 50 does, I guess he meant 50. Okay. That's the message received.

Mr. Ingalls: If it said "meant 50" and put it in brackets, I would understand that.

Dr. Larson: Well that's what the brackets mean. Well it's going to have to be defined on the minutes. Brackets are added after the fact for clarification.

Mr. Grimes: And again, I don't have any problem with that, but trying to recreate something because it was inaudible that's a real concern.

Dr. Larson: Okay, I'll buy that. But again, we all have to agree that it goes in as a correction. Well, four of us have to agree. Okay so I don't think this needs a vote or anything, maybe if we can reach a consensus about verbatim minutes and the use of brackets for errors and corrections and things like that.

Mr. Apicella: I, I… let's distinguish though, you've mentioned and I agree there's some places where there is some typos. I think we can fix that without having to put it in a bracket. I think the distinguishing point here is that you said, I don't mean to be pejorative here, you said X, but you really meant Y. I can see putting that in a bracket. So I'm just trying to make a dis… distinguish between just correcting because it was, again, this is a lot of stuff for staff to have to type out and I could see where… because I got a typo I'm going to… and if I didn't correct it, it probably wouldn't matter, but I probably will, just because. And I think we have the ability to do that, because we noticed that there is a typo, right, as compared to I'm changing the context of what I really meant to say. You see what I'm trying to distinguish here?

Dr. Larson: I think that's probably fair.

Mr. Grimes: I'd like to point out that the rest of us need to pay more attention to the changes that are suggested in the minutes as well, because, to be very honest, I'm not sure how everybody else does it, but most of the time I'm checking to see what I said for those exact items. So I need to pay more attention when you're suggesting your changes or Steve is suggesting his changes to make sure that it is a correction to a typo and not a complete change in the context of the statement.

Dr. Larson: That's a good point.

Mr. Grimes: That's kind of for all of us to pay attention.

Dr. Larson: Okay, have we reached consensus on this, do you think?

Mr. Grimes: I'd say we'd give it a shot this month and see how it goes and we can refine it from there.

Dr. Larson: Okay, so I think what I heard was, we're going to use verbatim minutes. We're going to, if there are typos, we're just going to fix the typo without a bracket. If there is a change, like the 100 to 50, then that requires the bracket.

Ms. Knighting: And then on the August 26th minutes, that one line where Mr. Walk was speaking and he said, I believe it was Mr. … and our minutes did say Apicella. But going back and listening to the tape he clearly said Ancella. The girl transcribing said oh he means Apicella because nobody can say Mr. Apicella's name right…

Mr. Apicella: Oh thank you.

Ms. Knighting: And she put it in, so in the newer addition on page 9 it says Ancella, I corrected that and then y'all wanted Ackermann, because you thought…

Dr. Larson: Who is Ancella?

Ms. Knighting: I have no idea. But that is what Mr. Walk said.

Dr. Larson: What page are you on?

Ms. Knighting: He said, I believe it was Mr. Ancella asked for (inaudible, microphone not on) … and Mr. Apicella said he was not at the meeting. And then somebody else said…

Dr. Larson: I think Dr. Ackermann said that was him.

Ms. Knighting: Right.

Dr. Larson: Okay then, let's just put… so Ancella is in the verbatim. We can put Ackermann in brackets.

Ms. Knighting: Yes, on page 4. Page 9, I'm sorry, on the new ones that you got.

Dr. Larson: Okay.

Ms. Knighting: I was just pointing that out to you. And of course the time of the tape will be removed from that too.

Dr. Larson: Yes, I don't think that adds anything. Okay. Well, so that's why the previous minutes were included? For that discussion?

Mrs. Musante: Yes.

Dr. Larson: So then let's go to the minutes for September 23rd. And we're looking for corrections to these minutes.

<u>ADOPTION OF MINUTES</u>

September 23, 2014

Mr. Apicella: Mr. Chairman, it's not a substantive but on page 18 of 43, line 892, kind of almost half way through the sentence it says "was hat" and I think it was "that". So just adding a "t". Not a significant change, but again, I wouldn't be surprised if this one ended up in court so I think it needs to be.

Dr. Larson: Okay, but again, I wouldn't say brackets are warranted in that case. Okay, I had a couple, on page 13, line 626, when I say "I will give you one more…" it should me minute, singular and the other one I had was on page 36, line 1778. Again, I don't recall this precisely, but it says "we've has some emails several weeks ago". I'm assuming that was "had". That's all I got. Any others? Is there a motion to adopt the minutes?

Mr. Apicella: So moved.

Dr. Larson: Is there a second?

Mr. Poss: Second.

Dr. Larson: All those in favor say aye.

Mr. Grimes: Aye.

Mr. Poss: Aye.

Mr. Davis: Aye.

Mr. Apicella: Aye.

Dr. Larson: Aye. Any opposed?

Mr. Ingalls: I'm going to abstain, because I wasn't there.

Dr. Larson: Very good. One abstention. That's it. Is there a motion to adjourn?

ZONING ADMINISTRATOR'S REPORT

ADJOURNMENT

Mr. Grimes: I move to adjourn.

Dr. Larson: Second?

Mr. Ingalls: Second.

Dr. Larson: Those in favor say aye.

Mr. Grimes: Aye.

Mr. Ingalls: Aye.

Mr. Poss: Aye.

Mr. Davis: Aye.

Mr. Apicella: Aye.

Dr. Larson: Aye. Any opposed?

With no further business to discuss the meeting adjourned at 10:08 p.m.