

**STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES**  
**November 25, 2014**

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, November 25, 2014, was called to order with the determination of a quorum at 7:00 p.m. by Vice-Chairman Danny Kim in the Board of Supervisors Chambers of the George L. Gordon, Jr., Government Center.

MEMBERS PRESENT: Danny Kim, Robert Grimes, Larry Ingalls, Ray Davis and Steven Apicella, Ernest Ackermann, and Heather Stefl

MEMBERS ABSENT: Dean Larson

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

DETERMINATION OF QUORUM

Mr. Kim: 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, I am sorry. 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. Hear and decide on requests for Special Exemptions where the zoning ordinance allows for Special Exemptions. 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 a quorum tonight with seven out of seven voting members present. The members present and voting tonight are Miss Heather Stefl, Dr. Ernest Ackermann, Mr. Larry Ingalls, Me Danny Kim, Mr. Robert Grimes, Mr. Ray Davis and Mr. Steven Apicella. Alternate members of the BZA who will be seated at the dais tonight, he or she or they will be hearing the case only as... that does not apply for tonight because there is not alternate. The County staff is represented by Miss Susan Blackburn, the Zoning Administrator. Miss Melody Musante, Zoning Manager and, I am sorry...

Mrs. Musante: Denise Knighting.

Mr. Kim: Thank you, I knew Denise, I forgot the... apologize Denise, as secretary. The hearing will be concluded in the following order, the Chair will ask the staff to read the case and members of the Board may ask questions of the staff. The Chair shall ask the applicant or their representative to come forward and state their name and address, and present their case to the Board. The presentation shall not exceed 10 minutes unless additional time is granted by the Board. Members of the Board may ask questions of the applicant to clarify or better understand the case. The Chair will then ask for any member of the public who wishes to speak in support of the application to come forward and speak. There shall be a three minute time limit for each individual speaker, and a five minute time limit for a speaker who represents a group. After hearing from those in favor of the application, the Chair will ask for any member of the public who wishes to speak in opposition to the application to come forward and speak. After all public comments have been received the applicant shall have three minutes to respond. We ask that each speaker present their views directly to the Board and not to the applicant or 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

***Board of Zoning Appeals Minutes  
November 25, 2014***

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 seven of seven 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 exemption that is substantially the same request for at least one year from the date of our decision. I now ask that anyone who has a cell phone, pager, or other electronic device, to silence it please. Thank you. It is the custom of the Board to require that any person who wishes to speak before the Board shall be administered an oath. Therefore, I ask anyone who wishes to speak tonight, to stand and raise your right hand.

*(Members of the audience stood)*

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

*(Members of the audience responded)*

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

Mrs. Musante: There are no changes.

Mr. Kim: Thank you. Before we hear the first case, does any Board Member wish to make any declaration or statement concerning any of the cases to be heard before the Board tonight? Yes sir.

**DECLARATIONS OF DISQUALIFICATION**

Mr. Davis: Mr. Chairman, I am on the Board of Directors for the Fredericksburg Counseling Service. The Fredericksburg Counseling Service is a non-profit agency serving those who are without insurance and cannot afford counseling. There is no charge to clients. I am not a clinician or a therapist, nor do I participate in the agency in any other way. I am speaking as a Stafford County resident and as a member of this Board. I am knowledgeable and able to participate fairly and objectively in the public's interest in the second case number SE14-08/ZON14150403 before this Board.

***Board of Zoning Appeals Minutes  
November 25, 2014***

Mr. Kim: Thank you. I now...

Mrs. Stefl: Mr. Chairman.

Mr. Kim: Oh, yes ma'am.

Mrs. Stefl: I did want to say I did visit the first case SE14-08/ZON1415040, I did not speak to the applicant but I did drive by the residence. And the second case A14-07/ZON14150404, I did drive by the said property and did speak to the owner and vice president of the Crucible some three months ago. But I feel that I can still fairly represent (inaudible, microphone not on).

Mr. Kim: Anyone else?

Dr. Ackermann: Mr. Chairman, I... it has been almost a year, but I have been on the Board of Mental Health America of Fredericksburg, and been involved in issues regarding mental health in this area. But strictly as a layman and intend to work in this case as a citizen of Stafford County. Thank you.

Mr. Kim: Anyone else? Thank you. I will now ask the Secretary to read the first case.

**PUBLIC HEARINGS**

1. SE14-08/ZON14150403 - Laurie Barton - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards," R-1, Suburban Residential(c), to allow Psychotherapy as a Home Business on Assessor's Parcel 29D-1-280. The property is zoned R-1, Suburban Residential, located at 29 Sassafras Lane, Autumn Ridge Subdivision.

Mrs. Musante: Case SE14-08 ZON14150403, applicant Laurie Barton, requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1 District Uses and Standards, for the R-1, Suburban Residential, to allow Psychotherapy as a Home Business on Assessor's Parcel 29D-1-280. The property is zoned R-1, Suburban Residential, located at 29 Sassafras Lane, in the Autumn Ridge Subdivision.

Mr. Kim: I am sorry, are you done?

Mrs. Musante: The applicant is requesting approval of a Special Exception to provide counseling to individuals who struggle with anxiety, depression, trauma, and adjustment problems. She currently meets with clients via secure conferencing, the internet, but wishes to expand to include face to face counseling within the home. The applicant is requesting the following days and hours of operation, Monday through Friday from 8:00 AM to 5:00 PM, with no weekend hours, and anticipates three clients per day. Three off-street parking spaces will be provided. The Home Business standards allow for 25% of the gross floor area of the dwelling to be utilized for the business. The applicant has indicated 115 square feet will be used for the business which meets this requirement since the house has 2,930 square feet. The single family dwelling was constructed in 1997. Suggested days and hours of... I am sorry, suggested development conditions, days and hours of operation, Monday through Friday, 8:00 AM to 5:00 PM. No weekend hours. Provide three off-street parking spaces for clients, customers by appointment only. Must comply with all State and local codes and this approval may be revoked for willful noncompliance of the conditions imposed by the Board of Zoning Appeals.

Mr. Kim: Are there any questions of staff?

***Board of Zoning Appeals Minutes  
November 25, 2014***

Mrs. Stefl: I have one question. Would any other business, like in a B-1, require like handicapped accessibility (inaudible) such business?

Mrs. Musante: We do require the applicant's or suggest to the applicants when they come in to speak with the Building Code Official. I do know that Mrs. Barton did speak with them and he did explain the handicap accessibility requirements to them.

Mrs. Stefl: Okay, thank you.

Mr. Apicella: Mr. Chairman. I noticed in the suggested development conditions its spoke to providing 3 off-street parking spaces. When I looked at the material it was not real clear to me where those 3 spaces would be. So I....

Mrs. Stefl: (inaudible, microphone not on) street.

Mr. Apicella: Well, it's off-street, it says off-street parking.

Mr. Kim: Would this be a question for staff or the applicant.

Mr. Apicella: Well I presume staff would have worked with the applicant to determine where those 3 off-street parking spaces are.

Mrs. Musante: When I met with the applicant, they do have a garage that they can utilize for their parking. So any exterior parking would be for clients.

Mr. Apicella: Again I can't see the driveway, so you think the driveway is big enough for 3... 3 vehicles?

Mrs. Musante: When I spoke with them, they did have the room for 3 vehicles. But it probably would be better to ask Mrs. Barton that.

Mr. Apicella: Okay. And really my only other question for staff would be on the suggested development conditions. Did you talk to the applicant about signs? Or not having signs?

Mrs. Musante: We did not.

Mr. Apicella: Okay, thank you.

Mr. Kim: Any other questions for staff? No, okay. We will now open the public hearing. Would the applicant or his or her representative please come forward to present the case?

Mrs. Barton: My name is Laurie Barton. I don't know what else to add to what you have said. It's a very simple business model. This is like, um... she said I have been meeting with people via secure video conferencing and a lot of people are now requesting to come and see me in person. So I am requesting a variance exception. Typically I don't imagine people would be parking anywhere but my driveway. I can have 3 cars, but I wouldn't imagine that I would have... I can only see probably 1 person at a time.

Mr. Kim: Okay, any questions for the applicant?

***Board of Zoning Appeals Minutes  
November 25, 2014***

Mr. Davis: (Inaudible, microphone not on) clients would you be seeing?

Mrs. Barton: I see... I would be seeing military, not a ... are you asking what population people with what kinds of problems?

Mr. Davis: Types of problems also, PTSD?

Mrs. Barton: PTSD, anxiety, depression...

Mr. Davis: Psychosis?

Mrs. Barton: ... adjustment problems.

Mr. Davis: Psychosis?

Mrs. Barton: No.

Mr. Davis: How do you determine and how would you turn somebody away?

Mrs. Barton: People that... I don't... I am not on any insurance panels. So those folks usually would be seeing somebody at the Community Services Board or maybe at an agency as yours. But that's not who I usually even get calls from.

Mr. Ingalls: I have a question. How do you advertise what you are doing? Is it by word of mouth, just through the internet...

Mrs. Barton: Psychology Today.

Mr. Ingalls: That is the only way you currently advertise?

Mrs. Barton: Yes. And word of mouth.

Mrs. Stefl: She has her own website. You have your own website.

Mrs. Barton: Yes, I do.

Mr. Ingalls: How many appointments do you envision with your business plan of having in a day and how long is an appointment.

Mrs. Barton: An appointment is about 50 minutes to an hour and I would say average 3 to 4 a day.

Mr. Ingalls: How many?

Mrs. Barton: 3 to 4 a day, perhaps.

Mr. Ingalls: So you would be creating 24 extra vehicles a day in that neighborhood, at least?

Mrs. Barton: No, I would see 3 or 4...

***Board of Zoning Appeals Minutes  
November 25, 2014***

Mr. Ingalls: 3 or 4.

Mrs. Barton: ... 3 or 4 individuals.

Mr. Ingalls: 3 or 4 individuals.

Mrs. Barton: Right.

Mr. Ingalls: In a day?

Mrs. Barton: Yes.

Mr. Ingalls: And that's Monday through Friday.

Mrs. Barton: Yes sir.

Mr. Ingalls: Okay.

Dr. Ackermann: How, if I may ask, how would this work with your video therapy sessions?

Mrs. Barton: How would it work?

Dr. Ackermann: Well what I mean is are you...

Mrs. Barton: I would continue that for sure. Right.

Dr. Ackermann: And so this would... these people visiting you would be as they could fit in, or not if they could fit in but you would make your schedule so you could do that?

Mrs. Barton: Yes. Sure. It would be scheduled just the same as I would schedule a secure video conferencing session. The same thing.

Dr. Ackermann: And from the size of the office it appears just one person at a time.

Mrs. Barton: That is correct.

Dr. Ackermann: Right. Okay, thank you.

Mrs. Stefl: Mr. Chairman.

Mr. Kim: Yes.

Mrs. Stefl: I have some questions.

Mr. Kim: Yes, Mrs. Stefl.

Mrs. Stefl: The 3 to 4 patients you see in a day, do you typically have them back to back or do you stagger them throughout the day?

*Board of Zoning Appeals Minutes  
November 25, 2014*

Mrs. Barton: Scattered throughout the day.

Mrs. Stefl: But in the... but if, for instance if you did have 2 clients coming would there be an area, a waiting room or someplace utilized? You know if there is the chance of having those 2 cars at the same time.

Mrs. Barton: I usually... my plan would be to give myself 15 minutes or a half hour in between. And when I am speaking with people and scheduling appointments I would explain to them that I don't have a waiting room and that I would be starting at the exact time of their appointment.

Mrs. Stefl: And then you said one of your specialties is trauma and PTSD. Which has a broad spectrum, and so are you prepared for... if a client should have, say a breakdown at your home, that could be somewhat disruptive sometimes in a neighborhood environment.

Mrs. Barton: I just completed my training in EMDR and so I do specialize in trauma. There is nobody in my neighborhood that is home, so I don't know really what you are asking.

Mrs. Stefl: But you can't necessarily predict that because there is always a chance, in a neighborhood environment...

Mrs. Barton: Sure.

Mrs. Stefl: ... of children being around, other adults being around and we are talking a neighborhood verses a structural business location or near a medical facility. So that is a concern to me and then also have your homeowners association signed off. Because I know some covenants don't allow home businesses. Do you have a letter or anything from your homeowners association?

Mrs. Barton: I provided the CCNRs from the homeowners association with my application.

Mrs. Stefl: But you have not request... you haven't talked to them or looked for any kind of...

Mrs. Barton: No, I have not.

Mrs. Stefl: Okay.

Mr. Apicella: Mr. Chairman, I have a couple questions myself. So one of the things that we typically do in some of these Special Exceptions has to do with signage, so are you opposed to a limitation which basically says no signs associated with your business.

Mrs. Barton: That is not a problem.

Mr. Apicella: Okay. Sort of on the same lines as Mrs. Stefl inquired, I don't... this may be beyond our scope here, but in terms of clients coming and going. I don't know if there are any privacy issues associated with a client showing up and then another client being right behind them, seeing who they are, you know.

Mrs. Barton: Well that happens if you are at Aquia Counseling that would happen.

***Board of Zoning Appeals Minutes  
November 25, 2014***

Mr. Apicella: Okay. Got ya. Again on the same lines as Mrs. Stefl was inquiring, and I am not trying to make a value judgment about your patients, but would you be opposed to having a security system ... monitored security system in your home?

Mrs. Barton: If you felt that was necessary and they... are you saying like a panic button?

Mr. Apicella: Sort of. Yes.

Mrs. Barton: I would not be opposed to that at all.

Mr. Apicella: Okay, those are my only questions Mr. Chairman.

Mr. Grimes: Have you spoke to your neighbors about your business venture, working out of your home?

Mrs. Barton: It was my understanding that a letter was going to go out.

Mr. Grimes: But you have not personally like walked next door and...

Mrs. Barton: My husband may have spoken to 1 or 2 of them, yes.

Mr. Grimes: And did they provide you any feedback or encouragement or otherwise?

Mrs. Barton: You spoke to... he spoke to one of our neighbors.

Mr. Mooney: Yes I spoke to one of the neighbors and (inaudible, speaking from the audience).

Mr. Kim: I am sorry we are going to... can you come down and state your name.

Mrs. Stefl: He also didn't rise to speak and swear... the oath.

Mr. Kim: Okay. Then we have to... if you can raise your right hand please. Do you hereby swear or affirm that all testimony before the Board shall be nothing but the truth?

Mr. Mooney: I do.

Mr. Kim: Thank you.

Mr. Grimes: And if you could state your name.

Mr. Mooney: My name is Christopher Mooney, I am married to Laurie Barton.

Mr. Grimes: Excellent, so you have spoken to at least one of the neighbors?

Mr. Mooney: Yes I did.

Mr. Grimes: And that discussion...

***Board of Zoning Appeals Minutes  
November 25, 2014***

Mr. Mooney: I spoke to the neighbor that lives across the street, Michael Thyrring, and I mentioned it to him and he had no issue with it. He thought it was a pretty nonevent.

Mr. Grimes: Okay, thank you.

Mr. Kim: I have a...

Mrs. Stefl: I have a question of the husband real quick.

Mr. Kim: Go ahead.

Mrs. Stefl: Since this is also your private residence, I don't see any kind of separation between home like and office here. And dealing with some of the clients and privacy and things like that, are you oppose to having some kind of a door or some kind of a security... to separate the office from, or is this office... I am just concerned about the nature of your business and HIPPA and everything like that.

Mr. Mooney: There is no issues. In fact we are putting up movable walls and doors.

Mrs. Stefl: Oh, okay.

Mr. Mooney: Yep.

Mrs. Stefl: Wonderful. Alright, thank you.

Mr. Kim: The only question I have is do you have any issues with the suggested development conditions that the County has provided?

Mrs. Barton: No, not at all.

Mr. Kim: Great, thank you. Thank you. Any member of the public who wishes to speak in support of the application, please come forward. Not seeing any, any member of the public who wishes to speak in opposition to the application, please come forward. Not seeing any, okay we will now close the public hearing for the application and bring the matter to the Board for motions and decisions.

Mr. Apicella: Mr. Chairman, before we go to a motion, may I recommend that we add a condition that indicates the applicant will not have any signs posted associated with the business on the property. That would be one condition, and the second condition would be that the applicant maintains a monitored security system.

Mr. Ingalls: Mr. Chairman, if I could add another... propose another condition and that would be upon change of ownership of the property, this Special Exception shall be null and void.

Mr. Kim: Yes.

Mr. Grimes: If we could go back through and read those exceptions starting with number 1.

Mrs. Musante: Days and hours of operation, Monday through Friday, 8:00 AM to 5:00 PM, with no weekend hours. Number 2, provide 3 off-street parking spaces for clients. Number 3, Customers by

***Board of Zoning Appeals Minutes  
November 25, 2014***

appointment only. Number 4, must comply with all State and Local codes. Number 5, no sign. Number 6, the applicant must maintain a monitored security system. Number 7, upon change in ownership this Special Exception will become null and void. Number 8, this approval may be revoked for willful noncompliance of the conditions imposed by the Board of Zoning Appeals.

Mrs. Stefl: I would like to make a suggestion. She did indicate that she does work with our solders and service personnel and some of them are handicapped and need handicap accessibility. So I guess I should have asked the applicant if she was opposed to making accommodations to make her home accessible for those who are possibly in a wheelchair or prosthetics or something. I mean if we are looking to make this business....

Mr. Grimes: But I would offer as long as she is complying with requirements of the ADA and the Accessibility Act, which is reasonable accommodations, that she wouldn't necessarily have to make physical changes to her home because as long as they are making reasonable accommodations, and that might be anything from assisting access to a ramp.

Mrs. Stefl: Okay.

Mr. Grimes: So with ADA being part of the codes...

Mrs. Stefl: That, that... I just want to make sure that that is... I don't want to limit her clientele because I know a lot of them...

Mr. Apicella: With that being said Mr. Grimes, the ADA is a Federal requirement. So it only says may comply with all State and Local Codes, do we want to add the word Federal?

Mrs. Stefl: Please.

Mr. Grimes: Sure.

Mr. Kim: That makes it... can we add Federal to that? Thank you. Do I hear any motions?

Mr. Davis: Mr. Chairman.

Mr. Kim: Yes, Mr. Davis.

Mr. Davis: I move for denial of the Special Exception in this case. It is my feeling except for emergency response and home nursing care, healthcare services should not be provided in a residential environment for the safety of the clients, professional staff and especially residents. These services should be provided in a professional environment where the intent of the services is clear.

Mr. Kim: Thank you. So it that your motion.

Mr. Davis: The first part was my motion. The second part was the reason.

Mr. Kim: Do I hear a second for denial?

Dr. Ackermann: I will offer a second, but just to discuss it. So Ray, I mean what is the difference... if we talk about people who have offices at, like George Washington Executive Center. Folks do have

***Board of Zoning Appeals Minutes  
November 25, 2014***

offices there. I mean that is a business environment, how do you see that as necessarily being better suited to this than her home?

Mr. Davis: The George Washington Executive Center has not residents. They have no children. They have no one on the streets to be concerned about. No school busses, no erratic drivers, etcetera.

Mr. Kim: Any...

Dr. Ackermann: Well, I mean there is a Medicaid healthcare facility right next to it and there are children there. And sometimes school busses go to Carl's which is across the street. So I don't quite see the difference. But I appreciate your concern.

Mr. Kim: Not hearing a second on Mr. Davis' motion... I am sorry, you did second it.

Dr. Ackermann: Yes, so we could discuss it.

Mr. Kim: Okay, I have a motion made by Mr. Ray Davis and seconded by Dr. Ackermann to deny the request for Variance or Special Exceptions as stated in case number SE14-08ZON14150403. All those in favor of the motion signify by saying yea, those opposed by saying nay. I am sorry yea for denial.

Mr. Davis: Yea.

Mrs. Musante: Hands please.

Mr. Kim: How many.

Mrs. Musante: Ray.

Mr. Kim: Ray. Okay. Now the nays.

Mr. Ingalls: Nay.

Mr. Grimes: Nay.

Dr. Ackermann: Nay.

Mrs. Stefl: Nay.

Mr. Apicella: Nay.

Mr. Kim: Nay. Okay let the reflection show that the motion is denied by a vote of 6 to 1.

Mr. Grimes: I would offer up an alternate motion here, or a new motion to approve Special Exception SE14-08/ZON1415040. I would like to move to approve with the suggested development conditions as modified.

Mr. Kim: I second that.

Mr. Apicella: Mr. Chairman, you have got to let somebody else second. I will second it for you.

***Board of Zoning Appeals Minutes  
November 25, 2014***

Mr. Kim: Thank you. I have a motion made by Mr. Robert Grimes and seconded by Mr. Steven Apicella to approve the request for Variance or Special Exception as stated in case number SE14-08ZON14150403. Motion to signify by saying yea.

Mr. Ingalls: Yea.

Mr. Grimes: Yea.

Mrs. Stefl: Yea.

Mr. Apicella: Yea.

Dr. Ackermann: Yea.

Mr. Kim: Yea. Those opposed signify by saying nay.

Mr. Davis: Nay.

Mr. Kim: Let the record reflect that the motion is approved by a 6 to 1 vote. Thank you, thank you. Okay, I now ask the secretary to read the second case

2. A14-07/ZON14150404 - Westlake Development LLC c/o Michael J. Coughlin, Walsh, Colucci, Lubeley & Walsh, P.C. - Per Stafford County Code Sec. 28-349, "Appeals to board [of zoning appeals] generally," the applicant, Westlake Development LLC, is appealing the approval of the Certificate of Approval for shooting ranges dated September 26, 2014, on Tax Map Parcel 35-22. The property involved is owned by Crucible Properties, II, LLC; zoned M-1, Light Industrial; addressed as 45 Jack Ellington Road; and located in the Hartwood Election District.

Mrs. Musante: Case A14-07 ZON14150404, Westlake Development LLC, Michael J. Coughlin, Walsh, Colucci, Lubeley & Walsh, P.C. Per Stafford County Code Sec. 28-349, "Appeals to board of zoning appeals generally," the applicant, Westlake Development LLC, is appealing the approval of the Certificate of Approval for shooting ranges dated September 26, 2014, on Tax Map Parcel 35-22. The property involved is owned by the Crucible Properties, zoned M-1, Light Industrial, addressed as 45 Jack Ellington Road and located in the Hartwood Election District. The applicant is appealing the certificate of approval for a shooting range, issued on September 23, 2014, for Assessor's Parcel Number 35-22 addressed as 45 and 60 Jack Ellington Road, Fredericksburg, 22406. The issuance of a certificate of approval for a shooting range is issued by the Public Works Director and is subject to Stafford County Code Sec. 26-31 through Sec. 26-34. At the September 23, 2014 meeting, the applicant presented its appeal to the Board of Zoning Appeals stating that the Zoning Administrator's determination that the outdoor shooting range is a permitted use on the property was incorrect. The BZA upheld the Zoning Administrator's determination that the use is permitted on the property. 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 certificate of approval for a shooting range which is subject to the County Code Section 26-31 through 26-34, which is part of the Weapons Chapter of the County Code, not the Zoning Ordinance. The certificate of approval is issued by the Public Works Director, not the Zoning Administrator. According to the Zoning Ordinance, the BZA can hear appeals from any orders, requirements, or decisions in the administration or enforcement of

***Board of Zoning Appeals Minutes  
November 25, 2014***

the Zoning Ordinance. The applicant even states that the approval was issued under the Stafford County Code Chapter 26, Weapons, and does not constitute or involve a zoning determination under Virginia Code Section 15.2-2311. The applicant states that it is merely filing this appeal to preserve its right to challenge the issuance of the 2014 Certificate of Approval in any pending or later proceedings. Therefore, the issuance of a certificate of approval is not within the authority of the Zoning Administrator or the Zoning Ordinance. The BZA 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 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 incorrectly claims the shooting range violates the performance standards of the M-1 zoning district. The applicant requested and received the Zoning Administrator's determination that the use of an outdoor shooting range on the property is permitted. The applicant appealed this determination. On September 23, 2014, the BZA upheld the Zoning Administrator's determination. The applicant claims the Crucible expanded this use from one range to five ranges without a County-approved site plan. During the inspection of the shooting ranges, staff did not observe any active land disturbance in the vicinity of the ranges. Land disturbance occurring on other portions of the property, not within sight of the shooting ranges, would not be inspected unless staff is made aware of such activity by an outside party. Any information concerning this issue may be addressed to the Department of Public Works.

Mr. Kim: Any question for staff?

Dr. Ackermann: So is the issuance of a certificate then not appealable to anyone if it's not to the Board of Zoning Appeals. To whom may it be appealed?

Mrs. Musante: We honestly do not know the answer to that question. The Certificate of Approval is actually issued through the Public Works Department. The actual County Code states Department of Code Administration, but the name of that department has been changed.

Dr. Ackermann: So staff feels that this Board should not hear it but does not know who should hear it. I mean if they wanted to appeal it, to whom do they go? Or if someone wanted to appeal it, if I wanted to appeal it to whom would I appeal it?

Mr. Apicella: Is it possible they can also, at worst case scenario, appeal it to the court?

Mrs. Musante: Yes, they can.

Mr. Apicella: Thank you.

Dr. Ackermann: And so it's staff's opinion that then in the past these Certificates of Approval for a Firing Range are not Zoning Determinations. They were by the Public Works Department.

Mrs. Musante: That is correct.

Dr. Ackermann: Okay, thank you. And... so any information concerning about the expansion of the ranges should be addressed to the Department of Public Works.

Mrs. Musante: Correct.

***Board of Zoning Appeals Minutes  
November 25, 2014***

Dr. Ackermann: So if someone has any information about that, they should go to the Department of Public Works, give them that information and then see what goes after that.

Mrs. Musante: Correct.

Dr. Ackermann: And then the Department of Public Works, if they think something has happened, like they have not filed a site plan, they would get in touch with Zoning?

Mrs. Musante: They would get in touch with Development Review section of the Planning Department.

Dr. Ackermann: Okay, thank you.

Mr. Apicella: Mr. Chairman, I wonder if staff has at their disposal... they referenced Section 28-349(a), I wonder if they have 349(b)? If they could read the first sentence? Sorry Melody.

Mrs. Musante: 28-349(b), an appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by an officer, department, Board or bureau of the County affected by any decision of the Zoning Administrator. Such appeals shall be taken within 30 days after the decisions appealed from, by filing with the Zoning Administrator a notice of appeal specifying the grounds thereof. The Zoning Administrator...

Mr. Apicella: Melody, I just wanted you to read the first sentence.

Mrs. Musante: Oh, sorry.

Mr. Apicella: So again, the two circumstances by which somebody can make an appeal to this Board are, any determination, decision made by an administrative officer in the enforcement of Chapter 28?

Mrs. Musante: Correct.

Mr. Apicella: Or any decision made by the Zoning Administrator.

Mrs. Musante: Correct.

Mr. Apicella: Those are the only two circumstances by which appeals come to this Board?

Mrs. Musante: Yes.

Mr. Apicella: Thank you.

Mr. Kim: Any more questions for staff?

Mr. Ingalls: I have a couple. I guess the Zoning Certificates that were issued from 2000 up to 2007... so for 7 years they were signed by the Zoning Administrator. Is that correct? R. Hudson signed these certificates for the shooting range.

Mrs. Musante: That is correct. At one point...

***Board of Zoning Appeals Minutes  
November 25, 2014***

Mr. Ingalls: Since 2000. So they signed for 8 years. It was done by the Zoning Official. And then in 2008 they are starting to be signed by the... one by the Director of Code Administration, the first one and then in 2008 my Keith Dayton and his title was Director of Code Administration. And then the rest of them were the Director of Public Works.

Mrs. Musante: The Zoning division up until, it must have been 2008, was actually under the Department of Code Administration. I cannot answer for you what the prior Zoning Administrator did. I can only tell you that at that time we were under the Director of Code Compliance. In 2008 we were transferred over to the Department of Planning which relieved us of any duties of signing those Certificates of Approval.

Mr. Ingalls: So what you are saying is that since 2008, these aren't Zoning Determinations.

Mrs. Musante: That is correct.

Mr. Ingalls: You are claiming that the Zoning Department had no input into any of these Certificates of Approval for the shooting range.

Mrs. Musante: I can tell you I did not in that capacity. Susan, have you been involved in these Certificates of Approval at all since you came in?

Mrs. Blackburn: No.

Mr. Ingalls: I mean they are signed by Keith Dayton.

Mrs. Musante: Keith was the Director of Public Works.

Mr. Ingalls: The Ordinance... does it still say the Director of Code Compliance? Is that how the code reads in that section, who shall inspect these things? Is that the Code?

Mrs. Musante: I can look that up for you to give you the exact language.

Mr. Ingalls: I don't remember what section of that Firearms Code.

Mrs. Musante: Hold on a second.

Mr. Ingalls: I thought it said the Director of...

Mr. Davis: 26-32.

Mr. Ingalls: Code Compliance shall go out and look at them and it listed a bunch of things they should find. I am just wondering... I know that over the years, and I have too many years. I can remember when our Ordinances were first done on a mimeograph. You had to type those stencils and come out with an Ordinance. Therefore they did not change very often, because it was too darn hard and complicated. But now we change them every month. Somewhere... and a lot of times what happens when you change Ordinance there, we forget about... oh, there is a section over here that we should have changes or a section over there that we should have changed, it didn't get changed and now all of a sudden we are confusing everybody by saying okay we've got this Director of Code Compliance and

***Board of Zoning Appeals Minutes  
November 25, 2014***

I don't know that we have anybody... the Zoning Ordinance does not reference, that I could find, a definition of what the Director of... Who he is or what he does.

Mrs. Musante: It is under 26-32c, a Certificate of Approval issued under the provisions of this article may be revoked by the Director of Code Compliance if the conditions upon which it was issued have changed.

Mr. Ingalls: Okay. So that is what the current Ordinance says.

Mrs. Musante: It is.

Mr. Ingalls: Director of Code Compliance.

Mrs. Musante: Yes.

Mr. Ingalls: And what we are saying... what you are saying is, we are not saying anything. Is that Keith Dayton, who is signing them as Director of Public Works is acting in that capacity? Or maybe you are in Zoning and you may say I don't know anything about that other Ordinance. I am not the administering it.

Mrs. Musante: I don't. I can only tell you that Code Compliance changed its name to Public Works.

Mr. Ingalls: Okay, but like it... let me go back one more time then. We are now saying that these Certificates of Approval really have nothing to do with zoning. They have everything.... they are not in your department. You have no control over them. They are issued by somebody else.

Mrs. Musante: That is correct.

Mr. Ingalls: In another department.

Mrs. Musante: Correct.

Mr. Ingalls: But at the same time I feel like from our last case a lot of people were thinking about using all those... we have been approving these shooting ranges since 2000 as a zoning determination. But what you are telling me, they are not zoning determinations, because they have nothing to do with your department. Is that right?

Mrs. Blackburn: Can you repeat that.

Mr. Ingalls: I am saying, it appears to me that from last... the last case everybody was talking about these... so many of these Certificates of Approval and they were kind of hanging hats on them and not hanging a hat on them, whether they Certificates of a Zoning Approval or a Zoning Verification or whatever. And now we are saying none... no that is not zoning. Zoning had nothing to do with it. So we should disregard them as Zoning Certificates. They are just Certificates issued by this mythical Director of Compliance who... we don't have one probably under that title in the County. But anyway...

Mrs. Blackburn: From my understanding through the reorganization of the departments, as Mrs. Musante said, in days gone by Code Compliance which included Zoning was one little entity of the

***Board of Zoning Appeals Minutes  
November 25, 2014***

Department of Building Inspections and Public Works. And I guess it was in 2008 that the zoning division was incorporated into Planning. And through that process the signing off on the Certificates, then became part of the Weapons Chapter of the Code and then the Director of Code Compliance, which has a new name as the Director of Public Works is now the official (inaudible, microphone not on) and I think this particular appeal is for the 2014...

Mr. Ingalls: Right, this is for this... and I was eventually going to get around. If you look at it in a very narrow way of saying, this one is for this year only, 2014. And in 2014 the Zoning Department had no input or whatever y'all do in the oversight of that approval. So you are saying, and this Board only has oversight on Zoning, not the other Ordinance of the County.

Mrs. Blackburn: (Inaudible, microphone not on) that is correct.

Mr. Ingalls: They should seek other venue to challenge that decision of issuing. Because it seems to me the applicant wasn't so much challenging whether you are right to have to do it. But it was more to me, the way I read it, he was more challenging that he should not have issued it because he didn't find A, B, C, D, E as set for the in the Ordinance. I am not sure, but that was my take on what he was really challenge... so he was challenging that. Okay, maybe that person didn't go out because... I wonder who went out and looked. All these from 2000, so 14 years somebody had gone out there and I could not tell you who. You don't seem to know, nobody seems to know who went, what they did, what they looked for, but yet the Ordinance right now is clear about what they should have looked for and what they saw. I didn't see any reports of, okay here's my inspection report, here is what I found, here is what I saw. So there is nothing of that to document any of that. It's just okay, and if you read some of the information it's almost a foregone conclusion the applicant would send y'all and fill out an application. He would say I request y'all to give me a new certificate. The County would give him a new certificate. And somebody would go out there. And one of them I read well Lieutenant somebody of the Sheriff's Department... Oh Lieutenant so and so went out and he did some training there and he thought it was okay. And then the Certificate was issued. Now I am sure the Lieutenant knew exactly what he was looking at, but the Ordinance certainly calls for a lot of different things to look at. And whether he looked at them, I don't know. Again there is not report other than that, if you read that one issue there. I get confused, but I guess... I am going to go all the way around. If we are looking at just 2014, that was not done by y'all... by zoning, it was not done under the Zoning Ordinance, it was not issued under the Zoning Ordinance, it was not issued in any way through the Zoning Department. If that is the narrow issue then that helps me make up my mind on certain other issues.

Mr. Kim: Any more questions for staff? Thank you Melody. Before I open the public hearing in this case the BZA...

Mr. Apicella: Mr. Chairman.

Mr. Kim: Yes.

Mr. Apicella: I request that you not go down that path and open the public hearing. I would like to make a motion that the BZA not hear this case.

Mr. Kim: Yes, I was getting to that.

Mr. Apicella: Okay,

*Board of Zoning Appeals Minutes  
November 25, 2014*

Mr. Davis: I second that.

Mr. Kim: We will just go with the motion. Hearing the motion not to hear the case by Steven Apicella and seconded by Mr. Ray Davis. In favor say aye...

Mr. Apicella: Discussion.

Mr. Kim: I am sorry, I thought you made the motion and we were going to... discussion?

Mr. Apicella: I beg the BZA's indulgence here. I have a few points I would like to make. The first thing is I do not believe this... that an appeal of the Director of Public Works approval, denial or issuance of a Certificate of Shooting Range Approval, I added those words, shooting range, which falls under the provisions of Stafford County Code 26-31 through 26-34 is within the BZA's jurisdiction to adjudicate. The appeal by the applicant clearly indicates that they are challenging the decision rendered by the Public Works Department or Director and recognizes that there is no zoning determination or decision related to the issuance of the September 23, 2014 Certificate of Approval. Now this case is different from the September 2014 Crucible related case in so far as the applicant then was challenging the Zoning Administrators April 10, 2014 decision that the Crucible operation of a shooting range was an approved use under Virginia Code 15-2-2311c. While it is within the BZA's purview to hear and decide appeals of the Zoning Administrator, which is why I asked the staff to read that second part of the portion of the code, the county code that deals with the BZAs authority to hear appeals. Nowhere can I find that the BZA may decide appeals of Certificates of Approval issued by the Public Works Department or any matter under Chapter 6-26 of the County Code. Now I am not suggesting that the applicant doesn't have any appeal rights. I don't know what those appeal rights are, they are not explained in Chapter 26 and as I asked staff, they do have the ability to go to court in the absence of some other appeal path provided for under the code. But just that going the BZA route is not the right venue. And even if somehow we could determine that this matter falls within our purview, with the exception of the latest Certificate of Approval issued in September, the applicant has produced no new evidence and made no new points whatsoever regarding the BZA's decision which again upheld the Zoning Administrators determination that an outdoor shooting range is an approved use. So in my view, that matter is already decided and we should not revisit the same matter that was already in front of us and already decided. So for those reasons Mr. Chairman, I think we should not hear this case.

Mr. Kim: I agree with you Steven and I agree with staff. The certificate was approved by Public Works and not by the Zoning Administrator. And I definitely saw the same difference the first appeal that Westlake had to this case. So, if... I mean I would... I mean that's just my opinion. If anyone else has anything to say...

Dr. Ackermann: I would just like to say that I appreciate your argument about how we should not hear it. I have not completely decided yes and will decide when I vote. But if we vote to not hear the case, at least my feeling is that, and if I vote that way, I am not saying that I don't think the case has some merits in some other venue perhaps, but this is not.. but this is not the place for the appeal to be filed. If there are issues of safety when houses are built, that will be an issue when houses are built or maybe as they are planning the houses. If there are issues of noise, I know a number of neighbors made, that could be an issue that could maybe come back to us. But I think... I think, I think it's... I think it's a pretty good argument that we really... this is not a case for us to hear.

*Board of Zoning Appeals Minutes  
November 25, 2014*

Mr. Ingalls: Mr. Chairman, I am going to agree with my distinguished colleagues that if you just look at the narrow case that we have before us, and that's the appeal of the 2014 certificate, then obviously from the evidence that we have heard tonight from the staff and everybody, it's not a zoning decision. We don't have the authority to do it. But I also have, like my colleagues, some question about all the things that have gone on with this particular project, what's out there, how it got there. And I really believe that there has been a lot on confusion, a lot of lack of oversight I might say, by the County itself. I think nobody seems to have been paying attention. But that's a whole 'nother issue, that is not for this Board and that is just my own feelings on it. It is not for us to decide what has gone on and I agree there's maybe some issues that somebody can talk about and appeal to another venue. Today what's before us is the certificate something that we should be looking at in terms of appeal. And the 2014 appeal for that certificate is just not based on zoning.

Mr. Kim: I would agree that with... I mean I think the staff did a great job. I think if this started at the second... if this appeal process started with the Zoning Administrator and staff, but I would absolutely say why the confusion. One of the confusing parts with me is that, then I figured out after reading everything, that the reason why there is that confusion is because one department held the approval and not they are coming to us for the appeal. So if... like I said I think the staff did a great job from what that had in front of them. You know basically it was okay I am going to appeal, here zoning department. So I still go back to the staff's response where they say that, you know I mean the certificate was approved by Public Works and not by the Zoning Administrator. I do agree that if it was through the Zoning Administrator, then it's definitely on us to make the decision on the Zoning Administrator. But since the Zoning Administrator had nothing to do with this, I don't want to put any of the blame on this staff.

Mr. Ingalls: Mr. Chairman, I didn't mean to imply the current staff because I think this project and what is going on started in 2000 and over the last 14 years. It's not this staff's... they have been dealt this hand and they have got to learn how to play it and I really wasn't speaking directly to our current staff.

Mr. Davis: Mr. Chairman, I don't think we need to dig the hole any deeper. We need to focus on what we are looking at here and not what happened 8 years ago. I would like to call for the vote.

Mr. Kim: So do I hear a motion?

Mr. Apicella: Mr. Chairman, I have made a motion and it has been properly seconded by Mr. Davis.

Mr. Kim: I know but since that was... I didn't know if we had to do that again since...

Mr. Apicella: No sir, I think we have already covered that ground.

Mr. Kim: Okay. So repeat your motion because we did that in the past.

Mr. Apicella: Mr. Chairman, I make a motion that we do not hear this case.

Mr. Kim: Do I hear a second? Okay I have a motion made by Mr. Steven Apicella and seconded by Mr. Ray Davis to not hear the special exemption for this case.

Mr. Apicella: It's not a special exception.

***Board of Zoning Appeals Minutes  
November 25, 2014***

Mr. Kim: I am sorry the appeal, the appeal.

Mr. Ingalls: The reason why we are doing this is what Steve gave to us. I don't like we are just not going to hear it. That is not... but our reasoning behind not hearing is this is not the proper venue to hear it.

Mr. Apicella: Mr. Ingalls, I believe I have made that point. I don't think it has to be a part of my motion.

Mr. Ingalls: Okay. Alright, I just want to make sure everybody understands that they have to read your prior statement.

Mr. Kim: Okay, so the motion is made by Mr. Steven Apicella and seconded by Mr. Ray Davis to not hear this appeal on case number A1407ZON14150404. Okay, all those in favor of not hearing this case, motion by signifying by saying yea.

Mr. Ingalls: Yea.

Mr. Apicella: Yea.

Mr. Davis: Yea.

Dr. Ackermann: Yea.

Mrs. Stefl: Yea.

Mr. Grimes: Yea.

Mr. Kim: Yea. Those opposed signify by saying nay. Let the record reflect that the motion to not hear this case by a 7 to 0 vote. Thank you. Okay, on to unfinished business.

**UNFINISHED BUSINESS**

Mr. Kim: Hearing no unfinished business, report by the Zoning Administrator.

**OTHER BUSINESS**

3. December meeting

**ADOPTION OF MINUTES**

None

**ZONING ADMINISTRATOR'S REPORT**

Mrs. Blackburn: I have a report.

Mr. Kim: And we will be glad to hear it.

***Board of Zoning Appeals Minutes  
November 25, 2014***

Mrs. Blackburn: Good evening gentlemen and (inaudible, microphone not on) thank you. It's been a long time since I have seen you all. It's nice to be back. A quick, just a quick report. A little overview of the year. Over the year we have heard 13 cases. Our big one was Special Exceptions for firearms sales in homes and that was 6. There were 4 appeals, 2...3 of them, well really 5 appeals when we have the shooting range and deciding you can submit an application. And 1 microbrewery and 2 offices, home offices. So it's been a nice little selection of things that you all have had to work with. And I have to say I think you all have done a wonderful job this year. The question that we get from you all in what is going on with this case or what is happening with that are great. We like to get them, it means you are reading the reports, which is wonderful. So thank you very much for that. And one thing that has been brought up is that there was a question about putting time limits on the Special Exceptions. And at one point in time we received information that was not possible, but in re-going back over the State Code, we did find the situation that, and you have a copy of this at your seats, that out of Section 15.2 – 2309, powers and duties of Boards of Zoning Appeals, number 6, it says you are to hear and decide applications of Special Exceptions as maybe authorized in the Ordinance and you may impose such conditions relating to the use for which a permit is granted and it may be deemed necessary in the public interest including limiting the duration of a permit. So I know that has been a question on several things, so we will start incorporating that into our suggested conditions with various time limits and we'll just see where we all kind of land, where you all feel appropriate time limits, if any, will be needed in some situation. And other than that have a Happy Thanksgiving.

Dr. Ackermann: You too.

Mr. Grimes: I have a question.

Mrs. Blackburn: Yes.

Mr. Grimes: What are we looking like for the 23<sup>rd</sup> of December?

Mrs. Musante: That is what I was going to bring up. We need to make a motion to not have a December meeting.

Mr. Grimes: That is why I was asking to see if there was... if you had 10 cases then maybe I wouldn't suggest that.

Mrs. Musante: No.

Mr. Apicella: I think that motion was seconded by everybody on the...

Mr. Kim: So I have a motion made?

Mr. Grimes: I move to skip the December 23<sup>rd</sup> meeting of the BZA.

Mr. Kim: Do I hear a second?

Dr. Ackermann: Yes, sure.

Mr. Kim: I have a motion made by Mr. Robert Grimes and seconded by everyone, not to meet in December. All those in favor say aye.

***Board of Zoning Appeals Minutes  
November 25, 2014***

Mr. Ingalls: Aye.

Mr. Apicella: Aye.

Mr. Davis: Aye.

Dr. Ackermann: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye.

Mr. Kim: Aye. All those opposed say nay. Let the record reflect 7 approve 0 deny, we will not have a meeting in December.

Mrs. Musante: Just one more, well actually two more things. One, the Boards and Commission dinner is next Tuesday night, December the 2<sup>nd</sup> at Riverside from 7:00 to 9:00. Hopefully you all received your invitations. And second I am hoping all of you all actually received Mr. Poss' resignation. So we will be looking to fill his vacancy.

Mrs. Blackburn: One more thing. Did you all receive...

Mr. Kim: Minutes?

Mrs. Blackburn: No the form that they...

Mrs. Musante: Yes they... each one had one in their spots today.

Mrs. Blackburn: Okay. Please fill them out and send them back in. They will yell at us. Oh look at you.

Dr. Ackermann: And they don't have to be notarized?

Mrs. Blackburn: No, no. Yes.

Mrs. Musante: We do not have minutes.

Mr. Kim: I figured because I did not see them.

Mrs. Musante: Yes.

Mr. Kim: Any other business?

Mr. Grimes: I am just talking about the time limits on the Special Exceptions. We are going to let your department handle the initial language on that.

Mrs. Blackburn: Yes, yes.

Mr. Grimes: Okay.

*Board of Zoning Appeals Minutes  
November 25, 2014*

Mr. Kim: It is going to be in the recommendations.

Mrs. Blackburn: Yes, and it will be in recommendations which will always be able to be changed.

Mr. Grimes: I like the idea of transfer of ownership, you know.

Mrs. Blackburn: Yes, and there may be some that you would like to have re-looked at every so many years. Just to keep people on their toes, depending on what it is. And there may not be any of those, but it's, I think, a nice tool to have in your tool box.

ADJOURNMENT

Mr. Kim: Okay, any other business? Okay do I hear a motion to adjourn?

Mr. Apicella: So moved.

Mr. Kim: We are adjourned.

With no further business to discuss the meeting was adjourned at 8:08 p.m.