STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
February 24, 2015

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, February 24, 2015, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Dean Larson in the Activities Room of the George L. Gordon, Jr., Government Center.

MEMBERS PRESENT: Dean Larson**,** Danny Kim, Robert Grimes, Ray Davis, Steven Apicella, Dana Brown, Ernest Ackermann

MEMBERS ABSENT: Larry Ingalls, Heather Stefl

STAFF PRESENT: Melody Musante, Susan Blackburn, Stacie Stinnette, Donald Cox

DETERMINATION OF QUORUM

Dr. Larson: Let the record show that we have 7 members present tonight. We have Mr. Steven Apicella here to my right, Ms. Dana Brown, she's welcome by the way, first time. To my right as well Mr. Robert Grimes, also to my right Mr. Danny Kim and Dr. Ackermann, and Mr. Ray Davis, and Dean Larson. For the County we have Melody Musante. She is the Zoning Manager for the County. We have Ms. Susan Blackburn, the Zoning Administrator. We have Stacie Stinnette, our Senior Associate for Zoning and Admin, that's still right? Okay. And then we have Mr. Donny Cox, a Zoning Official as well. The hearings will be conducted in the following order: The Chair will ask the staff to read the case and the members of the Board may ask questions of the staff. The Chair shall then 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 3 minute time limit for each individual speaker and a 5 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 3 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, 4 members of the Board must vote for approval. In order to allow the Board for appropriate review, the applicant or applicant's representative is required to submit relevant material to the Department of Zoning and Planning 10 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 material may require a deferral at the Board's option on behalf of the applicant to allow the Board time to consider that additional material. All members of the public and/or staff may also submit relevant material during the hearing. The applicant should note that we have 7 members present, so there will be no reason to ask for deferral because of members present. The applicant may also withdraw his or her application at any time prior to a vote to approve or disapprove the application provided that the applicant has not withdrawn a substantially similar application within the last 12 months. Any person or persons who do not agree with the decision of this Board shall have 30 days to petition the Stafford County Circuit Court to review our decision. Also be aware that the Board will not hear any denied application for a variance

or special exception that is substantially the same request for at least 1 year from the date of our decision. I now ask that anyone who has a cell phone, pager, or other electronic device to please silence it. It is the custom of this Board to require that any person who wishes to speak before the Board shall be administered an oath. Therefore, I ask that anyone who wishes to speak tonight, stand and raise your right hand. Do you hereby swear or affirm that all the testimony before this Board shall be nothing but the truth? Thank you, you may be seated. The Chair asks that when you come down to the podium to speak, please first give your name and address clearly into the microphone so that our recording secretary can have accurate record of the speakers. Also, please sign in on the form on the table in the rear of the room. I see no speakers, are you recording this?

Mrs. Musante: That's what I was getting ready to say when you finished. The only device we have are these two here. So it's very important when you speak, you speak loudly, because this is all we have.

Dr. Larson: Will that pick me up. I'm right in the middle.

Mrs. Musante: I'm hoping.

Mrs. Stinnette: Yes.

Dr. Larson: Are there any changes or additions to the advertised agenda?

Mrs. Musante: The only change to the agenda is item number 2, there is a typo, SE15-05/ZON1… should be 51 instead of 41.

Dr. Larson: Thank you.

DECLARATIONS OF DISQUALIFICATION

Dr. Larson: Before we hear the first case, does any Board member wish to make any declaration or statement regarding any cases to be heard before this Board tonight?

Ms. Brown: I do.

Dr. Larson: Okay.

Ms. Brown: Just wanted to say that I went out about 10 days ago, I think it was February 14th, and I visited both sites tonight, I did not speak with anyone there. That's it.

Dr. Larson: Anybody else? I went to the Shorts Branch Brewery a few days ago, took a tour, and talked to the applicant as well. Now I'll ask the Secretary to read the first case.

PUBLIC HEARINGS

1. SE15-01/ZON14150484 – Shorts Branch Brewery - Stafford County Zoning Administrator requests the Board of Zoning Appeals to conduct a public hearing to consider revoking Special Exception SE13-02/1300408, granted to Shorts Branch Brewery (Sidney E. Lovell) on October 22, 2013, allowing a microbrewery on Assessor's Parcel 21-57B with conditions. The property is located at 3071 Jefferson Davis Highway in the Aquia Pines RV Park. A notice has been

issued for a violation of the property's special exception conditions and compliance has not been met.

Mrs. Musante: Case SE15-01/ZON14150484, Shorts Branch Brewery – The Stafford County Zoning Administrator requests the Board of Zoning Appeals to conduct a public hearing to consider revoking Special Exception SE13-02/1300408, granted to Shorts Branch Brewery, Sidney E. Lovell, on October 22, 2013, allowing a microbrewery on Assessor's Parcel 21-57B with conditions. The property is located at 3071 Jefferson Davis Highway in the Aquia Pines RV Park, within the Aqua Election District. A notice has been issued for a violation of the property's special exception conditions and compliance has not been met. You have the letter granting special exception with the conditions of approval, the notice of the violation, and the site plan submitted with the original application. The applicant requested a special exception to operate a microbrewery in conjunction with the existing Aquia Pines Camp Resort. After conducting a public hearing on October 22, 2013, the BZA granted the request with seven conditions, which is Attachment 1. These conditions applied to the hours of operation, the number of parking spaces, and the type of signs not permitted, and required the microbrewery to comply with the plan submitted by the applicant and all federal, state and local codes. The decision to request the Board of Zoning Appeals to revoke the special exception is the result of the Microbrewery failing to meet the conditions after several attempts to gain compliance. Staff reviewed county records for building permit applications and a request for a certificate of occupancy. Upon seeing none, several visits were made to the site to verify progress toward compliance. In June, 2014, a code enforcement officer inspected the site and was informed that beer was being brewed on the site for sale. The inspector noted that parking spaces had not been designated nor had the pavilion, as one of the serving areas for the beer, been enclosed, as was stated in the meeting. The inspector informed the owner that the conditions of approval had not been met and that a certificate of occupancy was needed prior to the microbrewery operating. The owner stated that he did not need a certificate of occupancy. The inspector instructed the owner to contact the Zoning Administrator or the Building Official to discuss the matter further. Neither the Zoning Administrator nor the Building Official was contacted by the owner concerning this matter. On July 31, 2014, the code enforcement officer conducted another inspection to verify progress towards compliance with the conditions of approval. Finding that no progress had been made, a notice of violation seeking compliance within 30 days was issued on August 13, 2014, which is Attachment 2. On September 9, 2014, the owner contacted the inspector concerning the notice of violation and scheduled a meeting on site for September 11, 2014. At that meeting, the inspector discussed the conditions of approval, especially emphasizing the requirement of a certificate of occupancy in this situation. The inspector further explained that a certificate of occupancy would require compliance with all of the conditions of approval of the special exception. The owner stated that he would get the inspector what he needed. No progress towards compliance was observed during the site visits conducted on September 25 and October 11, 2014, which is significantly more than 30 days after the issuance of the notice of violation. Therefore, the Board of Zoning Appeals is being requested to consider revoking the special exception pursuant to condition #7; failure to comply with the approved conditions will result in the revocation of this special exception. The notice of the public hearing was delivered to the property owner on January 8, 2015. At that time, the inspector made note that the parking spaces were striped in the travel access lanes which is not in accordance with the plan submitted and approved with the special exception, nor is it permitted by the zoning ordinance (Attachment 3). The Zoning Administrator has the authority to enforce the Zoning Ordinance and conditions of approval for special exceptions. Pursuant to Virginia Code Sec. 15.2-2309(7), the Board of Zoning Appeals has the authority to revoke special exceptions it previously granted. Therefore, the Zoning Administrator is requesting the Board of Zoning Appeals to revoke special exception SE-13-02/1300408, for failure to comply with the conditions of approval.

The Aquia Pines Campground was established in 1973. The Board of Supervisors adopted an Ordinance, O13-06 on September 13, 2013, allowing microbreweries in the B-2, Urban Commercial Zoning District with a special exception.

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

Mr. Apicella: Mr. Chairman?

Dr. Larson: Yes, please.

Mr. Apicella: So with regards to the certificate of occupancy, what Code section requires that?

Mrs. Musante: Section 28-184.

Mr. Apicella: If you have it in front of you, can you read that?

Mrs. Musante: I do. No land shall be used or occupied, nor shall any building erected or structurally altered be used or changed in use without a certificate of occupancy being issued by the building official. Prior to issuance every certificate of occupancy shall be reviewed by the Zoning Administrator or his designee for compliance with this chapter. Such certificate shall state that the building or proposed use complies with the building laws and the provisions of this chapter.

Mr. Apicella: And that section would apply whether for a new or a changed use, whether it was a special exception or not?

Mrs. Musante: Correct.

Mr. Apicella: Kind of going through the history again, so, again, the BZA established these conditions in October 2013, about a year and a half ago, correct? And then about eight month later the Code Enforcement Officer inspected the site and found that the conditions of approval had not been met?

Mrs. Musante: Correct.

Mr. Apicella: And that was in June? The next month, July, a Code Enforcement Officer conducted another inspection and found no progress?

Mrs. Musante: Correct.

Mr. Apicella: That was about 10 months after the initial approval?

Mrs. Musante: Correct.

Mr. Apicella: And again on September 9th, and inspector, I don't know if it was the same inspector, discussed the conditions of approval with the applicant and emphasized that there was a need for a certificate of occupancy?

Mrs. Musante: Correct.

Mr. Apicella: That was eleven months after the approval?

Mrs. Musante: Correct.

Mr. Apicella: And then, I guess, back in… a month prior a notice of violation was issued, right?

Mrs. Musante: Mhm.

Mr. Apicella: And it clearly articulated what the issues were that had not been addressed?

Mrs. Musante: Yes.

Mr. Apicella: And additional reviews were conducted in late September and early October, now a year later?

Mrs. Musante: Yes.

Mr. Apicella: So the only attempt that the inspector found to correct the issues was to mark some parking spaces along the travel way?

Mrs. Musante: To my knowledge, yes.

Mr. Apicella: And that's not permitted by County…

Mrs. Musante: Correct.

Mr. Apicella: So this is not really an issue about whether or not we support Microbreweries…

Mrs. Musante: Not at all.

Mr. Apicella: … in particular this Microbrewery. This is not whether or not the specific conditions were met…

Mrs. Musante: … and whether the County's requirements were met?

Mrs. Musante: Correct.

Mr. Apicella: Okay. Thank you.

Dr. Larson: I have a question for staff. Certificates of occupancy, is there any grandfathering or vesting issues, with respect to do these certificates apply to buildings that were built prior to a requirement for a certificates of occupancy?

Mrs. Musante: He would be applying for a certificate of use for the new use. It doesn't have anything to do with the existing Aquia Pines. This is for the Microbrewery only.

Dr. Larson: Okay, so when there is a new use, then the law requires… it's called a certificate of occupancy, but it's actually some sort of certificate of use.

Mrs. Musante: It actually is printed out on a certificate of occupancy. We call it a use, because that's what we use. The term for Zoning is "a use".

Dr. Larson: So whenever you have an existing building, if you change what the building is used for, you need to get a new certificate of occupancy.

Mrs. Musante: That is correct.

Dr. Larson: For any building or just a commercial building?

Mrs. Musante: That's for any use.

Dr. Larson: Okay, so if I were to turn my house into a bed & breakfast, I would need a certificate of occupancy?

Mrs. Musante: Yes, you would.

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

Ms. Brown: I just had one. When you were reading off the Code 28-184, did you read in there too that it said when the building is structurally altered?

Mrs. Musante: It does. It says "a building erected or structurally altered be used or changed in use".

Ms. Brown: Thank you.

Dr. Larson: Any other questions for staff?

Mr. Apicella: I guess, Mr. Chairman, the Building Inspector or Inspectors are here today. Can they give us their take on what transpired?

Dr. Larson: We have a member of the staff that did the inspection, Mr. Donny Cox, present. Would you like to question… this is your opportunity.

Mr. Apicella: I just… yes, I would just like to find out from the building inspector, again, what…

Mr. Cox: I'm a Zoning Inspector, I'm not a Building Inspector.

Mr. Apicella: Sorry for the wrong terminology, but can you give us you take of the timeline and what…

Mr. Cox: Well the timeline is what is right there in front of you. That was taken from my notes that I keep a log on. We also take photographs which are dated, when we go out, so that keeps a timeline also. We had talked and discussed what was going on with what he agreed to do on the layout page with the parking, that that's what was needed to get his certificate of occupancy. Then we talked about the markings on the travel lane and I suggested that was not a good idea, that's not allowed by Code, by the standards. You have to set up… we can maybe even move it to a couple of your slots up on top of the hill also, and we could work on that and come up with a plan. And that's where it was left. At that time we were talking, I said, you never know who may pull up and want to know where the Microbrewery is and that time a guy pulls up and says "Where do I park for the Microbrewery".

Mr. Apicella: So again, from your vantage point, on multiple occasions, back as early as June or July of 2014, you advised the owner that he needed to pursuit a certificate of occupancy and then several times afterwards.

Mr. Cox: Not until after he received… we talked, that he received a notice of violation and he came into the office and we had a conversation and I said I would be glad to come out and meet with you tomorrow on site and we can go over it and look at what you have there and how to get you where you need to be.

Mr. Kim: What was the response?

Mr. Cox: He said "Okay, we'll meet tomorrow." We met in the afternoon.

Mr. Kim: Oh you guys did meet?

Mr. Cox: Yes.

Mr. Kim: And there was obviously nothing done?

Mr. Cox: Not to date.

Mr. Apicella: And there is still no certificate of occupancy?

Mr. Cox: No.

Dr. Larson: Mr. Cox, where you the only person from Planning and Zoning to visit this site regarding these violations?

Mr. Cox: We had another Zoning Inspector, it's only two of us, a new one, a new guy, his name is Jerrell, he just went out to update photos. I was in a meeting, had some meetings, I said "Could you go out and take these for me" because that's his area anyway, but I've been working this case. But that's the only other inspector that has gone out.

Dr. Larson: When was that? When did he go out?

Mr. Cox: That was probably, roughly about a month ago.

Dr. Larson: Okay. Did he talk to the applicant?

Mr. Cox: No.

Dr. Larson: And what is his name again?

Mr. Cox: Jerrell Hayden.

Mr. Apicella: Mr. Chairman, may I ask one more question?

Dr. Larson: Absolutely.

Mr. Apicella: So let's just say this wasn't a zoning appeals issue, it's a regular set of circumstances where someone where someone has established a use, a particular area or structure, that did not comply with the County's requirements, would they also receive a notice of violation and effectively being stopped from continuing with whatever use that they were doing that had not met the County's requirements?

Mr. Cox: Yes.

Mr. Apicella: Thank you.

Dr. Larson: Any other questions for staff?

Ms. Brown: I have one. I understand no occupancy permit has been issued, has one been applied for?

Mrs. Musante: Not to my knowledge.

Mr. Cox: No.

Dr. Larson: Any other questions for staff? Alright, hearing no more questions for staff, I'll know open the public hearing. Will the applicant please come forward and present their case?

Mr. Lovell: Good evening, my name is Everett Lovell from Wild Run Brewing Company. You all keep referring it to Shorts Branch Brewery. We had some trademark issues. We had registered Shorts Branch as a business name and we've registered Wild Run Brewing Company. We haven't changes our corporate structure at all. It's just a trade name and all those are on file in the Courthouse and in the State Corporation Division. Mr. Chairman, I'm going to ask that you dismiss the Counties of violation with prejudice, because I have complied to the best of my ability with all seven conditions that were set forth at the time of our October hearing. I'd like to go over some of the inaccuracies in the staff report. There are quite a few inaccuracies. Can I just ask a clarification? Mr. Cox said he was the inspector that came out. That was at the September 11th inspection? Is that correct?

Dr. Larson: He said he went to all of them, except the inspection by Mr. Jerrell Hayden about a month ago.

Mr. Lovell: Okay, so I'm going to assume he was the gentleman that came out on September 11th when we spoke. That was 2014. Thank you, Mr. Chairman. I have never applied for a conditional use permit for the very simple reason that I don't think one's required in this case. There hasn't been any change of use in my building. My building is continuing to be used in the exact use that it has been for the last 40 years. I've had a beer license for… I've personally had one for almost 30 years, and the owners prior to me had one. It's being used for the meetings and all that's it's been used for continuously the whole time. Staff… in the staff report it says that we haven't applied for any building permit applications or request for certificate of occupancy. That's not correct. We applied for an electrical permit and I brought several copies and I'd like to submit those to the Board. Mainly it was just to upgrade the electrical outlet in the brewing area, because none of the plugs and GFI or GFI-type plugs and when we have electricity and water, it's a good idea to have GFI plugs. I did apply for an electrical permit. It happened to be before the staff or Board defined breweries and microbreweries, but the electrical permit clearly says operating brewery there. They came out in March of 2014 and passed our upgrades, or changes, minor changes to the electrical service, and I just wanted to submit those to the Board if that would be alright.

Dr. Larson: That's fine.

Mr. Lovell: I'm surprised that County staff didn't find that if they were searching the records. This says in June that an inspector noticed the parking spots hadn't been designated, nor had the pavilion as one of the serving areas, had been enclosed. That's absolutely correct. We ended up using the lounge area for our serving area. It just so happens that the state ABC agent has designated the entire 20 acres as a serving area, so it's not just limited to the pavilion or the lounge. We could serve beer anywhere on the 20 acres and people have to keep their beer on the 20 acres unless it's in an enclosed container. The next paragraph… I'm sorry… I did state in June that I didn't think I needed a certificate of occupancy. The inspector asked me to contact the Zoning Administrator and the Building Official, that's totally correct. I also asked they contact me, because I stated emphatically, I don't think I need a certificate of occupancy, and if they think I do, please just have them call me and explain it to me. They have never contacted me to explain it, or to even go over why they think I do need an occupancy permit. When we met on September 11th, I met with Mr. Cox, there were three issues: The entry way sign is noted in the notice of violation. That was item number 6 on the notice of violation. It talks about carnival style flags, banners. I just put up a temporary entry way sign that was made out of fabric. And when I received this letter, I took it down. And I had mentioned to Mr. Cox that it's already been complied with. I took that down. As you may know, they're building a Hilton Hotel next to the camp ground. They're supposed to put in a turning lane and we intend to redo our entry way signs and that's why I put up the temporary sign stating the brewery was here. And since I've taken that down I haven't put up any sign stating that the brewery is located there. That was one of the three items. The second one was, he said, he thought an occupancy permit was required. Again, I told him I didn't think it was. The third item was the parking. He said that I had to keep the parking on the paved area, because the County staff has insisted that I have parking area on a paved area, which I didn't know when I applied for all this. He recommended I keep it on the paved area and that is, now staff report says, that's the travel lane. I don't think there's any definition of a travel lane in the camp ground. And I'll get to that a little bit more in a moment. It says no progress has been made in the compliance. So again, I take exception to that. I've tried to comply with all these conditions. Building permits, I did pull a building permit referencing section 28-183, buildings being older, or whatever, I didn't want to put in GFI plugs as I mentioned in the brewing area. The building inspector issued that. There is a note in the Code that says "no building"… let me find it here… I'm sorry. Concerning building permits, this is 28-183, it says "no building permit shall be issued unless deemed in conformance with the provisions of this chapter by the Zoning Administrator". I was issued that, so I would assume that the brewery, or the right to brew on the property is in compliance. And that was before Stafford County defined brewery. I just find it… I'm very troubled it seems the Planning Department has a great deal of problem with the brewery being in the camp ground. It doesn't seem like the building officials have any problem with the brewery being on the camp ground. Concerning a certificate of occupancy, again, I'm not sure why all this is coming from the Planning Department, because my understanding of the Code 28-184, that, again, comes from the building officials, and again, it doesn't seem I have any problems at all with the building officials. I haven't structurally altered the building. There is no change in use. It seems to be coming all from the Planning. And as Mr. Cox and I discussed on September 11th, he wasn't concerned with what happened inside the building. He was just interested in what was outside the building, and that was the entry way sign, parking and occupancy permit. Concerning paving, I'm still not sure section 28-256-c-5 talks about paving, and I think that makes allowances to have paving on, or having, excuse me, parking on unpaved areas. But it says that my travel lanes, drive lanes, whatever, ought to be contiguous with the public street to which these travel ways, drive ways, parking bays, or whatever, are connected. That means I'd have to be… have some sort of similar travel lane is what US Route 1 is, because that's what I join. To me that just seems bizarre, to require a campground to have something like that. And

again, I can't overemphasize that I don't think travel lane is at all defined for the camping area or for the driveways.

Dr. Larson: Mr. Lovell you have about a minute left.

Mr. Lovell: I'll stop, Sir, that's fine.

Dr. Larson: Are there any questions for the applicant?

Ms. Brown: Again, I'm sorry, what was your recollection of what the parking surface was supposed to be?

Mr. Lovell: County staff has told me repeatedly that it has to be a paved area and I'm not… I have no idea why they keep insisting that it has to be a paved area in the camping area.

Ms. Brown: And what is it now? I visited out there, but there were a lot of leaves and stuff so I couldn't…

Mr. Lovell: All the camping sites are gravel, but that's not really what we're talking about. The designated parking on the driveway in and out, and happens to be were people naturally park, and again, that was after… I was going to wait until the spring time to designate it, except I got a call from a reporter a day or so before Christmas notifying me that Stafford County was going to pursuit this and the newspaper reporter wanted to know how much longer I thought I was going to be in business. That was the question for me.

Ms. Brown: I guess what I'm trying to ask is, on the site plan there is some designated areas for parking and I tried to look at those.

Mr. Lovell: I was going to put in gravel parking there. I have no desire to put paved parking down there. I don't think that's in keeping with the camp ground at all. You know, we could put paved parking, I just don't see any need for it. People are parking in front of store where they've been parking for 30-something years.

Mr. Kim: You keep stating that you don't think you need an occupancy.

Mr. Lovell: Yes, Sir, occupancy permit, that's correct.

Mr. Kim: I still don't understand how you're coming to that conclusion. I mean it clearly states, you know, it defines, you know, and you know what you need an electrical permit as part of getting the occupancy. So you did this part, so I'm kind of lost. I like microbreweries, I like going to them, I enjoy them, but the only issue that I'm having is, why our inspector came out to your location and you keep saying that we're wrong or the Zoning staff is wrong that you need… you say that you don't think you need one, but what's the reason behind it. Is there something that's more than you just think?

Mr. Lovell: Absolutely. There has been no change in use. There has been no alteration of the building, the use of the building, or the activities in the building.

Mr. Kim: So for 30 or 40 years you have been selling and brewing beer?

Mr. Lovell: We haven't been brewing. That was something that was just…

Mr. Kim: So that is a change of use. It's a completely different set of circumstances. If you're selling beer to making it, I mean, if you go to the ABC Board to get that permit, there is two different standards you have to apply for. I don't know exactly what they are, but to sell alcohol is completely different than making alcohol. So it would be a change of use.

Mr. Lovell: I would argue that it's not a significant change of use.

Mr. Kim: It doesn't say significant use, it just says change of use.

Mr. Lovell: Okay, well, we've installed a credit card machine at the campground in the 30-something years I've been there. I wouldn't consider that a change in use.

Mr. Kim: That's not a change in use. That's just…

Mr. Lovell: We've installed WiFi. We've changed the campsite significantly to accommodate larger campers. We've change a lot of things.

Mr. Kim: But that's a part of the same usage. You're selling alcohol to now brewing alcohol. That is a complete different change of use. If you got a permit, and I know you got a permit from the ABC Board…

Mr. Lovell: And the federals.

Mr. Kim: Yes, of course, you have to.

Mr. Lovell: And the Department of Agriculture.

Mr. Kim: Now did you have to have that permit before?

Mr. Lovell: No, Sir.

Mr. Kim: No, so it is a change of use. You can argue as much as you want, and like I said, I have no problems with microbreweries. I like microbreweries. I like going to them. But my only issue is, there is a change of use and you keep arguing that there isn't, with our staff that's very well knowledged with all of this. I mean, obviously we're all humans, so we make mistakes, but as I look at this case, I don't think anything wrong that the Zoning Administrator did. I mean, you just, I mean I see where you're coming from, but…

Mr. Lovell: I believe you were in the original meeting in October…

Mr. Kim: Yes, I was.

Mr. Lovell: You may recall the staff came up with the seven recommendations, well actually they had more, but it was narrowed down.

Mr. Kim: Yes, recommended by staff and approved by us. Yes.

Mr. Lovell: And when asked about how they came up with them, these two staff members didn't say they consulted and expert, they consulted other counties. They said, we just sat down one afternoon and came up with them.

Dr. Larson: The staff could be considered experts in some of the things that they do and we take their recommendations as expert opinion. So when we go through each special exception as we do and they have recommendations for us, we take those first. We might add something. We might take some of those away, based on the testimony. But the staff themselves can be experts and our experts in Zoning matters. I just want to make sure…

Mr. Lovell: Very well.

Dr. Larson: I actually have one thing I want to…

Mr. Kim: I'm good. Thank you.

Dr. Larson: … the parking, we're talking about use permits and we're talking about parking. I think the banner was rectified, so I don't think we need to talk too much about the banner. Is that what the staff…

Mrs. Musante: Correct.

Dr. Larson: Yes, okay. I went through the minutes, I read through the minutes from the October 2014 meeting and I was reminded that what Mr. Lovell says is correct. When he was talking about parking spaces, he said that the parking spaces will be hard compacted gravel. That's in the minutes. Where is the requirement for paved parking?

Mr. Apicella: While their looking, may I interject?

Dr. Larson: Yes.

Mr. Apicella: So I'm looking at page 15 of 44 of the minutes you actually ask the question. "Any other questions for the applicant? Thank you, Mr. Lovell. Question for staff. The parking spot requirement. Is there any requirement in how the spots are constructed? Can they be grass? Can they be gravel? I mean is there a requirement on how you construct a parking spot?" "Mrs. Musante: In today's world, I'll start out that way, if he was coming in with a new business he would be required to pave the parking areas. I'm assuming that this would be the same way. We are not going to require him to do a site plan, because technically he is not disturbing the more than 2,500 square feet to get these parking spaces in. I would have to discuss this with Jeff Harvey to see if he would require him to pave these areas or not." And then you answered "Okay." And then Mrs. Musante responded back "Short answer would be: Yes, they would have to be paved." Now I'm sure they can go through and find requirements, all I'm trying to point is, there was a great deal of discussion about parking and there was a great deal of discussion about what the requirements were, why we got to the number 14, and ultimately that they had to be paved. Now the applicant may disagree with that ultimately, but there was a great deal of discussion about it.

Dr. Larson: Thanks for reminding me about that part of the discussion. I'd still like to see what the code says about the parking.

Mrs. Musante: I can add while Susan is looking, is that Non-profit Organizations can require a waiver of parking requirements. That is the only thing that can be exempt from paving. I do know that off the top of my head, now she'll probably find where it actually states in there that it has to be paved.

Dr. Larson: Let's go on while she's looking that up.

Mr. Lovell: Mr. Chairman?

Dr. Larson: Yes.

Mr. Lovell: The section 28-256(c)(5) says "At a minimum, however, parking and driving areas shall be surfaced in crushed stone in an amount sufficient to prevent soil erosion, abate dust" and it goes on "Contractor's equipment and vehicle storage areas, rural home businesses, landscaping businesses, plant nurseries…". Clearly none of those are the type of businesses that the County staff was just referring to. So I'd say there is provision to have unpaved parking. Another quick… Sir, the original, based on the square footage of the pavilion they came up with 14 parking spaces. I provided 15 and the lounge area that we're using is about 60% of the square footage of the pavilion so that would decrease the 14 square foot down to about 9. But still, I have 15 provided.

Mr. Kim: May I ask you a question. Where, just because of the snow it's hard to see, so I'm not sure, where is the parking area, just because I can't see because of the snow.

Mr. Lovell: I haven't seen those photographs that you have, so if I…

Mr. Kim: Is it maybe this.

Mr. Lovell: No, Sir.

Mr. Kim: No?

Mr. Lovell: These are some of the designated parking areas, but on…

Mr. Kim: Our inspector said that that wasn't up to Code? I mean, I'm asking. I'm not arguing. Because it's in the middle of… this kind of takes up the street?

Mr. Lovell: It's not in the middle.

Mr. Kim: I just want to know.

Mr. Lovell: It is in the entry way at the campground. However people park there continually to either register, to buy propane, to come into the store and buy groceries.

Dr. Larson: Let's examine that issue more closely.

Mr. Lovell: We do have six other spots, not in this area.

Dr. Larson: I just need questions for the applicant.

Mr. Kim: Okay.

Dr. Ackermann: So the plan that was submitted has parking designated?

Mr. Lovell: Yes, Sir.

Dr. Ackermann: And those parking spaces are available?

Mr. Lovell: Some of them, the ones next to the pavilion are available. It's the ones down there down near Route 1 that weren't built.

Dr. Ackermann: So, but one of the conditions for the special exception was that all this would be provided.

Mr. Lovell: Yes, Sir.

Dr. Ackermann: And it's not provided.

Mr. Lovell: I would say it is provided. After my meeting with Mr. Cox on September 11th…

Dr. Ackermann: But the ones near Route 1 are not available.

Mr. Lovell: No, Sir, they're not. But I did designate parking.

Dr. Ackermann: But not according to the plan and the condition 1 says that any changes or alterations to the use or the plan will require a new special exception application.

Mr. Lovell: That's absolutely correct and I would ask the Board to think or to consider, you know, every change that I make, do I have to file a 1,400 dollar filing fee and come back and ask for another change?

Dr. Ackermann: If you change this plan, yes. I mean that's pretty standard operation. That's my interpretation.

Ms. Brown: I was reading through the minutes because I was not on the Board when you came originally and I spent an hour and a half reading through everything last night. You stated in the minutes, you stated that the pavilion was going to be used and you were going to replace the walls on it and insulate the ceiling to make it more of a 10-month facility. You no longer intend to do that?

Mr. Lovell: I'd like to in the future. There's a little bit of a problem with cash flow. We are in a bit of a recession, and we have been for the last six or seven years. We use the lounge area for all kinds of logistical reasons.

Ms. Brown: I know… when I was there, I was trying to find the parking. I think I was up parking near the basketball courts looking down at the pavilion.

Mr. Lovell: Okay.

Ms. Brown: Is that correct?

Mr. Lovell: That is parking area. Mhm.

Ms. Brown: So you don't intend to use the pavilion anymore?

Mr. Lovell: We do use the pavilion. We just weren't going to use it for the tasting room, or maybe I should say serving room, because people can certainly and people have gotten pitchers of beer and taken it down there or gotten pints of beer an gone down there, or down to the fire ring area that's just between the pavilion and that little parking area that you see on your map.

Ms. Brown: Thank you.

Mr. Apicella: Mr. Chairman?

Dr. Larson: Yes.

Mr. Apicella: So from this picture that I'm looking at where the paved spaces are, I think you said there were six of them, is that, this area here, is that two-way traffic?

Mr. Lovell: Yes, Sir. Yes.

Mr. Apicella: And so, where the edge of the spaces are marked, how much clearance is there? If you had six cars sitting there, how much clearance is there from the edge of these spaces to the other edge?

Mr. Lovell: I would guess about sixteen feet.

Mr. Apicella: So what would happen if, again, you had six cars lined up and someone wanted to come out? You have people who want to come in and people who want to come out, and you've got these six spaces occupied. What happens with the traffic flow?

Mr. Lovell: Right in that area they could probably pass by each other without any problem, but…

Mr. Apicella: In that sixteen foot area…

Mr. Lovell: Yes, Sir.

Mr. Apicella: … they can pass each other?

Mr. Lovell: Yes, Sir. We have encountered this for years too, because people come in to buy propane, or buy supplies from the store, and you have motorhomes coming that are 40-foot fifth-wheels.

Mr. Apicella: I'm not suggesting people can't come in. I'm suggesting you got people wanting to come in at the same time people are trying to come out.

Mr. Lovell: Yes, Sir, and I totally agree with you, and that is, that has happened, where people come up to register, there'll be people parked along the side of the road. People will pull up next to them in a very large camper, let's say a 40-foot fifth-wheel and then somebody wants to go out, say a motorhome, and it hasn't been a problem.

Mr. Apicella: So two vehicles going in… so you're saying, based on your experience, with six cars lined up in that area, two cars going in opposite direction can pass each other without any problem?

Mr. Lovell: No, I wouldn't say can pass each other without any problem. I'm saying that that situation arises, and you know, maybe one person waits a few minutes. But it hasn't been a problem.

Mr. Apicella: It's not an issue whether it's a problem. It's an issue, again, the County has requirements, I'm assuming there's a reason why they have these requirements, and I think the reason is, again, so that two cars going along the travel way, going in opposite directions, can have free flow. So if cars are having to stop and wait for one car, I don't know, moving in whatever direction, has to stop, then you're restricting the free flow of movement, of two cars going in the opposite direction. Again, I think that's the reason why these requirements are in existence. I mean if somebody could go in and go all the way around and get back out to Route 1, it wouldn't be an issue, if you have a one-way traffic direction, but in this case you have two-way traffic direction and you've got parking spaces that are inhibiting that free flow of movement.

Mr. Lovell: You're partially correct and people have been parking there long before I designated the parking spots. So I mean this is not a new situation.

Mr. Apicella: I understand, Sir, I'm saying what the County requirements are.

Mr. Lovell: Okay. Mr. Chairman, one other final point is in the notice of violation. There was no mention of parking and so I'm not sure why we're dwelling so much on parking. It seems like County staff was kind of, sort of searching to find something that has some substance to it. But I wasn't cited for a parking issue in the notice of violation.

Dr. Larson: One moment please. That's true, but it was a condition. Following the plan was a condition in the special exception.

Mr. Lovell: Okay.

Ms. Brown: I do have one more question.

Dr. Larson: For the applicant?

Ms. Brown: Yes.

Dr. Larson: Yes. Please.

Ms. Brown: The Zoning inspector had mentioned that when he was there a customer pulled out at the time and asked where to park. I didn't notice any signs for parking. Did I miss that? Is there a sign designating where the brewery parking is?

Mr. Lovell: No. We did discuss this back in October 2013 as well. Several of the Board members had driven up into the camp ground, driven around the camp ground, and left the camp ground without stopping at the office and saying, we're entering your private property. And I raised that point, because only the Chairman, out of everybody that visited, County staff included, the Chairman is the only one that walked into the office and said I'm here and I'd like to visit your property. Despite having two signs as you enter the property saying "Everyone must stop at the office." Everyone.

Ms. Brown: I see those in the picture. I actually missed those when I drove in.

Mr. Lovell: I saw you drive in. I saw somebody drive down to the area and take some pictures…

Ms. Brown: No, I didn't.

Mr. Lovell: … of the parking area. The question I raised in October 2013 is how many signs do you want designating where people could park for the brewery when obviously people don't read signs and don't obey the signs. And the Board laughed. So I'm not sure what sort of signs you want, which sort of paintings you want on the road. I've tried to abide by the conditions.

Ms. Brown: This is…you submitted this, right? This site plan?

Mr. Lovell: Yes, ma'am.

Ms. Brown: With the parking spots?

Mr. Lovell: Yes.

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

Mr. Lovell: Thank you.

Dr. Larson: Does any member of the public like to speak in support of the applicant? Good evening. Please state your name and address into the microphone.

Dr. Fetteroff: Good evening, Mr. Chairman, members of the Board, Dr. Dean Fetteroff. I'm going start with my last sentence first. The solution to this problem is quite simple. Amend the conditions for the special exception permit and allow this gentleman to continue to operate his business. According to the Virginia Craft Brewers Guild there are now one hundred craft breweries operating in the state. This explosive growth is the result of the General Assembly's passage of SB 604 in 2012. In 2014 craft beer outsold Budweiser 16.1 billion barrels to 16 billion barrels. Those one hundred microbreweries in Virginia have created 8,163 jobs and have an economic impact of 263 million dollars a year, 623 million dollars a year. As you know, in Stafford a special exception permit was passed in September of 2013 as a direct result of the efforts of a local group of home brewers who decided to be entrepreneurs. Two such craft breweries now operate in Stafford and I know of at least one other in the planning stages. The Aquia Pines camp ground has been in operation since April of 1973 and in May of 2014 began its operation of the microbrewery. The brewery was recently highlighted in Virginia Craft Beer Magazine and the Freelance Star now even runs a feature in the newspaper. I have visited the brewery. I have purchased brewery supplies in the store. Wild Run has even sponsored events for local brewing clubs. I have never, let me emphasize, never – underline, bold, italics, exclamation points, and quote marks – had a parking issue. There are some twenty acres of parking. As I said before, the easy solution is to amend the special conditions. Have you tried to park at the new Chipotle? There's a parking issue. Won't this County look foolish shutting down a new business in an industry that is growing at a rate of 52% per year and bound to create new tourism dollars? The solution is quite simple, again, amend the conditions of the special exception and allow this gentleman to continue to operate his business. Don't embarrass the County by shutting this business down. Thank you.

Dr. Larson: Thank you, Sir. Would anybody else like to speak in favor?

Mr. Patterson: Good evening. My name is Robert Patterson. Can I ask a question?

Dr. Larson: Okay.

Mr. Patterson: Okay. How many of you folks have been to Aquia Pines? The lady has. You were a couple of years ago.

Dr. Larson: No, I was there about, let's say a month ago.

Mr. Patterson: Okay. He didn't state his case enough. There's actually two lanes. There's an in-lane and an out-lane divided by a triangle at Route 1. It's distinctly different. I don't see anywhere where it could say that these are travel lanes where he painted parking signs up to the store and that's what I consider the brewery and the brew pub if you will. Those signs are not impeding any… those parking spots are not impeding any traffic in either direction. There is ample room to get a trailer in and out at the same time while cars are parked. If you doubt that, then you should go and take a look. Look at what he painted, the signs he painted, pardon me, the spaces he painted. Okay I have no vested interest in this, but like the doctor said, I enjoy craft beer. I think, and as a matter of fact, one of the owners of Adventure Brewing told me, as the doctor also said about craft beers in Virginia, that microbreweries would make Stafford County a destination. Okay, these magazines, newspapers that are being circulated throughout the state, be an enthusiast, read those. They're going to say, Stafford is a brew location, let's go there. Like Jean said, I hope you don't shut this man down, and I think that if you take a look at was he has done… now it seems to me the only thing holding up this occupancy statement is the parking. Is that correct?

Dr. Larson: No.

Mr. Kim: No.

Mr. Patterson: Then what else is there?

Mr. Kim: He didn't submit one.

Mr. Patterson: Okay. Okay. But the thing, if he did, the thing that would hold it up is the parking, is that correct?

Mrs. Musante: That's what we're waiting for zoning purposes. Correct. There are other…

Dr. Larson: There are other issues, but the Board…

Mr. Patterson: I've only heard two. I'm sorry, Sir, that's enough.

Dr. Larson: Okay. Thank you. Anybody else who wants to speak in favor? Sir?

Mr. Kotwicki: Good evening members of the Board. My name is James Kotwicki. Two hard acts to follow. I've lived in the county for 15 years with my family of six. I love Wild Run Brewery. It's a great place to take a family. It's one of the few places in Stafford that I feel comfortable going to with my family and my children. I can drink a beer, they drink a root beer. And once again, we feel safe. There's no other place like that, where you're not hustled out the door. It's convenient. I know it also provides employment for people who live in Stafford and some tax revenue too. So I think that's important as well. As far as the parking, I go there, I frequent the place, I have never had an issue with the parking. Whether I parked on the street or one of the RV spots. As far as the surface condition, I know for a fact that I went to a restaurant today in Stafford, and I'm not going to name it, because I

don't want you guys shutting it down, but I know for a fact it's all gravel parking. There is no paved parking there. So that, as far as the parking goes. As far as the free flow of traffic, once again, I go in there, I go in there weekdays, weekdays, weekends and weekdays, and Mr. Apicella, the situation you're talking about, I've never encountered. And because that there is two-way traffic, two lanes, one going in and one going out, when you enter if I did encounter that, there's plenty of space available just to wait. And I don't think you wait several minutes. You're talking about waiting a few seconds. I'd also like to mention that this is a small business, and if it was McDonald's or a big corporation, I'm sure they'd be able to meet these requirements lickety-split, but the guy is running a small business here and I think it's the Board's best interest and the citizen's that we maybe do find a way that we can just keep this place open and work with them to meet…maybe a little bit more reasonable on some of these conditions, because it's a camp ground. It's not a fancy restaurant. Lastly, I went to the website, you're website, real quick before I came here tonight and it states on the website "The responsibility of this Board is supposed to ensure the future orderly development that is reflective of this community's desire and needs". And I'm a member of this community, and I desire and I need it. So I hope you all will take that into consideration. Thank you.

Dr. Larson: Thank you, Sir. Anybody else want to speak in favor?

Ms. Shelton: Hi. I'm Cindy Shelton. Have you been down that road, please fix that. It's horrible.

Dr. Larson: Which one was that?

Ms. Shelton: Andrew Chapel Road. That's not what we're talking about.

Dr. Larson: Okay, let's try to stay… I'd like to keep people to their time, because we have a lot of people that want to talk.

Ms. Shelton: Right. Okay. I just wondered if we're just taking the wrong approach, because I'm listening to you guys and some people may not realize but I'm absolutely not associated with Wild Run, but I really like good business models. And so I came to Stafford three years ago. In fact I wonder, did you guys get the email that I posted? I asked for, I and several other people sent emails in and asked that you guys see those emails? This Board? Did you get them?

Dr. Larson: I remember getting an email from somebody.

Mr. Kim: I got like five.

Ms. Shelton: Good. Because that's what I wanted to talk to. So my interest, you'll see me on your notes, is that I owned a winery before I came up here to where I am now, Virginia, sorry. So I'm familiar with those kind of laws, but I'm kind of amazed at that the ones here in Stafford County, but I absolutely understand you need to do it, but I'm just wondered if we're taking the wrong tack. Because I went today and the last couple of days trying to help Everett out, trying to see, you know, what the lay of land was, and I was really surprised at some of the laws that you have. Now, I'm sure you made them for really good reasons, you know, we're so close to D.C., I'm sure that has an impact frankly, but still looking at that, one of the things that I thought was really, really important is that you're not looking at it from a model of the camp ground. You have something amazingly unique here in Stafford. I say "we do". There is not one other camp ground brewery like this anywhere. Nowhere. The whole concept… I have an autistic son. The whole concept of being able to go into a place and be able to park my vehicle and, you know, let my son, who is like the most hyperactive individual in the world according a whole bunch of psychiatrists, is to let him run around and go crazy on the camp

ground and just have fun in a very safe environment. But yet, me as a mom I get 20 minutes of God given peace to sit there and not just have a beer, but have a home brewed… not a home brewed, but something that's a lot better. Now why that's really important, I don't know if you guys have ever had… you have children. It's crazy. We need a safe place to be able to go and be able to drink, and be able to drink responsibly to be able to relax, and I think that's the compelling thing that this Board is missing, is that this is a really, really cool thing. Your laws don't have anything to do with it. They're not written for that. You go look at some of your entrance laws, and your zoning laws, and how you do your roads. They don't address, what do you do with a camp ground. You know yes, you want it match Route 1. Well, if you kind of look at your laws, you can interpret that everything in the camp ground is a road, and everything in the campground has to match Route 1. So it's kind of like you pick and choose what matches, so I kind of agree with what you brought up. Maybe we should rethink the zoning laws. So, that's all I got to say guys.

Dr. Larson: Thank you very much. Would anybody else like to speak in favor?

Mr. Boyd: Good evening Board. My name is Barry Boyd and I'm not going to add a lot more to what has been said. There's some pretty prolific things that were brought to the Board's attention. I think there's been a lot of missed opportunities for positive communication between the Zoning Board, and the Zoning Office, and Mr. Lovell and Shorts Branch, well, Wild Run Brewery, and I… it is my desire having visited Wild Run and also Adventure Brewing and having a positive experience in each one of those breweries. Wild Run is a very unique place and I would hate to see that go away. And we have an opportunity here to help out a business continue on a positive path. So I think with continued communication we can get through the parking which I personally never had an issue with. I was surprised one day when I drove up and I saw the designated parking spots. Okay, we're coming into compliance, so he's not going to be shut down, and now we're here. There are fifteen spots for parking and every time I go in and out I never have an issue with travelling through that area or parking. As it comes down to the occupancy permit, it's my desire that whatever the miscommunication has been, we can work through that by modifying the special exemption and moving forward from that. Thank you very much.

Dr. Larson: Thank you, Sir. Would anybody else like to speak in favor?

Mr. Corum: Well hopefully I can wrap this up. My name is Doug Corum. I'm a patron mainly of the brewing supply store that Everett runs and I'll be honest with you, we didn't know a darn brew pub was there for the longest time. It's not like a bar or tavern where there's a lot of people coming in and out, but be that as it may, I think the last speaker hit the nail right on the head. I've read over on the website the issue. I've talked to Everett a little bit about it. I think there's… communication's going like this right here and it would be sad if this place got shut down just because some people just couldn't come together and understand what one person is saying to the other. I really believe that's all that's going on here and I think that more communication could probably solve it. And I'd like to see that happen. Thank you.

Dr. Larson: Thank you, Sir. Do we have anybody else?

Ms. Swan: My name is Robin Swan and I didn't come with anything prepared but I feel compelled to point out my experience at Wild Run. I don't think that anybody up here is against microbreweries, but I want to talk about what Everett has done, what kind of person Everett is. I met him through my husband, Brian, purchasing brewing supplies and I've watched his business grow. We haven't had any problems with parking either before or after the lines have been painted, but the first time I really ever spoke to Everett was at the Marine Core Ball where he donated his time and his products for a party.

And after that he put together a baby shower and donated his space for a Marine that he met through that same event and I think that kind of shows what kind of generous person he is. And I also like to just echo that I hope that the County and Everett can come together and work, just work together, so that his business can continue.

Dr. Larson: Thank you.

Ms. Swan: Thank you.

Mr. Haller: Scott Haller. Mr. Chairman and Board members, some topics came up that could take me off my original course. I want to cover those real quick, kind of a shotgun effect. Mr. Ackermann, you talk about the parking and the paving at the bottom of the hill where it shows on his plan. Why he didn't do that, it's my understanding he didn't do that because he was told that everything had to be paved and so he went with pavement. His original plan was to put pressed gravel there. So I think that's the answer to your question. I'm not sure. That's what I heard. As far as… everyone keeps saying an occupancy permit. It's not a permit. It's a certificate of occupancy. In 2013 some Code was changed, Section 28-183 and 184 was changed by the County to come in alignment with the State, it was conflicting with the State Code. When that Code was changed they approved the wording of 28-184. The original language said "when required", period, and the rest of what is there now. The approved language by the Board of Supervisors that was supposed to go into the Code, included "when require". When it actually got published the "when required" fell off. That's part of the problem for the certificate of occupancy, is "when required", and the "when required" has not been defined for Mr. Everett Lovell. And so I would like you to look that up and see that the Code changed. This happened in 2013 and one of the things both of those Ordinances had done, is it removed the Zoning Administrator from the issuing of occupancy certificates and put it on the Building Official. So my understanding of reading the Code is, the Building Official is supposed to issue the occupancy certificate. When that certificate is issued, then the Zoning is supposed to inspect the certificate to ensure that Zoning was met. And that's what's supposed to happen. This seems to be the cart before the horse sort of situation, where Zoning's going in saying "you didn't meet what you need to do", but he doesn't have an occupancy certificate because the Building Official seems to not have issued one, because it's not required. That was my interpretation. I don't know if it's yours. So I would ask you to go back and look at the Code, the Ordinance that was changed in 2013, where words were omitted that weren't supposed to be omitted, and perhaps that might help clear this up. The first speaker spoke of what I think is the best resolution to this, and that is to change the conditions of the certificate, so that everyone can work this out and Mr. Lovell can get this thing going and off of this dead center here.

Dr. Larson: Thank you, Sir. Your time is up.

Mr. Haller: Okay. Thank you.

Dr. Larson: Thank you. Any others wishing to speak in favor? Hearing none, does anybody here wish to speak in opposition to the applicant? Seeing none, does the applicant wish to respond or provide any additional information? Okay. I'll now close the public hearing and I think, one of the things we started to do, yes, this is what we'll do. I'll just bring it back to the Board. Do I have a motion?

Mr. Kim: Is there any way, it might be a little unconventional, to ask Mr. Lovell another question or two?

Dr. Larson: Yes.

Mr. Kim: Do you mind if ask you questions?

Mr. Lovell: Not at all, Sir. Do I need to stand?

Dr. Larson: Yes, please stand at the… where they can record your reply.

Mr. Kim: Okay, for me, I absolutely love microbreweries. You know, I read up on your Facebook page, I didn't come out to the site, but I did a lot of research on your business, and I think it is great, I do, and obviously you have a lot of good support here from people that like your business and your business plan and the way you are running it. Still my only issue is, I understand that if you have a disagreement with someone from the County, you know, you had made a statement earlier stating that the Zoning Administrator didn't contact you. I mean, that's just not the way any County in the United States works. If you want something done, you have to go to them. My only issue is, we had this hearing in October of 2013 and I'm only going off of what I read here. There are numerous attempts by our inspector for you to comply, or, from what I understand, to work something out. Once again, everyone that comes out here, I think it's awesome that you have done this, but I'm not sure on the motion how I'm swaying here, mostly because obviously you have a good thing going, people love it, you know I like family community here. I love… I think this is great, but my issue goes to I don't understand why there was a lack of communication between you and the inspector or the Zoning Administrator. And I'm sorry, the excuse of "the Zoning Administrator never contacted me" is not what any Zoning Administrator in the United States would do, especially in this purpose. If you have an issue it would be on you to contact the Zoning Administrator. So, I guess where I'm kind of befuddled with all this is, I just don't understand why you didn't contact us sooner, instead of letting it get to this point.

Mr. Lovell: Well I guess my answer would be, I don't think I have an issue. I am adamant that I do not need a certificate of occupancy, because there's been no change in use.

Mr. Kim: Okay.

Dr. Larson: Well let me ask you a question. Did you understand that when we issued the special exception that you had submitted a plan that we expected you to follow?

Mr. Lovell: I do.

Dr. Larson: But you also understand that you changed the plan without saying anything?

Mr. Lovell: Well, Mr. Cox came out and we discussed it. In hind sight, I'm sorry I didn't get him to sign a document right then and there and say "this is what we agreed to". That was probably an error on my part. I mean sometimes you take the inspectors at their word.

Dr. Larson: You're talking pertaining to the location of the parking spots.

Mr. Lovell: The September 11th, 2014 meeting we had.

Dr. Larson: This is regarding to the parking spot?

Mr. Lovell: Yes.

Dr. Larson: How about the tasting… the plan called for the pavilion to be the tasting room, now it's inside.

Mr. Lovell: That's correct and actually I'd like to again state that according to the alcohol department the tasting area is the twenty acres and the ABC inspector doesn't really care where I have it on the twenty acres.

Dr. Larson: I don't think we would either. I'm just trying to understand how this evolved and…well, maybe we should be clearer in that… when we… you know, we approve as it's submitted, that's all we have to go on and we heavily depend on the plan, because we'll, in many cases we'll discuss somebody's plan and make alterations to it during the hearing. Yours we didn't make any alterations to. We accepted the plan.

Mr. Lovell: I would also like the record to show that you're the only person that's been inside the building.

Dr. Larson: Okay.

Mr. Lovell: There's been no… well, except for the building inspector coming out and inspecting the electrical changes that we did to add the GFI circuits. You're the only person that's been inside the building.

Dr. Larson: Yes, and I think that your presentation and the questions that we've covered tonight have basically covered what we discussed there. I think all of those issues were covered.

Mr. Kim: And in… I'm sorry, Mr. Chairman, can I ask…

Dr. Larson: Yes.

Mr. Kim: And in the conditions for special exceptions it says "all areas and structures associated with the microbrewery shall comply with all federal, state, and local codes"…

Mr. Lovell: Do you realize how burdensome that would be?

Mr. Kim: Well, I mean, when I opened my business, I had to submit an amended plan just to change a vent in my bathroom. Yes I know, I absolutely know, and it was in this County and I actually was…this is ridiculous, but I had to follow. I understand, trust me, when I had to spend an additional 325 dollars because my contractor put in 4.5 inch vents, and this is the vent in bathroom that takes out…yes. I had to resubmit that and I absolutely understand. That's why I have a hard time with this. I absolutely understand where you're coming from, but we have to follow our Codes and when we gave you this special use permit, sorry, special exception, I mean, it's just difficult. I mean, I'm sorry. When you're telling me that you don't think you need this, but I mean, a simple phone call would have probably… or even just coming to the County. Did you come in and meet Mrs. Susan, the Zoning Administrator, like Mr. Cox had suggested?

Mr. Lovell: No, I did not.

Mr. Kim: I mean, if I'm wrong, I think that's what he suggested to you.

Mr. Lovell: I asked that they contact me, that's correct. I work seven days a week, probably as you do too.

Mr. Kim: Actually yes. I work as much as I can, including this.

Mr. Lovell: I can't speak to your having to submit for a change.

Mr. Kim: I'm just telling you my experience. I'm not asking you to…

Mr. Lovell: I also constructed another separate building in the County and there are numerous fire codes that you had to abide by and we had a four week, no, actually a six week delay on the construction, trying to meet a fire code, so perhaps… I don't know why you had to pay a three hundred and something dollar fee.

Mr. Kim: That's the process. Or maybe it was a little less, maybe two-something. But I mean the whole problem, the whole issue is, is... go ahead.

Mr. Lovell: In my building we didn't structurally alter the building. We didn't change the building. We didn't change the activities.

Mr. Kim: But once again, it's you know, it's been over two years now and…

Mr. Lovell: Has it?

Mr. Kim: Yes, and…

Mr. Lovell: We opened up on Memorial Day this past year.

Mr. Kim: October 13. Okay so it's been a year and a half and this is to the point where…because you've been operating your business obviously, because these are people saying that, and I understand, that's an argument you're going to have, saying that you don't think you need an occupancy or the permit parking, but I guess, just the… I mean, a gentleman said that all you had to do, you know, communicate with us, and you know, I'm sorry, we're a big County. There's only one Zoning Administrator. I know you're busy, but you know, the County's a lot bigger, one Zoning Administrator, I understand that there's staff there, but it is on you to contact her. So I just don't understand why.

Mr. Lovell: And again, the only thing that I can state is that, I… there is no doubt in my mind that I don't need an occupancy permit.

Dr. Larson: Just for the record, I just want to read the first conditions of the special exception again. "The microbrewery will comply with the plan submitted with the case and/or any changes that may be made by the Board of Zoning Appeals at the time of the hearing." So after the hearing, everybody knows what the plan is, and that's it. "Any changes or alterations to the use or the plan will require a new special exception application."

Mr. Lovell: Okay.

Dr. Larson: That's what the first condition says.

Mr. Lovell: Very well.

Dr. Larson: And the problem with this… the next one deals with your hours of operation and the next one deals with the number of barrels you produce, and I mean, where does it stop? Do you change the hours of operation because they're not convenient? Do you increase the number of barrels because you want to? I mean…

Mr. Lovell: No, Sir, and as I stated before, I have strenuously tried to abide by every one of those conditions.

Dr. Larson: I think you have abided by most of them.

Mr. Apicella: Mr. President, Mr. Chairman, Sir? So, since we have applicant up here, I looked extensively through the minutes from October 2013 and it's pretty clear from the discussion back and forth that you… you say now that you have a brewery, but it looks to me like you had an ABC license and you sold beer or other alcoholic beverages, not necessarily a brewery at that point in time, and even if you did, you submitted an application for a microbrewery, a new use allowed by Stafford County as part of the special exception process. That wasn't the use prior to that. So on October 2013 you came in front of us, you knew that was different use, or you should have known it was a different use, or you should have known it was a different use than you currently have, because you had to submit a specific application for it. We went through a process. We took testimony. We had staff comments. We talked about what we thought the right conditions were. So, I mean, it was all a very public process and at the end of that public process you were granted a special exception with certain conditions. One of those conditions is, again, that you're going to abide by federal, state and local ordinance. One of those ordinances goes back to obtaining a certificate of occupancy. I'm going to read the first sentence, because I think it's pretty clear in my mind. Section 28-184; "No land"…we were talking about buildings, but it also says… "No land shall be used or occupied, nor shall any building erected or structurally altered be used or changed in use"… and this is wheat it talks about, it's the use…" without a certificate of occupancy being issued by the building official". To me it's pretty clear. You have a different use going forward after October 2013 than you had prior to 2013. You consciously came in here and ask for the ability to establish and implement a microbrewery, something that you didn't have the ability to do before. It's a use. And it's a use that is fully identified in our County Ordinances. We look a lot of time to talk about it to allow that opportunity to happen, and I think it's a great opportunity, and I think we all support it. I don't think anybody spoke against it. The issue is not about the microbrewery, and I think it's great that you have a lot of public support for it, I wish you would just have submitted the occupancy permit, because that's the issue. Did you or did you not? You said you didn't, and you say you still don't think you have to and you're not going to. And that to me is the issue.

Mr. Lovell: No, Sir, I asked the staff repeatedly why I would have to submit an occupancy permit and I have gotten no response from the staff to clarify one of you misconceptions, although it's minor, but had the Board of Supervisors not passed the Resolution whatever the date was, early October of 2013, I never would have come in here, because I was well on the way of having a brewery operating. And I'd had spoken with Mrs. Blackburn before the Board of Supervisors met and went through their clarification process on what is a brewery and microbrewery and what would be allowed. And I told her I wanted to open a microbrewery and she said, well you have to wait until after the Board of Supervisors meets. So that's not totally correct.

Mr. Apicella: So you would not have been able to establish a microbrewery in Stafford County in a B-2 zoning district without having gone through the special exception process. That process did not exist

prior to the Planning Commission and the Board of Supervisors allowing that to happen. B-2 uses are established in the County Code. Microbreweries were not an established use.

Mr. Lovell: And they were not a prohibited use.

Mr. Apicella: Well that's to say anything that's not prohibited is therefore allowed. That is not the case in Stafford County. You can't have…

Mr. Lovell: I was issued a permit for a brewery prior to that.

Dr. Larson: Let me cut this short. I will remind the Board that Mr. Lovell was the first application for a microbrewery in this zoning district, so we knew that at the time. So I think we should think about that too. Perhaps we've all learned something about the process.

Dr. Ackermann: I'd like to make a motion in case SE15-01/ZON14150484 – Shorts Branch Brewery. I move that the Board of Zoning Appeals revoke the special exception SE13-02/1300408. It seems apparent to me, misunderstanding or not, that condition 1 of the special exception was not followed and we don't make the Zoning rules, we're bound by oath to enforce the County Ordinance as best we see fit. And in my opinion it's the best thing to do.

Dr. Larson: There's a motion on the floor…

Mr. Kim: I second that.

Dr. Larson: Further discussion, or would you like to say why you seconded the motion?

Mr. Kim: I…no I just second it. I think I said enough. Thank you.

Dr. Larson: Any other discussion?

Mr. Apicella: Mr. Chairman, again, I think I tried to express my thought and concerns throughout this conversation that we had tonight. Several of the conditions were not met. They were established. They were well known. I reluctantly have to support this motion, because, again, the applicant hasn't fulfilled the conditions. He had the opportunity to do it, chose not to. Even if it wasn't clear to him, I think as Mr. Kim pointed out, you had the responsibility to go back to staff. I thought from the conversation that we've had and the documentation that we've had with staff indicated that they had several conversations with the applicant. If nothing else, there's a notice of violation that was issued in August that articulated at least some of the issues that were not being met, and to this day they have not been satisfied. It's not about a microbrewery. It's not about whether we'd like to have microbreweries in Stafford County. Put aside the fact that it is a microbrewery. The fundamental issue is, somebody has a new… put aside the fact that there's a special exception process and that this individual had to apply and be given a special exception and abide by the rules. Even if this weren't a special exception, that's why I asked the question, to have a different use than you have today, you have to get a certificate of occupancy. That is the core issue here. And as Dr. Ackermann just indicated, we don't make the rules in Stafford County, we don't have to agree with those rules, but those are rules and if you don't apply for and receive a certificate of occupancy you cannot have a different use going forward than you have today. And that's the core issue here, not microbreweries. Did the individual get a certificate of occupancy? The answer is no. Again, I reluctantly have to support the motion. I wish the applicant would have gotten a certificate of occupancy. It seems that he's still not interest in doing it and still doesn't see the rationale for it. So for those reasons, again, I

don't want to, but I feel like I have to, because we have a responsibility here to enforce rules in Stafford County, if we like them or not.

Dr. Larson: I have a question for staff.

Mrs. Musante: Yes.

Dr. Larson: I'm not sure this has ever happened before, but if a special exception is revoked is there any issue with having the applicant reapply for a special exception?

Mrs. Musante: They can…

Dr. Larson: I don't see that in our bylaws.

Mrs. Musante: I know if they're denied they cannot reapply within one year, if it's revoked I'm not sure. It's something that I'll have to research.

Dr. Ackermann: I think that's just a matter of our bylaws.

Dr. Larson: Well, in fact I didn't read the bylaw that well. I didn't see something that covered special exception in the bylaws, but if you could maybe read more carefully. Any other discussion on the motion?

Ms. Brown: Uhm, hello, yes. I'm also reluctant to support the motion. Again, I was not here when this was issued, but I'm looking at the information presented to me and it appears to me, that number 1 condition "Any changes or alterations will require a new special exception application". I'm reluctant, because I think it's great. I researched your brewery and I read about the Daddy Day Care thing and I thought that was terrific. However you did agree to enclose the pavilion and I asked tonight if you no longer intend to do that anymore and in the minutes I read that the parking was to be paved. And when I drove in the other day there was no snow, it was just before we had our snow, but I did think that it was very narrow and I don't know. If there's cars parked there and there's cars coming into the camp ground and coming down, I don't think they're all going to be able to fit through there and I have no issues with microbreweries. I hope we can find some way to reapply for this, but I'm going to support the motion.

Dr. Larson: Any other discussion? I think that the applicant's plan evolved and…

Mrs. Musante: Are those your bylaws?

Dr. Larson: Yes.

Mrs. Musante: May I say them please?

Dr. Larson: And what the applicant's plan evolved to setting aside there are still a couple of issues that you would have to resolve. One is the building use permit and one is parking on the street. That's not clear to me yet, parking on the street, but the other changes that were made is I think is what we have is a business man making changes that he realized needed to be made after he submitted the plan. And that to me is a classic example why I need to change the plan. I have to go through the process again. So I think that's where we are with that. Now, the other thing that, I'm not sure we need to discuss it now but we may later, the thing that occurred to me about the road markings. I think that the concern

might be emergency vehicles getting passed parked trucks, like a fire truck and I don't know if that would fit, but they might be able to go but I just don't know what the rules are for that kind of thing. Did you find the parking….

Ms. Blackburn: Well, the paving for parking lots is part of the site plan section of the zoning code and it refers to chapter 21.5, which is part of, I think it's the public works section for service of roads, so it's intertwined that way and I don't have a full copy of the County Code.

Dr. Larson: Okay, so the answer is we can't really answer the question regarding paved parking.

Ms. Blackburn: It refers to it as being part of VDOT's standards and then it goes on in our section of the Code. It says: All surfaces shall be to VDOT standards. And it talks about excluding low impact development sites in accordance with provisions of Chapter 21.5 of this Code provided, however, that churches, clubs, fraternities…and it goes on to say… can then ask for a waiver for parking.

Dr. Larson: Okay. Ask who for a waiver?

Ms. Blackburn: They ask the agent to the Board of Supervisors, which is the Director of Planning in this particular case. And then as far as the parking regulations, it was mentioned in the minutes, we determined the number of parking spaces according to the square footage that was stated was going to be used for the tasting room, and that it was… you had to have parking for manufacturing and that's how we came up with the numbers. And as far as using the drive aisle, the Zoning Ordinance does talk about if you have parallel parking, you have a certain size for that parallel parking, at least 8.5 by 22, and then it needs to be adjacent to the 24-foot wide drive aisle to allow for traffic going both ways and for the encroachment of (inaudible).

Dr. Larson: Okay, so, Melody, what is the current fee for applying for a special exception for this kind of use?

Mrs. Musante: I believe they're $1,400 for commercial.

Dr. Larson: Okay. I thought you sent around an email that showed less, but I might have…

Mrs. Musante: Residential is $616 and that may be what I quoted you. But the commercial special exception fees are $1,400.

Mr. Apicella: I thought the Board, because there was some conversation in the minutes about the Board of Supervisors potentially changing the fee associated with microbrewery special exceptions.

Dr. Larson: I'm going to have to support the motion too. And my concerns are, I've already addressed, but I also have some concerns now about the parking as far as following the rules that I just heard and whether vehicles can get passed it. I think that needs to be examined with an amended plan. If Mr. Lovell so choose to do that. There is nothing in our rules that says that you can't apply for another special exception. And I think there is enough that has changed here, that requires more discussion on anyway. So, is there any other discussion on the motion?

Mr. Davis: I'm going to vote in favor of the motion, because Mr. Lovell has never indicated that we hill apply for an occupancy permit. He has never admitted that he even needs one. We've read the Code several times, pointed out to him, staff has pointed out to him. He's made no effort. Until that happens, he's in violation and as the Code says there is a fine per day, a hefty fine, for violation.

Dr. Larson: Well, we don't enforce that.

Mr. Davis: We don't, but that's…

Dr. Larson: We'll let the County handle that. But I understand your point. Any other discussion on the motion?

Mr. Grimes: Yes, I'd offer that I'm going to have to support the motion reluctantly myself for a lot of the reason cited. This is a great business in Stafford. We spend a lot of time with the original case trying to make this work and talked about all the conditions, specifically with Mr. Lovell, and were actually getting feedback during that discussion, for folks who weren't at the original meeting, and it discussed limitations on how much he could produce, and parking, and access to the site, and signs, and Mr. Lovell was very helpful educating us on microbreweries. So we appreciate that and it's the last thing we want to do, is to stop him from having a successful business, because it's good for Stafford, but he did agree to all the conditions. He had the right at that meeting on October 22nd to withdraw his application at any of those conditions he thought were too heavy of a burden to comply. He could have come back, offered a different approach to it, but he choose to accept the conditions as they were presented that night, which is why I'm going to have to support the motion.

Dr. Larson: Again, I think that Mr. Lovell's plan evolved as he started executing it and I think it evolved into something that may be passible later, once it's properly discussed and once the building permit issue is resolved. But, again, I think this is… I have to vote to rescind, because otherwise anybody can change whatever they want to on these special exceptions without any consequences. We have to follow the rules. So I'm going to call for the question. Those in favor say aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Mr. Davis: Aye.

Mr. Apicella: Aye.

Ms. Brown: Aye.

Dr. Ackermann: Aye.

Dr. Larson: Aye. Any opposed? Okay motion carries 7-0. I'm going to call for a short recess. Everybody please come back by 8:50.

RECESS 8:39-8:50

Dr. Larson: I'll bring the meeting back to order. Could the secretary please read the next case please?

2. <u>SE15-02/ZON14150526 – Michele Mason-Harris</u> - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standards," to allow Esthetician Services (facials, skin care) as a Home Business on Assessor's Parcel 29J-6A-165. The property is zoned R-3, Residential (High Density), located at 16 Farmview Drive, Colonial Forge Subdivision.

Mrs. Musante: The applicant is requesting a Special Exception to conduct Esthetician Services as a Home Business. Requested days and hours of operation are Monday through Friday from 9:00 AM to 7:00 PM; Saturday 10:00 AM to 2:00 PM with no Sunday hours. The applicant indicates she will provide two off street parking spaces and serve four to five clients per day. According to the plat submitted, the applicant will need to add an additional parking space to meet the parking requirements for a single-family home and a Home Business. The ordinance requires two parking spaces for a single family dwelling and does not allow utilizing garage parking to meet this requirement. The area designated for the business requires one additional space. The regulations for a Home Business state no more than 25% of the gross floor area of the dwelling shall be utilized for the business. According to the applicant, 200 square feet will be used for the business which complies with this requirement as the gross floor area of the dwelling is 4,333 square feet. We have a single-family dwelling constructed in 2014 and the basement was finished under the single-family dwelling permit. Suggested development Conditions: 1. Days and hours of operation: Monday through Friday 9:00 AM to 7:00 PM; Saturday 10:00 AM to 2:00 PM; no Sunday hours. 2. Provide two off-street parking spaces for clients. No on-street parking shall be permitted for clients. 3. Clients by appointment only. 4. Must comply with all State and local codes. 5. Approval of this Special Exception for Esthetician Services only will expire when this applicant vacates the property and is non-transferable. 6. This approval may be revoked by the Board of Zoning Appeals for noncompliance of the conditions of this approval.

Dr. Larson: Questions for staff?

Dr. Ackermann: These suggested development conditions are fairly standard ones?

Mrs. Musante: They are. Yes.

Mr. Davis: Should we also add one additional parking space?

Mrs. Musante: You can make that as one of the conditions of your approval.

Dr. Larson: Yes, if it's actually… yes, you said it's required, so yes, I think we should.

Mrs. Musante: Yes.

Dr. Larson: Any other questions for staff? Go ahead.

Ms. Blackburn: In talking about the parking space, the condition says to provide two off-street parking spaces for clients. So I just wanted to make sure, because you have to have two for the house and only one for the business. It may just be changed to one.

Dr. Larson: Okay, so, do they need to have to put in another parking space or not?

Mrs. Musante: Yes. One more.

Dr. Larson: Okay.

Mr. Kim: And they can't use their garage? I'm sorry.

Mrs. Musante: No, they cannot.

Mr. Kim: Even for their personal parking?

Mrs. Musante: They can for their personal parking, but it is not included in the parking tabulation.

Mr. Kim: Oh, okay.

Dr. Larson: Any other questions for staff?

Mr. Apicella: Maybe this is for the applicant, I'm just… Heather, Ms. Stefl submitted a couple of questions. One of which was, she mentioned the Spa is in the basement, and her concern was, how would clients actually get to the basement? Are they walking through the home, or is there some path for them to get to the basement?

Dr. Larson: Actually I thought Heather had some good questions, but I think they all are for the applicant.

Mr. Apicella: Probably.

Dr. Larson: Any other questions for staff?

Mr. Apicella: I do. It's a question or a comment. In one of the previous approvals we, and I recommended this, but my concern is, again, in line with the number of parking spaces limiting the number of clients who can be there at any given time to the number of available parking spaces.

Dr. Larson: That's a good point. Any further questions for staff? Hearing none, will the applicant or his/or her representative please come forward and present the case?

Ms. Mason-Harris: Good evening. Michele Mason-Harris. Basically what you guys have been discussing, I want to open up basically skin care at my home. It will be in my basement. Yes there are alternatives to walking through my front door. We just had a sidewalk put in and they can actually enter through my basement, so they wouldn't have to actually come through my home. The parking I heard you guys talking about, I think I'm just a little bit confused, because not counting my garage, which is a two-car garage, there's also two parking spaces in my driveway. Does that not count? I'm a little confused on how that works.

Dr. Larson: Does staff want to answer that?

Mrs. Musante: When we tabulate parking your garage parking is not included, so we… the two spaces that you are required for your single family dwelling are the outside of the garage only. It does not include the inside of the garage parking. So if you've got two, that's two for your personal vehicles, so you'll need to add the additional one for your clients.

Ms. Mason-Harris: Okay. My other question to that part would be, in my neighborhood, in one of these pictures you guys can see, that less than probably 75 feet away from my house there is guest parking. Would that not count? We have guest parking in the neighborhood. Because my neighborhood also has townhouses, so that's just guest parking, period, and I can only see one client at a time based on, it's just me.

Mr. Apicella: My only concern there would be that you can't guarantee would be available, so…

Mrs. Musante: Correct.

Mr. Apicella: I lived in a townhouse development. All the guest parking spaces were completely used by residents, much less guest, so…

Mr. Kim: And street parking won't work?

Mrs. Musante: There is a… under the parking requirements, number 10, special exceptions, no vehicle for which a special exception has been granted under previously valid laws shall be parked on any street or street right-of-way. On lots of 1 acre or larger the vehicle shall not be parked within the front yard setback.

Ms. Mason-Harris: I also live in a cul-de-sac. Does that not count?

Mrs. Musante: No.

Ms. Mason-Harris: Okay. I'm trying.

Dr. Larson: Okay, so you can't… it has to be off-street parking.

Mrs. Musante: It has to be off-street parking.

Dr. Larson: The garage doesn't count. If she has a wide enough driveway, that doesn't count?

Mrs. Musante: She, according to what her drive will allow, only allows for two cars, so she's got to add that third space to get her client parking, because we are not allowed to utilize garage parking to count as part of the two spaces that she's required for a single-family.

Mr. Grimes: So the County Code doesn't allow garages built to park cars to be counted as the parking spaces?

Mrs. Musante: No, because, if you see most people's garages, not including mine, they are filled with boxes.

Ms. Blackburn: Or they are converted to family rooms.

Mrs. Musante: Family rooms, yes.

Ms. Blackburn: It's a standard zoning thing.

Dr. Larson: I'm not going to dispute the law, I mean, my garage is a garage. I park two cars there and that may be unusual, but both my cars go in there.

Mrs. Musante: Mine too.

Mr. Kim: I mean, can't we put in special exemptions here that…to use their parking, I mean, like they can't put boxes in there since we… I mean I'm trying to help them out, and I understand your…

Mr. Apicella: This kind of goes back to the last case then. The rules are the rules.

Dr. Larson: The law says you can't count the garage?

Mrs. Musante: Right.

Dr. Larson: Okay.

Mr. Davis: Does the extra parking space have to be paved or could it be gravel?

Mr. Grimes: And out of curiosity, what does the client count then require? Two parking spaces versus one? Because you said 4 or 5 clients a day, which then requires two parking spaces.

Mrs. Musante: The two parking spaces was a standard conditions that we were putting on prior special exceptions based on, normally based on the number of clients. In this case she is only required the one space.

Mr. Apicella: So we need to fix that?

Mrs. Musante: Yes, we do.

Dr. Ackermann: Let me ask you another question. From the plat here, could the extra parking space be put adjacent to her driveway?

Mrs. Musante: Yes it could.

Dr. Ackermann: There's no… too close to the property line or anything?

Mrs. Musante: Driveways can actually be on the property line.

Dr. Ackermann: Okay, so that's not an issue.

Ms. Brown: Mr. Chairman, I have a question. Obviously you wouldn't go put the extra parking space in front of the front door. It would have to go on the left side of the house if you're facing the house.

Ms. Mason-Harris: Yes.

Ms. Brown: Looks like the space is 13.8 feet. What is the parking space width?

Mrs. Musante: Eight and a half.

Ms. Brown: Eight and a half. I noticed there is a Verizon vault there. Now is there some type of easement? It's in the picture. Can you pave over there so they can access that?

Mrs. Musante: It would be her responsibility to locate the easements and make sure that she does not encroach within those easements.

Ms. Brown: Is there even room enough?

Dr. Ackermann: You can drive over it, can't you?

Mrs. Musante: You can drive over the easement, just don't pave it, pretty much.

Dr. Larson: I'm going to stop questions right now, because somehow we started, I think you asked a question, everybody else… please continue with your presentation. Sorry.

Ms. Mason-Harris: I mean that's basically it for me. I just want to do this out of my home. I mean, it's whatever questions you guys have at this point.

Dr. Larson: Well, I have just one and just for the records, you want to do Esthetician, could you define that for me please?

Ms. Mason-Harris: Skincare.

Dr. Larson: Skincare with any special equipment?

Ms. Mason-Harris: Yes.

Dr. Larson: What would that be?

Ms. Mason-Harris: I wax, so there's going to be… I do full body waxing, so there's going to be a table down there. There's going to be wax pots. There's going to be facials. So there's going to be magnifying glass. There's going to be a towel, things like that.

Dr. Larson: I'm talking more technical things, special equipment. Is there any requirement for something that might use power?

Ms. Mason-Harris: Well these things are plugged in, but…

Mr. Kim: Not like 240 Volts things?

Ms. Mason-Harris: No. No.

Dr. Larson: Okay. Thank you. Okay, I guess we can proceed with questions for the applicant.

Dr. Ackermann: And then, by this drawing, there's a house as you face your property, to the left.

Ms. Mason-Harris: Yes.

Dr. Ackermann: But nothing… is there no plans for that?

Ms. Mason-Harris: That's like just a field, right? There's nothing…

Dr. Ackermann: I mean it's not subdivided?

Ms. Mason-Harris: You're talking about the right side of my house, facing it?

Dr. Ackermann: Yes, the right side.

Ms. Mason-Harris: The right side, that's my property. I'm like a corner lot.

Dr. Ackermann: Okay. So you go all the way to the street?

Mrs. Musante: Mr. Ackermann, that's common area.

Dr. Ackermann: Okay. That's common area? Got you.

Mr. Davis: You indicated you had or you're going to put in a concrete walkway to the door?

Ms. Mason-Harris: We put in one before snow, yes. There's one in there now.

Mr. Grimes: So it goes, facing your house, around the left of the house back into the basement.

Ms. Mason-Harris: Yes.

Dr. Larson: So is it your intent then to have one client at a time.

Ms. Mason-Harris: Yes, it's just me. That's all I can do. So there's only going to be one person at a time there.

Mr. Grimes: So your clients are seen by appointment only?

Ms. Mason-Harris: Yes.

Mr. Grimes: No walk-ins?

Ms. Mason-Harris: No such thing. No.

Mr. Apicella: So this walkway to your basement would have some kind of lighting, because I see that your hours can be up to 7 o'clock, so in the wintertime it could be dark.

Ms. Mason-Harris: Yes, there will be lighting. Like I said, it's not completely finished, because the snow stopped it. We just had it put in. So it's not completely done. And it will also have solar lights.

Ms. Brown: Will you have any kind of signage at all?

Ms. Mason-Harris: No.

Dr. Larson: Other questions for the client, well applicant?

Dr. Ackermann: Are there rules in the subdivision about having a home business?

Ms. Mason-Harris: No. I contacted the HOA and they said that it's fine. The only thing they said that I couldn't have is the signage.

Mr. Davis: Do we normally put in the conditions that… no signs, even though it's HOA?

Dr. Larson: I do remember seeing things about signs in the conditions.

Mr. Davis: I would like to make that recommendation.

Dr. Larson: I think that would be appropriate and (inaudible). You would not object to that?

Ms. Mason-Harris: No, no problem at all.

Mr. Apicella: I have a question about your Saturday hours. As you probably saw from the last item in front of us, if you wanted to change, you would have to come back to… so is 10 a.m. to 2 o'clock really what you want for Saturday? You don't think you're going to want an earlier time or a later time?

Ms. Mason-Harris: I really don't even want to work on Saturdays. That is for my people that can't come in when I open till 7, when I people come in from D.C. or whatever. They have to get down from work, so that's why I'm open till 7. That 10 to 2 is the same thing. What about the moms that stay home or whatever. It gives them a chance to come in on Saturday.

Mr. Apicella: I understand. I just… now is the time to…

Ms. Mason-Harris: No, I understand, not, I don't even want to work Saturdays, so that's why I'm offering just 10 to 2.

Dr. Larson: Okay, but again, just to be clear, make sure that everything we discussed tonight is what you can live with, and if it's not we need to talk about it, because once you come out of here and the conditions are set, that's it.

Ms. Brown: I'd like to talk about adding another condition. I understand that this body has no enforcement capabilities on your HOA. I do live in one and I wouldn't want anybody to have the misinterpretation that by granting exception that we're overwriting your Home Owners Association. So I would, especially with having to pave some of the yard. I would like to put some wording in there that…something to effect that any Zoning Exception granted does not release the Home Owner from any obligations that they may or may not have on their deed restrictions regarding the HOA.

Mr. Apicella: We… that issue came up as part of a completely different project, and we discussed it and made it clear that we have not ability one way or the other to enforce or not enforce deed restrictions or HOA requirements. I would not put that in because it's really not within our purview. I mean that's something that she would have to deal with separately with her HOA. If there are any disputes, they would have to follow whatever is within the covenants and any other legal remedies that she or the HOA has. We can't really go… I think it's a scope issue for me. So I hear what you're saying, but it's… we have no ability and we really shouldn't get in that realm of even talking about it. In my view HOA covenants…

Ms. Brown: I don't think you know what I'm saying.

Mr. Apicella: I do know what you're saying, but it's… to me… we've not… I've been here for 4-5 years and we've never… we've talked about HOA rules. We've tried to stay clear of even discussion as part of our conditions purposefully.

Dr. Larson: Yes, in fact after we talked about this a few days ago, after we spoke I got the thinking about it, and not only… we've stayed clear of it because we have no legal authority there. I'm beginning to get concerned that if we put something in we may actually be violating the law. I need a reading on our lawyer from this and I think we can go ahead and do that because we have funding to do that. The problem comes in the fact that the HOA rules are not laws. They're part of a contract, part of a deed.

Ms. Brown: Yes, they're deed restrictions. They're recorded with the deed.

Dr. Larson: That's right. They vary all over the county and if a citizen has, let's say for example we said… put something in our special exception and the citizen went to the Home Owners Association and they wouldn't hear the case, they just wouldn't hear it, then they wouldn't be able to get an approval. I'm not sure that we would get into legal trouble by putting that in there, and that's why I would ask the Board to allow me to contact our research attorney and ask him to do some research and see what he feels.

Ms. Brown: Yes, I think, because I'm understanding what I'm saying, I hear what you are saying, I am not saying we're going to impose restrictions, I just want to say that anything that we do, we're not giving her HOA permission. I want to make that clear. That's up to her, and it's on her, and that's what I want to make clear. I don't want… my experience with an HOA has been sometimes when the County rules on something, that tends to cut the legs legally out from underneath an HOA, and I don't want to be in any way insinuating that it's cool to put your driveway in without checking with your HOA, because we said it's okay.

Dr. Larson: Right. I do know what you're saying and I think Steven knows what you're saying too. I, again, before we went there I would like to see what the research attorney says, but…

Ms. Brown: That's important to me. We also, in all of ours, I looked back, we say we must comply with all state, local codes. That's kind of a catch all. That's kind of what this is intended to be as well.

Dr. Larson: Well, let's go back. We had another example of the federal firearms license. They have to, when somebody applies for that, they need a special exception to transfer firearms and they need to apply to us for the special exception. Then they have certain licensing requirements… I'm sorry, did you have any other things to say about your business? You can go ahead too.

Mr. Davis: I am. I have one question. Number 4 says…

Dr. Larson: Well, let me finish what I was going to say. So there are other requirement for an FFL. One of them is special exception, other has to be federal government, ATF. Both have to be satisfied. We don't deal with the ATF. Those rules are their rules… so we… when somebody comes to us for a special exception that is one of the things they need to do, but they may have to do other things and in this case they have to something else, and that is to make sure that it's cleared with their Home Owners Association, because if it's not then it can be taken to court.

Ms. Brown: I'm speaking from experience. I can't, I'm not trying to say you have to get this as a requirement of any approval we grant. I'm just saying that our approval does not release them from having to do anything (inaudible) follow the state and local codes that applies to their HOA. That's all. Again, any Zoning Exception granted does not release the home owner from any obligations that may or may not have on their deed restrictions regarding the HOA. I just don't want it to… step on the Home Owners Association here by, you know, indicating that we're approving this for them. That's all.

Dr. Larson: Again, my bottom line would be, since there is no problem with the Home Owners Association in particular in this case…

Ms. Brown: For zoning, not necessarily for the driveway.

Dr. Larson: I would like to have the research attorney forward this (inaudible).

Ms. Brown: Okay.

Dr. Larson: And see if there is some problem with us actually violating the law in putting wording in to that effect.

Mr. Kim: You're not violating… I'm sorry, can I ask that one question. You seem like you want to say something.

Ms. Mason-Harris: I have the question on the parking.

Mr. Kim: Sure, absolutely, if you don't mind, Mr. Chairman.

Ms. Mason-Harris: The parking thing, is it Code or whatever, that it has to be covered in cement?

Dr. Ackermann: Pavement.

Ms. Mason-Harris: Does it have to be pavement, because based on where my house sits I don't even know if that's possible.

Mrs. Musante: Our Code only addresses commercial entities for parking on pavement. It does not address home businesses for parking, so…

Ms. Blackburn: It would just depend on what your Homeowner's Association says.

Mrs. Musante: Yes, Homeowner's Association would say.

Mr. Kim: This why I think must comply with all state and local codes, I mean maybe I'm wrong, but I thought local codes would be HOAs.

Dr. Larson: Well, it's really not a law.

Ms. Brown: It's a deed restriction. It's not a code.

Dr. Larson: That's another reason we're running into a problem here. We're deal with laws, not deed restrictions.

Dr. Ackermann: So we could maybe not… well, let's see what the lawyer says, but that may be something we cannot do.

Dr. Larson: I'm wondering the same thing.

Dr. Ackermann: I mean, it's good advice to the person applying, but it's not a condition that we put in there.

Dr. Larson: I think you could do that. I made it very clear in other cases when there was a Home Owners Association issue involved, that I told them they had a deed restriction and they had to clear with the Home Owners Association.

Ms. Brown: Yes, I know, but it's different when you stand in front of the judge and you say "Yeah well, I didn't think I needed to go to my Homeowner's Association, because the Board of Zoning Appeal approved this for me. So it was okay."

Dr. Larson: Well, the HOA would have our minutes and have our wordage telling them that they need to make sure they clear it with the Homeowner's Association.

Ms. Brown: Well, that's all I wanted to do. I just wanted to say that we're not responsible for seeing that she gets approval. Any approval that we make…

Dr. Larson: I understand, but my problem is putting it in the special exception conditions makes the special exception contingent on that, and I think we might run into legal problems. I'd like to research that.

Ms. Brown: I'm all for researching it.

Dr. Larson: But I encourage to remind people of that responsibility.

Ms. Brown: Yes, and that's her responsibility, it's not something I am imposing. I mean it's not my responsibility.

Mr. Apicella: And the reality is, despite what we may do here in approving this, if we were to approve the special exception, she would still have to satisfy her HOA requirements, and if she didn't they have a legal recourse to stop her from taking any action. That's outside of our purview, I'm just saying. Even if we approved it. They could still stop her… or somebody else, let's say it's another set of circumstances, she's complying with it, but in another set of circumstances where somebody is not complying with the HOA rules, irrespective of what we do here, she would still… that person would still have to comply with the HOA rules, or they would take some kind of action against her. And that's a private, private matter between that individual and the HOA, not a matter in front of the BZA, or one that we would enforce. And that's… I'm sort of saying the same thing, it's really not our issue. Whether there are covenants or not covenants, it's kind of immaterial to me.

Dr. Larson: Again, we had this discussion and I think we agreed that that is our issue. My concern in addressing what Dana wants to do is that I'm not sure. I want to check. I may get us into hot water legally if we do that.

Ms. Brown: And I think it could get us into hot water legally if we don't.

Mr. Kim: Can we just do a motion for this instead of going back and forth, because we have two different opinions? Is that okay?

Dr. Larson: Sure. Yes. I thought we did. Oh, I'm sorry, Mr. Davis? Do you have a question for the applicant?

Mr. Davis: I do.

Dr. Larson: I'm sorry.

Mr. Davis: Conditions number 3 says, you must comply with all state and local codes. Do you understand that you need an occupancy permit?

Ms. Mason-Harris: Yes.

Ms. Brown: Good answer.

Mr. Apicella: Actually there is a typo there, we need to fix that.

Mrs. Musante: They are. Yes.

Dr. Ackermann: This extra parking space, could she park her car in there? I mean, does that have to be reserved for the clients, or could she park her car in the extra parking space and the clients would go in the driveway?

Mrs. Musante: She could use the additional parking space.

Dr. Ackermann: Okay.

Ms. Brown: Are you willing to put in the third parking space?

Ms. Mason-Harris: Well, yes, there's actually nothing I have to put in, if it doesn't have to be…

Mr. Harris: The problem we have with that now that it's an additional parking space, if you look to the side of the house, I'm just trying to be real with the logistics of the whole thing. One, my first concern is, it's never going to be used, because it's only one client there, and there's one car in our driveway, there's on car to the side and one car gone. So there's always a parking space for one client. Now if I were to try to modify it, because I would have to go… I understand what you're saying about the HOA, but I can't do anything to the outside of the house. I had to go to the HOA to put the sidewalk in, but now the sidewalk is in… it takes up part of the space in the driveway, because it's almost like, if you're looking at black top portion of the driveway, probably like a third of it is like, there's a bush there, it's a little small setback about a foot and then it's about a 3 foot wide maybe sidewalk, it goes around the side of the house. So that really only leaves enough space to park a Yugo if something were to even go there, and the only other thing I could do is maybe put to flow with the house, to extend the concrete that makes the driveway to the side. All I'm saying is, it's a lot to say to do when there's like 8 parking spaces in that little strip and we've been there since last May, but it was never all full. Because they're mainly for the townhouses, so I could easily a vehicle over there, park my car there and our driveway is empty. There's still access to realistically two in the driveway, 8 on the side, well 3 of them are reserved for the model home, but 5 on the side. So there's technically 7 parking spaces within, you know, a reasonable distance.

Ms. Brown: But they're for the townhomes?

Mr. Harris: They're for the neighborhood, because every townhome doesn't have parking spots in front of them, because that whole area, if you've been out in Colonial Forge, once you get to my street, all over here to the side is townhomes. Every townhome doesn't have reserved a spot of parking spaces. They're just there. So there's always one open.

Mr. Grimes: I would offer that you need to go to your HOA and present to them, that part of your development conditions are adding this space. What is their requirement for that space? It could be grass pavers. It could be paved driveway. I'm pretty sure they're not going to let you park on the lawn, but given Colonial Forge and where it's at in the development, but it could be something other than pavement. It could be stamped concrete. The zoning folks have mentioned that it's allowed to go

to the property line, but again, you'd have to get that approved by your HOA. So you just have to plan for that space with some material that you HOA will approve. Whether it's ever used or not. If there's nobody home, then the driveway is open, but it has to be planned for.

Ms. Brown: And the easement issue with Verizon. Because that thing is kind of close to…and it's underground.

Mr. Grimes: Well, I think it's possible based on your plans, but it's more an HOA question.

Ms. Brown: As the County though, we need the extra parking space?

Mrs. Musante: Yes.

Ms. Brown: Okay. That's a must have?

Mrs. Musante: Yes.

Dr. Larson: And for a residential business like this, it does not have to be paved?

Mr. Harris: But it has to be on the property?

Mrs. Musante: Yes.

Dr. Larson: Okay. I think we're still in the questions for the applicant. Any other question for the applicant?

Mr. Grimes: Can you tell we might be a little gun shy too?

Dr. Larson: Okay, hearing none. Thank you. And there, well actually there is one person in the audience. Sir, would you like to speak in favor of the application?

Mr. Harris: Yes, I was in favor of the application. I'm Ivan Harris, I'm actually the owner of the house. I'm the one that's on the deed and everything else, so, I mean, I'm in favor of the business, because even when we purchased the house, we knew if we were starting a business we probably would have to start out in the home, initially being new to the area, because I'm military. So to build up the cliental rather than going into the business, because this our first try of a small business. So before going out of town and we have no clients, we're trying to start it out at home to build up reputation, word of mouth, then eventually move out.

Dr. Larson: Well, any questions for this witness? Okay. Seeing no other people in the room…

Ms. Brown: Wait, wait, wait, I still need an answer to my question. Do you agree to provide the third space?

Mr. Harris: Since I'm the homeowner, the biggest concern I'm going to have is I have to go to the HOA to request another exterior modification, because I just did the exterior modification to put the sidewalk in. So I'm not sure what they're going to say about trying to put a driveway in when in my mind they would come back and simply tell me before I be the only house in the neighborhood that has the extended driveway when literally, I'm just trying to say it's kind of hard to understand the Code, but there's parking right there.

Dr. Larson: All you need to do is tell them that it's a condition of your special exception, so they would understand the reason for it.

Mrs. Musante: And in can be decorative.

Mr. Harris: We're going to have to try to figure out a way to make it esthetically pleasing. Like I said, I just know with it being one client at a time it's never going to be used, so I just need it to be there to be more decorative than functional.

Mr. Grimes: Well that's when you move the basketball hoops over to that side where you pave it and it's now a dual purpose.

Mr. Harris: If I move the spot over and I put the basketball court there? Does that count?

Ms. Mason-Harris: I was thinking we get decorative with it, because it doesn't have to be pavement, so we just do our little thing with it and we'll be fine. And it doesn't have to be paved. We're good.

Dr. Larson: Okay, seeing no other people in the room to support or not support, I'll close the public hearing and bring it back to the Board.

Dr. Ackermann: I suggest, as in our past practice, should we go over these so we know.

Dr. Larson: Excellent practice and let's do that.

Mr. Grimes: I think Ms. Brown would like to discuss the HOA thing.

Dr. Larson: Oh yes. So we were talking about the condition.

Ms. Brown: Maybe it's not a condition, maybe it's more of a disclaimer.

Dr. Larson: Yes, and like I said, I've done that myself and we've already actually done it in this case too, telling the homeowner to get their HOA…

Mr. Apicella: And it'll be in the minutes multiple times.

Dr. Larson: So, yes, to me there's absolutely nothing wrong with that. I was just wondering if we're running into legal problems if we put it in as a condition.

Ms. Brown: I'm fine with not putting it as a condition, but in maybe her letter, you know, a disclaimer in the letter?

Dr. Larson: I'm going to resist anything written from us to them. It's in the minutes. We've already advised them and we discussed it. If you want to have a motion we can do that, but I resist.

Ms. Brown: You said this has come up before?

Dr. Larson: Yes. Many times.

Ms. Brown: And why has it come up before?

Dr. Larson: Because we Home Owners Associations that come in and oppose, for example there was an FFL. The Home Owners Association came in and opposed the FFL. And our response at that time was, you're the Home Owners Association and we're the BZA. We issue special exceptions. You take care of your deed restrictions. So we gave a special exception, but the Home Owners Association denied permission for the FFL and it didn't go anywhere. The applicant withdrew the request because the Homeowner's Association was not going to grant it.

Mr. Grimes: They didn't want home businesses at all.

Dr. Larson: That's right. There was a problem with home businesses period.

Ms. Brown: My goal here is just to not put a burden on Home Owners Associations to have to take people to court, because that's a lot of money, and that causes… I know, I just don't want to imply that we are overwriting a Homeowner's Association.

Dr. Ackermann: But we could do that. We have the right to overwrite a Homeowner's Association, like in that FFL situation. I mean that's not, not that we overwrite them, but we can have an opinion that's different the Homeowner's Association.

Dr. Larson: We're different. We're doing a different function.

Ms. Brown: Yes, we don't have the authorization to overwrite…

Dr. Ackermann: Right, right, right.

Dr. Larson: But the remedy is in court and what one judge does as opposed to another judge as far as Homeowner's Associations that's way out of our…that's above our paygrade.

Mr. Kim: Which is easy to do.

Dr. Larson: I was a president for five years in a Homeowner's Association too and I know that sometimes your go in and you lose and you don't think you should lose, but you do. But that's not BZA issue. That's not even a County issue. It's not a local ordinance issue. That's a remedy by law that people use and sometimes it works and sometimes it doesn't. Sometimes the judge rules in favor, sometimes he doesn't.

Ms. Brown: I guess I am just expressing myself at times.

Mr. Apicella: Yes you are. I think we understand… I've been an HOA president too and I've had the unfortunate circumstance where we had to sue residents. It's not pleasant. It costs money, but that's the process and unfortunately, as Dr. Larson said, sometimes it works, sometimes it doesn't, but it's a different environment. It's a different set of issues. It's not a matter in front of us. It's not something we enforce. It's not something we… we act within our own purview. I think the time that I've been here I tried to keep us… I always talk about what's in our scope and what's outside our scope, and this is, in my view, outside of our scope and that's why I say, I'm loathe to even talk about and writing covenants restrictions, deed restrictions in our documentation, because it's not something that we enforce.

Ms. Brown: Correct. It's not something we approve either. And that's my concern.

Mr. Davis: Do we have a motion on the floor?

Mr. Kim: Yes, let's deal with the motion.

Dr. Larson: Is there a motion?

Dr. Ackermann: No, there's no motion. The suggestion was we go with the development conditions.

Dr. Larson: I think that's a good idea.

Dr. Ackermann: And then we can add conditions or remove them.

Dr. Larson: Okay. Development conditions, Condition 1: Days and hours of operation: Monday through Friday 9:00 AM to 7:00 PM; Saturday 10:00 AM to 2:00 PM; no Sunday hours. Those are the hours that you want.

Ms. Mason-Harris: Yes. Yes.

Dr. Larson: Is there any discussion on those hours?

Mr. Kim: I do have one question. Did you talk to your neighbor to see if there's any issues with…

Ms. Mason-Harris: Yes. She knows exactly what's going on. We're friends. There is no issues there with my neighbor at all.

Mr. Kim: There's no complaint? Okay. Great.

Dr. Larson: Any other discussion on hours? Next one I have…I changed it. What I wrote was: Provide one additional off-street parking space for clients. Is that correct staff? No on-street parking shall be permitted for clients.

Ms. Mason-Harris: Okay. Yes.

Dr. Larson: Number 3: Clients by appointment only.

Mr. Apicella: So that's where I have my add: The number of clients at any given time shall not exceed the number of provided parking spaces.

Dr. Larson: That's a general one. In this case I would say: Limit one client at a time on the premises.

Mr. Apicella: That's fine.

Dr. Larson: Did you get that Melody?

Mrs. Musante: Yes.

Dr. Larson: Okay. Must comply with all State and local codes.

Mr. Apicella: We're changing that number 2. It's now number 4, correct?

Mrs. Musante: Yes.

Mr. Apicella: We have two 3's so that specific condition becomes number 4.

Mrs. Musante: Sometimes the computer doesn't like me, so…

Dr. Larson: Okay, comply with all State and local codes? Again, the use permit, building occupancy permit. Okay. And at this point, if hasn't already been said, this is a reminder about the HOA responsibilities. We don't put them in the conditions. Okay, then I have: Approval of this Special Exception for Esthetician Services only will expire when this applicant vacates the property and is non-transferable. You understand that?

Mr. Apicella: Before we have that one, because I think it kind of logically follows closer to the end of the number of conditions, I think someone mentioned the issue of signage, no signage.

Dr. Larson: Yes, that's right. So, no signage. So that would be in between… actually.

Mr. Apicella: It would be the new number 5.

Mrs. Musante: Got it.

Dr. Larson: Okay, so you understand your special exception rule? They expire when you vacate the property and you can't sell it with your property.

Ms. Mason-Harris: Yes, I understand. I'm never leaving my house, but I understand.

Dr. Larson: Okay, this approval may be revoked by the Board of Zoning Appeals for noncompliance of the conditions of approval.

Ms. Mason-Harris: I understand.

Dr. Larson: So again…

Ms. Mason-Harris: I understand.

Mr. Davis: In other words, we don't want to see you again.

Dr. Larson: Other questions?

Ms. Brown: Do we want to set a time limit on complying with the conditions? It is my understanding the business is already operating right now?

Ms. Mason-Harris: Yes, slightly, marginally, because my, I'm not sure if you guys have seen the website, but the website guy had originally told me it would take him 3-4 weeks. This was the end of November. He got it up in a weekend. I didn't know how this process worked out. Ignorance. This is my first time doing it. I came the first week of January. That was too close to the… within the 30 day thing, because I've actually been trying to do this for two month. So it's just been ignorance on my part.

Ms. Brown: I know with our last case, it was a long time to get the conditions met, do we want to set a time frame?

Dr. Larson: For the parking space you mean?

Ms. Brown: For all of it. Get the occupancy permit, everything.

Mr. Davis: I think all this has to be done before the OP.

Dr. Larson: I think… isn't that already in the special exception?

Mrs. Musante: What happens after this hearing is, a letter is sent to the applicant with a copy of the home business permit that states: Attached is a copy of the home business permit that you must submit to the Department of Public Works. It does not state how many days that she has to comply, but that is sent with the letter of approval and a copy of the conditions.

Dr. Larson: Okay, so that might be an issue.

Ms. Brown: And I just don't want to get into like the case where this goes on for a year and a half and we have to invite her back.

Dr. Larson: What would you suggest?

Ms. Brown: A month, 30 days. How long does it take to get an occupancy permit?

Ms. Blackburn: What I have worked with in the past has been a year for compliance, because in some situations… there can just be various situation where they do nothing. They don't work. They don't fix anything. They don't do anything. But it may be, if you're going to talk to the attorney about HOAs and how you want to deal with them, it may also be a question to ask them, or ask him if he has any information concerning that.

Mr. Grimes: There were some issues with applying time limits to special exceptions. How long they were valid for. But we were able to get around that by saying: It goes with the property ownership.

Ms. Blackburn: Well, we actually double checked with the State Code and our County Attorney said no, it goes with the land, and they were thinking conditional use permit approved by the Board of Supervisors. On second go around it was like: Oh yes. There is a section in the State Code that does allow you to put time limits on special exceptions, and as I've said I know other jurisdictions have put time limits on gaining all approvals and if you do not gain all approvals within a year then the approval is null and void.

Ms. Brown: That's what I'm talking about. I think a year is too long, because I'm worried about her operating without an occupancy permit. The same thing that happened with our last case.

Ms. Blackburn: So that may be something that the research attorney may have more experience with.

Ms. Brown: And I think 30 days is going to be hard, I think a year is too much. I just don't want to have her back her because she hasn't gotten her occupancy permit.

Mr. Kim: If you don't mind, Mr. Chairman, I think 30 days is a little short. Because I mean the littlest thing could hold it up and it might not be their call. It might be just because of the process.

Ms. Brown: And I'm willing to go longer, but I think a year is too long.

Mr. Kim: Sometimes the inspector come out and then it takes two, three days, and then you have to wait for that, and then they give you two or three days if there's something wrong. I just think 30 days is a little too short.

Dr. Larson: This special exception… the only things that they really have to do, they need the conditional use permit, they need the occupancy permit.

Mr. Apicella: First they need to get the parking space, then they need to get the…

Dr. Larson: I was going to say, they need to get a parking space. The parking space, well, it doesn't have to be paved, but it has to approved by the Home Owners Association.

Ms. Brown: No, no, it has to be there. Our condition is she has to have it to operate. Is that not what I'm understanding?

Dr. Larson: The Home Owners Association says "we're going to consider this in a couple of years". I mean, we don't have control over that. And that's a due process. This is the same problem I was having with the other issue.

Ms. Brown: Well the problem is…

Dr. Larson: I know exactly what you're talking about.

Ms. Brown: Actually, I've not seen any… all the HOAs, I've never seen them… they either approve it or they don't. I mean, I think they meet once a month, so I think a couple of month would be plenty of time to get approval, but if she gets it… we're not going on HOA approval, I understand that.

Mr. Grimes: But I would offer though that you can word this condition that it grants us some flexibility, right? Compliance must be made within 6 month or the special exception may be revoked by the BZA.

Dr. Ackermann: That's a good idea.

Mr. Grimes: If we find out in 6 month they're violating because it's not done yet and we find out the reason is that the Home Owners Association deferred it to December of next year, then we go, well okay, we're not going to revoke you yet.

Ms. Brown: I'm concerned that she's already operating the business without the…

Mr. Kim: She's here.

Mr. Grimes: We've given her six month to comply now and there's going to have to be a pretty good reason given, again, if she was violated for not being in compliance.

Dr. Larson: Okay, so really what we have on the last condition is already written, the approval may be revoked.

Mr. Kim: Can we ask the Zoning Administrator her opinion on what's a reasonable time? What's a reasonable time to get into compliance of getting your OP or whatever you guys want to call it. Six month, a year is that reasonable? Unreasonable?

Ms. Blackburn: I think it's reasonable 6 month or a year. I have seen, as I said, I have seen cases where people thought they were going to get money to do whatever they were trying to do, and it didn't come through. Or they had an illness in the family and they could not do what they were doing. So I mean, unfortunately it becomes more of a standardized condition and then we have all these extenuating circumstances that happen in the world. So 6 month to a year is a decent time, I think, to accommodate for various things that we can't even begin to think of.

Ms. Brown: I wonder (inaudible). I'm sure they got all kinds of stories too.

Ms. Blackburn: They've been extended for years because of the housing prices. 5 years.

Dr. Larson: Well, 6 month to a year sound like maybe 9 month.

Ms. Brown: I'll go with 6.

Mr. Kim: A like the one year aspect. So 9 month?

Ms. Brown: I won't support 9 month. It's a parking spot and an occupancy permit.

Ms. Blackburn: Or discuss it with the attorney.

Dr. Larson: I have that down. I'm going to, but he have to make something here for this special exception.

Ms. Brown: I'm willing to go with 6 if that's what it takes to get this approval. I think it's wrong, but…

Dr. Larson: I think the Board… this is… okay, we need… I'm going to have a vote on this particular exception, okay? So we're discussing this exception. We've heard 6 month, we've heard 9 month. Any discussion?

Mr. Kim: Mr. Chairman, I can offer a motion of giving a time limit of 9 month.

Dr. Larson: Second?

Mr. Davis: Yes.

Dr. Larson: Okay, I have a motion and a second. Any other discussion on 9 month?

Dr. Ackermann: It's just a question I have, is that required or they may?

Dr. Larson: We're going to put "we may revoke".

Mr. Apicella: Before we get into language let's… because I have some language myself. I think the language is more along the lines of "The applicant shall come into compliance within 9 months." You want to be careful about the rest of the sentence, because at any point in time thereafter you can still revoke this matter for non-compliance.

Dr. Larson: That's true. Yes.

Ms. Blackburn: As far as the time limit goes and I think maybe I misspoke, it would be to get permits and not to be in compliance.

Mr. Davis: What was that? I'm sorry?

Ms. Blackburn: It would be to get permits, all required permits and approval, not to be totally in compliance with what's going on.

Mr. Kim: But you couldn't get your occupancy permit until you… your electrical, your mechanical, your... okay.

Ms. Brown: How many permits are required?

Ms. Blackburn: It depends on what you're doing.

Ms. Brown: I mean for her in particular.

Ms. Blackburn: I don't know.

Ms. Brown: Because I would think that maybe our time limits would be tailored to what kind of project it is and what they have to do.

Mr. Grimes: Well, the space is finished. It's an occupancy permit. Now that they have to actually build a driveway, there's construction permits involved. Could be a site plan.

Ms. Brown: I don't think… Is there?

Mrs. Musante: She won't need to do anything for the driveway as far as the County is concerned.

Dr. Larson: There'll be and architectural control committee issue probably with the Home Owners Association.

Mrs. Musante: Yes.

Ms. Brown: Well, and the Verizon thing possibly.

Mrs. Musante: Yes.

Dr. Larson: Alright, there is a motion and a second on the floor for allowing her to come, was it 9 month, in compliance. How do you want to phrase it?

Mr. Apicella: What I heard was sort of along what I said: The applicant shall obtain all necessary permits within 9 months. Followed by the sentences already there.

Mr. Grimes: I think you want to leave number 6 by itself. I really think this should be standing alone, and it could be permits, it can be the original compliance, something. This last part I really think needs to stand on its own. If we want to put in that the applicant must obtain all required permits within…

Dr. Larson: Within 9 months of approval.

Mr. Apicella: Yes, I would just say County permits, just so we're clear. We're talking about within the County's…

Ms. Brown: Okay, so can't get an occupancy permit until the parking situation is satisfied, is that correct?

Mrs. Musante: She can apply for the occupancy permit, which I think there may be some misunderstanding on how our processes work. She will come in and apply for the certificate of occupancy, submit us with the conditions that she's done and the layout that she's already done on what she's using. That will go through the review process. We issue her a permit. We then schedule inspections to go out to inspect to make sure she has complied with, if they are outside conditions that we have to check. We will then schedule an inspection when the applicant is ready to come out and make sure she is in compliance with all the conditions.

Ms. Brown: So the permit can be issued?

Mrs. Musante: Yes.

Ms. Brown: In a month?

Mrs. Musante: Yes.

Mr. Kim: Oh okay.

Mrs. Musante: And then we will sign off on it after all of the conditions are met. The computer will generate a certificate of occupancy and we will sign off on it.

Dr. Larson: Okay, so she can get the permit fairly quickly. Getting all the paperwork done might take 9 months.

Mrs. Musante: It could, if she is having issues outside of the County regulations.

Dr. Larson: So if we say applicant must obtain all required permits that could be 6 months, right?

Mrs. Musante: We're on a 3 week turn around, how long it takes us once the application is submitted. Maximum is 3 weeks. Hope I didn't say 3 months.

Mr. Kim: Yes, you said 3 weeks.

Mrs. Musante: Sorry, 3 weeks.

Dr. Ackermann: But the letter is sent by normal post, right?

Mrs. Musante: It is.

Dr. Ackermann: So it could be a week before she gets the letter?

Mrs. Musante: That is correct.

Dr. Ackermann: So that's 4 weeks. That's a month right there.

Mr. Kim: Yes, and for me, if there is some issue why, then that has to… she has to rectify that issue before submitting another OP permit. So that's another two month there. And depending on what the situation might be, it could be a contractor, it could be whatever, thousands of different reasons why I hold it up.

Dr. Larson: So the motion is for 9 months. It's been seconded. We're talking about a sentence that reads "Applicant must obtain all required County permits within 9 months of approval", right? Okay, so that's the motion and a second. Any other discussion?

Ms. Brown: I will not be supporting that. I like the language I just don't like the time.

Mr. Kim: Just vote it. If we can just vote it, you can vote it down.

Dr. Larson: All in favor say aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Mr. Davis: Aye.

Mr. Apicella: Aye.

Dr. Ackermann: Aye.

Dr. Larson: Aye. Any opposed?

Ms. Brown: No.

Dr. Larson: Alright, motion carries. Alright so I think we have the conditions. Could you read them back, please Melody?

Mrs. Musante: Number 1: Days and hours of operation: Monday through Friday 9:00 AM to 7:00 PM; Saturday 10:00 AM to 2:00 PM; no Sunday hours. Number 2: Applicant shall provide 1 additional off-street parking space for clients. No on-street parking shall be permitted for clients. Number 3: Clients by appointment only. Limit 1 client at a time. I can't read my own writing.

Dr. Larson: On the premises.

Mrs. Musante: On the premises, yes. Number 4: Must comply with all State and local codes. Number 5: No sign. Number 6: Approval of this Special Exception for Esthetician Services only will expire when this applicant vacates the property and is non-transferable. Number 7: Applicant must obtain all County permits within 9 months of approval. Number 8: This approval may be revoked by the Board of Zoning Appeals for noncompliance of the conditions of approval.

Mr. Apicella: Mr. Chairman?

Dr. Larson: Yes, Sir.

Mr. I make a motion to approve SE-15-02/ZON15150526 with the revised conditions we just read.

Dr. Larson: Is there a second?

Mr. Grimes: I would second the approval of the application.

Dr. Larson: Further discussion on the application?

Ms. Brown: Just one question. By approving this, are we approving for her to do business today without an occupancy permit?

Mrs. Musante: She cannot operate until she applies for her certificate of occupancy.

Ms. Brown: Applies or gets it? Oh, I'm sorry, applies or obtains it.

Mrs. Musante: Well we already know she's already operating there. The BZA action will stay all violation processes on her, because she has gone through this process. She should obtain her certificate of occupancy before she is operating, but it's not our policy to issue a violation notice if she is approved through this process.

Ms. Brown: So we're just going to extend her time?

Dr. Larson: Well we're… that's a County issue. That's a County enforcement issue. Whether… how they deal with the enforcement.

Mrs. Musante: Correct.

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

Mr. Kim: Aye.

Mr. Grimes: Aye.

Mr. Davis: Aye.

Mr. Apicella: Aye.

Dr. Ackermann: Aye.

Ms. Brown: Aye.

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

<u>ELECTION OF OFFICERS</u>

Dr. Larson: Alright, Election of Officers. Do I have a nomination for the position of Chairman?

Mr. Apicella: Mr. Chairman? I'd like to nominate Dr. Dean Larson to be Chairman, in fact I would like to nominate Dr. Larson to be Chairman and Danny Kim to be Vice-Chairman.

Mr. Grimes: I would second that.

Dr. Ackermann: I would third that.

Dr. Larson: Okay, are there any other nominations for Chair or Vice-Chair? Okay. Any nominations for Secretary?

Mr. Kim: Mr. Robert Grimes. I nominate Mr. Robert Grimes.

Dr. Larson: There's a nomination.

Mr. Apicella: Second that.

Dr. Larson: Okay. Any other nominations for Secretary? Okay. Hearing none. Chairman; Those in favor of the current Chairman say aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Mr. Davis: Aye.

Mr. Apicella: Aye.

Dr. Ackermann: Aye.

Ms. Brown: Aye.

Dr. Larson: Aye. Opposed? Okay those in favor of the current Vice-Chairman say aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Mr. Davis: Aye.

Mr. Apicella: Aye.

Dr. Ackermann: Aye.

Ms. Brown: Aye.

Dr. Larson: Aye. Any opposed? Those in favor of the current Secretary say aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Mr. Davis: Aye.

Mr. Apicella: Aye.

Dr. Ackermann: Aye.

Ms. Brown: Aye.

Dr. Larson: Aye. Okay. We have our Officers for next year.

UNFINISHED BUSINESS

Dr. Larson: No unfinished Business.

OTHER BUSINESS

- Annual Report

Dr. Larson: Let's discuss the annual report real quick. You have a chance to look over. It's pretty standard. I added a couple of new sections. One was issues encountered by Board, and one was legal advice. I guess first I'd like to talk about content of those two sections. Any discussion on issues encountered by the Board of Zoning Appeals?

Mr. Grimes: Yes. I was wondering that in the annual report if we could not… if we could have staff include, and I know I'm creating work for you so I apologize, but when cases go to Court, can there be a section that identifies which cases went to Court and what the outcome was. For example, our ruling on the gazeebo was overturned by the Courts. It might be nice for us to know that going forward, even though I disagree on how they got there, but it doesn't matter.

Mr. Davis: You say you want them in the annual report?

Mr. Grimes: Somehow to summarize the cases that were appealed and went to Court and what the outcome was, yes.

Mr. Davis: I would like to add to that that we find out about it when the Court decides, not wait for the annual meeting.

Dr. Larson: Oh no, we should know. What he's saying is it should be noted in the annual report.

Mr. Davis: Right, I agree, but in addition to what he's saying.

Mr. Grimes: But I think, you know, all I did was ask the Secretary to get the documentation and then I pass it on to Melody. I'll be honest, I don't know that I… I think I did email everybody on the email list that, hey, by the way, this was overturned, but maybe we can do it more formally.

Ms. Brown: That would be helpful. As a new Board member I would look at that, because I didn't go back and read every month's minutes, but I did look at how the cases were solved and that would be helpful to me to see.

Mr. Apicella: I think it would be helpful just to even know that these matters are going to Court.

Dr. Larson: That it goes to Court, yes, and then what the resolution is.

Mr. Grimes: Just in a final, if you had a section that said: Appeals; those are the case numbers, outcomes, it could just be pending

Dr. Ackermann: What if a case we decided this year goes to Court this year, but doesn't get decided until the following year?

Dr. Larson: That happens a lot.

Dr. Ackermann: I know. Then which report does that…I mean the one report is going to go in as an appeal and then do we carry it over to the next report? I think it's a good idea to carry it over to the next report.

Mr. Apicella: Well we're just saying… you know, no disposition.

Dr. Ackermann: But in the next year it has to be in the next year report.

Mr. Grimes: That case that was turned over was from 13? 12?

Dr. Larson: Okay, so if we had an appeals section, it would have two possible entries there. One would be: "This case is being appealed. No decision." and "This case was appealed. Here was the decision." So if somebody can't watch, they look at these historic documents they're so grand, then they could know…

Ms. Brown: I did want to look at them.

Dr. Larson: I still don't think that's going to be too much. We don't have that many appeals.

Mrs. Musante: So are you telling me you want it on this annual report, or can we start going forward?

Dr. Larson: When is this due?

Mrs. Musante: Now. Like past due.

Dr. Larson: I agree, it's a great suggestion for next year's report.

Mr. Kim: That's perfect.

Ms. Brown: Can we do it on the little chart?

Mrs. Musante: We can.

Dr. Larson: Are there any other suggestions or comments on the annual report?

Ms. Brown: I'm abstaining from voting on it, since I wasn't here.

Dr. Larson: Okay. I have… it's just formatting that makes a difference in how it comes across. Under the "legal advice" section, the stuff that's in parentheses there, in italics, that should be a sub-bullet of

the primary bullet above it. So that's what the attorney decided on the whole discussion of that primary bullet above it. My computer, I thought I caught it, but it argued with me and I think it won.

Mr. Apicella: Must be the same computer that Melody had.

Dr. Larson: So it's like the ones above where you had a primary and a sub-bullet, the italics are the sub-bullet. And then the stuff that's not italicized that's just a separate paragraph.

Mrs. Musante: Okay, I missed that, what you last said.

Dr. Larson: That's not bullet, that last… after the italics and there's a part with one or two sentences that are not italicized, that's not bulleted. It's still part of the section, but it's not bulleted. I would be on the same level as the first part, right under legal advice.

Mrs. Musante: Got it.

Dr. Larson: Just so nobody gets confused.

Mrs. Musante: Okay.

Dr. Larson: Those are the only comment I have. Any other comments on the annual report?

Mr. Davis: I'm glad we did such a great job.

Dr. Ackermann: Yes.

Dr. Larson: Fantastic job.

Mr. Kim: And if I can make one comment about staff, I think you guys are awesome. I think you definitely make us look good.

Mrs. Musante: Thank you.

Mr. Kim: Yes, and if it wasn't for you guys we definitely couldn't look this good. I think we do a pretty good job, so thank you guys.

Mr. Davis: Even the Director?

Mr. Kim: Mainly Jeff, of course, yes.

Mr. Apicella: With that being said, there are two items in the document that I think should be passed on to the Planning Commission at a minimum related to issues that we've encountered, so that maybe…

Dr. Larson: The issues encountered by the Board of Zoning Appeals?

Mr. Apicella: Well, that's one piece of it and then I think also the BZA had to deal the issue of retail sales, so what we may not know is currently the Planning Commission is looking at definitions in trying to sync up the subdivision ordinance and the zoning ordinance where there may be some conflicts, and I don't know what the right answer is, but I'm just saying, these are issues that we might

want to consider at Planning Commission level to try and see if any resolution is needed. On both those issues about what is retails sales and what is… and one with zoning district issue.

Dr. Larson: Could you take that?

Mr. Apicella: Well, I think the staff, and I mean I will certainly respond to it, but I think it would be helpful if the issues encountered by the Board of Zoning Appeals, the conflict of standards shown for the M-1 zoning district and the table.

Mr. Davis: I think that's a great suggestion.

Dr. Larson: So could the staff then send the appropriate email just highlighting those two sections?

Ms. Blackburn: Yes.

Dr. Larson: So, any other comments on the annual report? Hearing none, is there a motion on the annual report?

Dr. Ackermann: I'd move that we adopt the annual report.

Mr. Davis: Second.

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

Mr. Kim: Aye.

Mr. Grimes: Aye.

Mr. Davis: Aye.

Mr. Apicella: Aye.

Dr. Ackermann: Aye.

Dr. Larson: Aye. Any opposed? Abstentions?

Ms. Brown: Abstain.

- Discuss funding authorization from Board of Supervisors for Board of Zoning Appeals research attorney for next fiscal year

Dr. Larson: Okay. Alright. Very quickly. Last year we were successful in getting a 10,000 dollar authorization from the Board of Supervisors to fund for us a research attorney, which I think everybody is aware of. It's been in my view very useful and I think that 10,000 dollars is probably the right level of funding for that based on the fact that we still have half a year to go and we have about 4,200 dollars left. My question is, when do we approach the Board of Supervisors about that? First question. Does the Board think we should ask for an additional increment of money for the following year, what its magnitude should be, and how we go about that?

Ms. Brown: Yes, I think we should ask them for the money. I think we should do it now because there are studying the budget right now.

Dr. Larson: I agree. Any discussion?

Mr. Grimes: I think you should ask for an increase in that budget and compromise back down to 10. We didn't spend it all last year…

Dr. Larson: Well we haven't yet, but we may.

Mr. Grimes: The year is over.

Dr. Larson: No it's not.

Dr. Ackermann: When is the fiscal year?

Mrs. Musante: July to June.

Mr. Grimes: So it was approved in July?

Dr. Larson: It was effective July 1st. I didn't spend a dime before July 1st.

Mr. Grimes: I thought it was before that. Okay, alright, then definitely I would think we should request an increase. Not much.

Ms. Brown: How much were you thinking?

Mr. Grimes: Another 2,500 dollars.

Dr. Larson: I have to change the annual report. I think I put something in the effect that we thought it was the right level of funding.

Mr. Grimes: It does say that.

Ms. Brown: Are we anticipating…

Mr. Apicella: The problem is we have no way of knowing. What I do know is, there are some things that we may not have gotten to a good conclusion or the right answer in the absence of having the advice.

Dr. Larson: I do remember a discussion of somebody wanting to consult the attorney and I said no.

Ms. Brown: I definitely want to have the money. If you guys think you need more I'll support that.

Dr. Ackermann: All you have to change is, instead of saying sufficient, say insufficient.

Dr. Larson: Honestly, I think it's enough.

Mr. Apicella: I think there's a risk of asking for more.

Mr. Kim: I think so too.

Mr. Apicella: And sometimes we don't want to look a… yes, could we use 12,000? Probably. Could we ask couple more questions? Probably. But I think it's going to be a…

Dr. Larson: It's not a gift.

Mr. Apicella: … well I'm not saying it's a gift. What I'm trying to say is, the 10,000 dollars that I hope they would probably agree to that if asked for more money the risk is that they really start to ask a lot of questions about the total amount. So that 2,000 dollar increase could put the whole amount at risk.

Dr. Larson: Let me reword what was said in the annual report. Right now I said it was sufficient. Maybe I could say it was uncomfortably sufficient, or you know something to convey the notion that we need the whole thing. We can't be cut.

Dr. Ackermann: Could the lawyer raise his fees? Do we have to negotiate another agreement?

Dr. Larson: We'll definitely have to negotiate another…

Dr. Ackermann: If the lawyer raises his fees by 50 dollars an hour…

Ms. Brown: Why can't we use the County Attorneys? I don't understand.

Dr. Larson: Let's discuss that (inaudible).

Dr. Larson: Okay. Do we want to name a new number or do we want to try to convey something about the current level was barely sufficient, or was fully utilized, or will be fully utilized? Because I can't say it was fully utilized because it's not yet. I fully expect it to be, but I…

Mr. Apicella: I would suggest we just leave it at your discretion to artfully paint the picture that we certainly at a minimum need the 10,000.

Dr. Larson: Alright, let me relook at the wording on that.

Mr. Grimes: Because it's going to be sufficient because you manage it so well.

Dr. Larson: Well, it's because we made it sufficient.

Mr. Kim: We had to make it sufficient.

Dr. Larson: We declined to examine some issues because we wanted to save the money for things we thought were coming up. We thought may come up, and they did. I mean there are two issues now.

Dr. Ackermann: So that's great language for the report, is that it was sufficient because we declined examining some issues.

Mr. Grimes: And then based on the budget year and the fiscal year we need to ask soon.

Ms. Brown: Yes, they're setting the tax rate and everybody is getting their requests in now.

Dr. Larson: Yes, I like that, because, number one, it's true and number two, it conveys the notion that we could use some more money. I may…I don't know for a fact, but I think that money just comes out of the County Attorney's office. So, I don't know, we may start getting pushed back if we ask for a whole lot more.

- Discussion of Section 7-7 of the Bylaws

Dr. Larson: Alright, Section 7-7, the Bylaws. Oh yes, okay, we had this… we made a change to the bylaws a few month ago which addressed the issue of granting referrals when they are requested before the ad goes in. Once the ad goes in, the case has been publicly announced and it's a pain to revoke it, because it costs lots of money, and so we want to try to do it before the ad goes in. So Melody, I'm sorry, I didn't ask you this ahead of time, but when does the ad have to be in for the first advertisement?

Mrs. Musante: It's advertised the second and third Tuesday, it's when it's in the paper. So it has to be to the newspaper the first Thursday of the month.

Dr. Larson: Which could be the first of the month.

Mrs. Musante: Wednesday. Thursday is pushing it. They want it Wednesday, yes. Thursday they will accept it.

Dr. Larson: We want to have the capability to defer a case if it was requested before the ad. But the ad requires so…the ad is really upfront, I mean, it's really very close to the beginning of the month and some cases may be on the first of the month.

Mrs. Musante: Could be.

Dr. Ackermann: April 1st.

Dr. Larson: So I was hoping to say something reasonable like maybe "by the first of the month", because what happens is exactly what happened to us last time, and the time before for the same lawyer. They decided they want a deferral and we had to have the ad in either that day or the next day.

Mr. Apicella: And that's the public notice requirement?

Mrs. Musante: Yes.

Mr. Apicella: So it's not a money issue, it's a time issue.

Dr. Larson: We have virtually no time to consider deferral. It's always in… look, I don't think there's any way around it. It's always going to be a firehouse type… So, okay, I just wanted to understand if we had any options about giving us a little more, at least a couple of days to… but we can't guarantee that.

Mrs. Musante: We cannot.

Mr. Apicella: Okay so how is it that the Board…I mean, so you got a bad weather day and the Board cancels a meeting and move it to another day, and they do it that day. Didn't that happen with the last Board meeting? It happened on the day of the Board meeting.

Mr. Harvey: The County Attorney ruled that since it's an advertised meeting they can adjourn it to another day due to unforeseen events. So that's sort of an exception.

Mr. Kim: Okay.

Ms. Brown: Did they have any public hearings at that meeting?

Mr. Harvey: Yes. Tonight's meeting was essentially last Tuesday's meeting. Same agenda and everything.

Ms. Brown: I know the School Board, they had a public hearing that got cancelled because of the weather and they said in the notice that if it was cancelled due to weather… they gave another date.

Mr. Harvey: Yes, it has to be announced date specific when the public hearing and the meeting will be constituted and occur.

Dr. Larson: Okay. It just occurred to me, we don't have a weather cancellation policy, but I don't want to go there right now. So, what I'm hearing, I think, is, there is no reasonable way to do this. If we're going to allow deferral, then it's always going to be a last minute… the first time it happened, as you guys may recall, Clark Leming made a really last minute, it was like the same day I think, he came to us at 11 o'clock in the morning and said he wanted a deferral and we had to have it in like 2 o'clock in the afternoon and I circulated everything and we didn't get four votes. So we had to write him back and say "You're not deferred, because you didn't get four votes".

Mrs. Musante: Well something else that you can consider as well is, we go ahead with the public advertisement and then require the applicant to come to the meeting that night and request the deferral. If we've gone through everything, you know, we've had to do the staff report, all of the… that's the only other option.

Mr. Harvey: That is a concern to staff, that if you're polling the Board electronically, are you conducting a meeting?

Dr. Larson: Well, we only do it for the purposes of this deferral. It's not a meeting. It's the question is should we defer or not. There is no evidence presented. What's given is the conditions of the case, what the case is about. No evidence is presented, no discussion, it's just here is what the case is, do you favor deferral or not. There's no hearing per se. There's just no discussion, just a vote. I would prefer being able to defer even in the firehouse last minute basis, because otherwise, when you have a meeting under those circumstances you open a public meeting and we have in the past, but I refuse to do this, if the public comes, we're going to let them talk, I don't want to have them come back. So I'll open the public hearing and leave it open until the next time. And I don't like to do that.

Mrs. Musante: Right.

Dr. Larson: So I think, bottom line of what I'm saying is that this Firehouse deferral process that we have to try to vote to defer before the paper's due. It is what it is. It's just always going to be real short notice and if you happen to get the email you can vote, great, if you can't, that's fine too. If we don't get four votes there's no deferral.

Mr. Kim: Sounds good to me.

Ms. Brown: So we can do this up to an hour before it goes to press. The applicant can call us at 1 o'clock and say, I want a deferral.

Dr. Larson: Did you get a phone call, if you get an email?

Mrs. Musante: Email.

Mr. Apicella: My concern, Mr. Chairman, is, it really is contingent upon us…who knows that we're going to be getting an email for this purpose. I mean I'm at work. I don't have great reception at my office. Sometimes an email will pop up and sometimes it won't, and, again... Sometimes these deferrals are legitimate and there's a good basis for it, and I think the last one that came in there was a good reason for it. And I don't know how difficult it would be, can staff give us a phone call and let us know, hey take a look at your emails. Because again I am not looking at my email constantly, I might check it every couple of hours at best, on a day when I don't have a bunch of meetings lined up. And that may be true for all of us.

Ms. Brown: I don't know if this is in our purview, can we stipulate that we need 24 hours?

Dr. Larson: What?

Ms. Brown: Instead of letting, you know, an applicant call us an hour before press time, can we stipulate we need a 24 hour notice?

Dr. Larson: Sure. That is the reason I wanted to talk about it. But what is the date? It's a day and it could be the first… how do you say that?

Mrs. Musante: I would have to go back and look at the approved calendar for the year and figure out the language that we could put in here. I am sure that we could come up with something, but I would have to go back and look and see what day of the month it falls.

Dr. Larson: Could you come up with something that sounds like 24 hours prior to when it is due…

Mrs. Musante: Sure.

Dr. Larson: … to the newspaper?

Mrs. Musante: Sure.

Mr. Harvey: Mr. Chairman, it would be a number of days prior to your scheduled hearing date.

Mrs. Musante: Yes.

Mr. Harvey: It is approximately 22 days, or something like that.

Dr. Larson: Alright, we can do it that way.

Mrs. Blackburn: Because our notices are done on so many days prior to the hearing.

Dr. Ackermann: Sure, we could do that.

Dr. Larson: Okay, good. So if you could send some draft language.

Mrs. Musante: I sure will.

Dr. Larson: I am going to skip the minutes due to the late hour, we can adopt those next time. Zoning Administrator's Report.

ADOPTION OF MINUTES

October 28, 2014

November 25, 2014

ZONING ADMINISTRATOR'S REPORT

Mrs. Blackburn: I don't have anything at this time.

Dr. Larson: Okay, thank you. That is it. Is there a motion to adjourn?

ADJOURNMENT

Mr. Kim: Motion to adjourn.

Dr. Larson: Second?

Mr. Apicella: Second.

The motion to adjourn passed 7 – 0.

With no further business to discuss the meeting adjourned at 10:20 p.m.