

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
July 28, 2015

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, July 28, 2015, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Dean Larson in the Board of Supervisors Chambers of the George L. Gordon, Jr., Government Center.

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

MEMBERS ABSENT: Dean Larson and Danny Kim

STAFF PRESENT: Susan Blackburn, Melody Musante, and Stacie Stinnette

DETERMINATION OF QUORUM

Mr. Grimes: The Board consists of 7 regular members and 2 alternates. An alternate may be called upon to participate when a regular member is unable to hear a case. Tonight let the record reflect that we have 2 of our alternates sitting to hear the case. We have a quorum tonight with 7 voting members present. The members present and voting tonight are Mr. Steven Apicella, Mr. Ray Davis, Dr. Ernest Ackermann, Mr. Larry Ingalls, Ms. Dana Brown, and Mrs. Heather Stefl, and myself, Robert Grimes. The County staff is represented tonight by Mrs. Susan Blackburn, the Zoning Administrator, Mrs. Melody Musante, the Zoning Manager, and Mrs. Stacie Stinnette, the Recording Secretary. The hearings will be conducted in the following order. The Chair will ask the staff to read the case and members of the Board may ask questions of the staff. The Chair shall ask the applicant or their representative to come forward and state their name and address and present their case to the Board. The presentation shall not exceed 10 minutes unless additional time is granted by the Board. The 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 time for appropriate review, the applicant or the 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 additional material may require deferral at the Board's option on behalf of the applicant to allow the Board time to consider the additional material. Members of the public and/or staff may also submit relevant material during the hearing. The applicant should be aware tonight we have 7 voting members present, and you must have 4 affirmative votes to approve an application. If you do not think there are enough members to receive a fair hearing, then you have the right to defer the hearing until another meeting. However, you may defer the hearing for this reason only once in any 12 month period. Deferral requests are granted at the sole discretion of the Board. The applicant may also withdraw his or her application at any time prior to a vote to approve or deny

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the application, provided that the applicant has not withdrawn a substantially similar application within the previous 12 months. Any person or persons who does 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. Thank you. 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, to stand and raise their right hand. Do you hereby swear or affirm that all testimony before this Board shall be nothing but the truth? Thank you, please 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 our recording secretary can have an accurate record of the speakers. Also, please sign the form on the table at the back of the room. Thank you. Are there any changes or additions to the advertised agenda?

Mrs. Musante: There are no changes.

DECLARATIONS OF DISQUALIFICATION

Mr. Grimes: Before we hear the first case, does any Board member wish to make any declaration or statement concerning any cases to be heard before the Board tonight.

Ms. Brown: Mr. Chairman, I do. I just wanted to state that I did visit the site twice. I went out on July 22nd and I was out there again today.

Mr. Grimes: Thank you.

Mr. Ingalls: I also visited the site, but I did not speak to anyone when I was on the site.

Mr. Grimes: Thank you.

PUBLIC HEARINGS

1. V15-01/15150713 - Stafford Corner Pad, L.L.C. - Requests a Variance of Stafford County Code, Section 28-35, Table 3.1 "District Uses and Standards," B-2, Urban Commercial, open space requirement, to reduce the requirement of 25% open space to 12.82% open space on a developed property on Assessor's Parcel 21-26A. The property is zoned B-2, Urban Commercial, located at 100 Prosperity Lane, Stafford Corner.

Mr. Grimes: I will now have the secretary read the first case.

Mrs. Musante: The applicant is requesting a variance of the percentage of required open space on an existing commercial site. The open space requirement for B-2, Urban Commercial is 25% of the total parcel. Currently, the open space requirement consists of grass pavers in the parking lot green space along the perimeter of the property and parking lot islands. The applicant is proposing to remove the existing grass pavers and install asphalt reducing the required open space to 12.82% and asking for a variance of 12.18%. Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance.

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The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance. The applicant states the property was acquired in good faith and was not aware that complying with the required open space ratio would be an issue in developing the property. Open space ratio is the percentage of the total gross area of a site that is not impervious surface. According to the county records, the site plan submitted did not comply with this requirement. In order to comply with the open space ratio, the grass pavers were permitted to satisfy the area required for the open space ratio and also for the required parking spaces. Grass pavers is a system of either concrete or plastic grids that can be planted with grass which provides a surface strong enough for a vehicle to park on and create areas that are pervious. The applicant states he did not create the hardship that is the subject of this variance. He states the grass pavers were installed per the manufacturer's specifications; but does not admit...but does admit the installation occurred during the winter months and the area was not protected from the construction traffic occurring on the site. This resulted in the grass not establishing itself and not providing the desired result of green open space. Currently, the system is only functioning as a Storm Water Management quality instrument. Number 2; The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area. If the variance is granted, it would only affect this property cited in the application. This is the last lot to be developed along the perimeter of the Stafford Market Place development. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance. The situation is unique to this development and the condition or situation of the property is not of so a general or recurring nature as to pursue an amendment to the ordinance. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property. The granting of the variance does not result in use not permitted nor a change in the zoning classification of the property. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of 15.2-2286 at the time of the filing of the variance. The relief or remedy sought by the variance application is neither available through a special exception process authorized in the ordinance pursuant to subdivision 6 of 15.2-2309 nor a modification of a zoning ordinance pursuant to subdivision A4 of 15.2-2286 at the time of the filing of the variance. Zoning History; The property is the consolidation of Assessor's Parcel Tax Map 21 Parcels 26A and 26D drawn by Dickerson Survey and approved by Stafford County in March, 2015. These parcels were not a part of the original Stafford Market Place development plan. A major site plan was approved in March 2014 for a 9,440 square foot commercial/retail building on a 44,684 square foot site, showing the open space ratio of 34 % utilizing the grass pavers. In December 2014, a revision to this site plan replacing a portion of the grass pavers with pervious pavement was approved. This approval reduced the open space percentage to 26.12%. The reason for this revision was due to the failure of grass growing in the paver system thus not provided the desired effect. A Temporary Certificate of occupancy was issued November 24, 2014 with a permanent certificate of occupancy issued April 2, 2015.

Mr. Grimes: Are there any questions for the staff?

Dr. Ackermann: May I ask, Sir?

Mr. Grimes: Yes.

Dr. Ackermann: So in the zoning history you say major site plan was approved in March, 2014 and this is for a 9,440...that was the site plan for 9,440 square foot commercial building on this lot that's under discussion?

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Mrs. Musante: Correct.

Dr. Ackermann: Okay, which had 34% utilizing grass pavers. There was a revision of the site plan and what was the reason for the revision of the site plan? Do you know?

Mrs. Musante: To my knowledge, the reason for the revision of the site plan was because the grass pavers had failed. So they removed some of the grass pavers and installed pavement, if that's my understanding.

Dr. Ackermann: And...let me see...there was one other thing. So, this, and then a temporary certificate of occupancy was issued November 24th. That was before the site plan was revised? Right?

Mrs. Musante: Correct.

Dr. Ackermann: Okay. And then a permanent certificate of occupancy was issued on April 2nd, 2015, and that's with the existing...that's under the existing conditions?

Mrs. Musante: That is correct.

Dr. Ackermann: And you said that this is functioning as a stormwater...what was the term? It was functioning as a stormwater management quality instrument. So, does that...is that considered open space then? The stormwater quality...you know...because in the end of I guess point 1 on the Variance you said, this was a result of the grass not establishing itself and not providing the result of green open space, currently the system is only functioning as a stormwater management quality instrument. So, does it...I mean, with the pavers that are there now, does it meet the green space requirement?

Mrs. Musante: With the current pavers, yes it does. Problem is, the pavers are not working correctly.

Dr. Ackermann: Not...so that...because...not working correctly because it is only functioning as a stormwater management quality instrument?

Mrs. Musante: Correct. The pavers, the seeds in the pavers did not take...

Dr. Ackermann: Yeah, yeah, I got that from reading all that. So at the present time with the pavers that are there, they do not meet the open space requirement, or they do?

Mrs. Musante: They currently meet the open space requirement.

Dr. Ackermann: They do, okay, but it's just not green.

Mrs. Blackburn: The definition of open space is undeveloped land or water left in undisturbed, open condition, or developed as a landscape area, unoccupied by habitable buildings, streets, or parking lots. Used primarily for resource protection or recreational purposes. The statement there is a landscaped area and so, without having the grass growing in it, it is not meeting that definition. It still works as potentially a stormwater filtration system, but it is not a landscaped area with grass in it.

Dr. Ackermann: And a permanent certificate of occupancy was issues with that knowledge?

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Mrs. Blackburn: That I don't know. At the time I think it was being planted and there was some growing.

Dr. Ackermann: That was April? Yes. Okay, thank you.

Mr. Apicella: Mr. Chairman?

Mr. Grimes: Yes.

Mr. Apicella: I'll defer to Larry.

Mr. Ingalls: You just read the definition of open space. You read it kind of funny there, because you kind of paused and made it sound like a landscaped area was open space. But then it goes on to say landscaped area unoccupied by habitable buildings, streets, or parking lots. Who determined from the site plan approval that these pavers would qualify as open space?

Mrs. Blackburn: It was the Director of Planning.

Mr. Ingalls: Who?

Mrs. Blackburn: It's my understanding it was the Director of Planning.

Mr. Ingalls: Do you do a zoning review of a site plan? Zoning Department doesn't do a review of the site plan or approval?

Mrs. Musante: We have not reviewed site plans in many years. There are planners within our department that review the site plans for zoning requirements.

Mr. Ingalls: You think this meets open space requirements, now as a Zoning Administrator? You know, if you do, then we ought to tell all the developers around they don't need to provide open space, just do this. I don't understand how...the zoning ordinance has some type of zoning review. I thought I saw in the packet, I guess plan review, and it said zoning and then it had comments, you know, about different zoning issues, but the zoning department, you and Melody, and nobody in your department looks at these plans and decides is that a correct decision?

Mrs. Blackburn: In a routine review, the site planners do review it against the zoning regulations. There are times when, if it is something that is out of the ordinary, they will request consultation with me or with Melody, and...but on a routine basis they are the ones that review it against regulations of the zoning ordinance.

Mr. Ingalls: But they don't have...you still have final authority over the...they can't violate the zoning ordinance, nor can you, and neither can we?

Mrs. Blackburn: Correct.

Mr. Ingalls: So do you...how did...you know...that's the crux to this matter, how did we get to this point first. That's the first question...I can't...I'm having a hard time finding out how these brick pavers all of a sudden become open space, when the ordinance says, it's got to be unoccupied by a parking lot. If you're telling me that there's somebody who's reviewing these that doesn't understand the definition of open space, maybe you all need to have a class on open space. Because this clearly,

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to me, doesn't even meet the term open space. You know, because it's going to have a little bit of grass growing up in it, it's not a landscaped area. Has this...do you know whether this has been approved, this type of thing has been approved, this open space in any other site in the County?

Mrs. Blackburn: Not to my knowledge.

Mr. Ingalls: So you've never seen one of these or visited one of these, or...have you visited this site?

Mrs. Blackburn: Yes, I have.

Mr. Ingalls: You seen what it is.

Mrs. Blackburn: Yes I have.

Mr. Ingalls: Would you approve one of these as open space?

Mrs. Blackburn: I would have to probably review more of the zoning code and review more of the requirements for pavers and then have to decide if it was in line with the code.

Mr. Ingalls: Another question, if...it's been a while since I've looked at the whole ordinance, but I know in parking lots, there's like a parking lot perimeter landscape area required, and I noticed on this site plan, on the Market Street side the curbing for the parking lot is right against the property line. There is no, what I call, perimeter parking lot open space or landscaping on that particular side. The curbing is right there. If I parked a Ford F150 and I'm hanging over into the Market Street right of way. I mean, is that normal? And maybe you don't know what happened to that either. I mean, it just seems like, we've gotten to a place here where we should never have gotten and now we're in a hard place here. I mean I know, all the things you read that are in italics on here, they're not your comments, they're just the applicants thoughts on those things? It's not your voice saying this situation is unique to this development, and that's not the county staff saying that, is it? It's what his application said in answer to that question?

Mrs. Musante: We do take information from the applicant.

Mr. Ingalls: But that's what I'm saying, the italicized is really his...most of it is his words.

Mrs. Musante: Correct. That's how he's answered the questions.

Mr. Ingalls: It's not your...it's not what you're necessarily thinking. You might think different of that.

Mrs. Musante: That would be correct. Yes.

Mr. Ingalls: So what we read here is just what...his answer to those questions.

Mrs. Musante: Correct.

Mr. Ingalls: The first one you kind of started off like it was going to be, you know, you said the applicant states, and that's what I assumed, every one of those italicizes is his words, not the county staff words. So you don't necessarily agree with everything he says and you're not stating that here, is that correct?

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Mrs. Musante: Correct.

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

Mr. Apicella: Mr. Chairman, I have several questions.

Mr. Grimes: Yes.

Mr. Apicella: And I think I hear and agree with where Mr. Ingalls was going. As a Planning Commissioner I was a little troubled that the so called open space was also used as a parking lot. I find it hard to see that it could be both. I'm not necessarily agreeing that, you know, grass itself isn't open space, but I'm having a hard time seeing where you can park permanently on open space, because I don't think that's the intent of open space, but I do have several questions. I believe, Melody, you read out the current Virginia State Code definition of a variance during your opening.

Mrs. Musante: I do have the definition of a variance.

Mr. Apicella: Okay, can you read that out loud for us please?

Mrs. Musante: Sure. Variance means in the application of a zoning ordinance a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land where the size, height area, bulk or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property and such need for a variance would not be shared generally by other properties and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use. Change shall be accomplished by rezoning or a conditional zoning.

Mr. Apicella: Thank you. I do have several more questions Mr. Chairman, with your indulgence. How long has the parcel been zoned B-2?

Mrs. Musante: Since 1978.

Mr. Apicella: Okay. Is the parcel currently improved or unimproved?

Mrs. Musante: It's improved.

Mr. Apicella: So they've actually put a building on the parcel?

Mrs. Musante: Yes, they have.

Mr. Apicella: Okay, that's hard to tell from the picture that I saw. And the building itself is the 9,000 square feet building?

Mrs. Musante: It is.

Mr. Apicella. Ha. Okay. What are the general requirements or perimeters for building a commercial structure under the county's B-2 zoning district? The setbacks, the height, the open space, etc.?

Mrs. Musante: Okay, the open space is 25%. The front yard setback is 40 feet. The side yard setback is 0 when it's adjacent to another commercial or industrial property, and the back is 25 feet.

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Mr. Apicella: Okay, and did you say the height was 65 feet?

Mrs. Musante: The height is 65 feet, correct.

Mr. Apicella: Okay.

Mrs. Musante: Now it is in the Highway Corridor Overlay district, so that may kick in some additional requirements.

Mr. Apicella: Understand. Is it fair to say that there were dozens of by-right uses that they could have pursued under the B-1 and B-2 zoning district as well as others that can build under conditional zoning?

Mrs. Musante: Correct.

Mr. Apicella: And the building requirements and the use options, are they spelled out pretty clearly in the county zoning ordinance?

Mrs. Musante: As far as the size and setbacks?

Mr. Apicella: The open space requirement.

Mrs. Musante: Yes.

Mr. Apicella: So if you look at it, it is pretty easy to tell.

Mrs. Musante: It is.

Mr. Apicella: Does the applicant have any other properties in Stafford built or unbuilt?

Mrs. Musante: I'm not sure if the applicant does. I did do some research on adjacent properties just to see what the open space requirements were and see if there were similar situations and the other properties were well within their open space requirements. They're not owned by the current applicant, but they are within their requirements.

Mr. Apicella: And those are B-2?

Mrs. Musante: They are.

Mr. Apicella: Okay, so they met the minimum 25% requirement?

Mrs. Musante: They did.

Mr. Apicella: In looking at the staff package, it appears the owners of the parcel had at one point proposed more than the 25% open space. I think it was at one point, you mentioned, or the staff report mentioned, it was 34% somewhere thereabouts?

Mrs. Musante: It was 34% and that was utilizing the grass pavers.

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Mr. Apicella: So that was an accommodation that the county allowed to reduce the amount of open space?

Mrs. Musante: Correct.

Mr. Apicella: ...and still meet the requirement. So the history of the parcel appears to indicate the county allowed this accommodation, these grass pavers, and that's kind of the reason why we're here, because we allow them to do something that in some ways is, as Mr. Ingalls has indicated, somewhat of a deviation from what we normally do and merely because the grass won't grow, that's why they want to get a variance. Are there any physical or topographical conditions on the property where the absence of a variance on the open space requirement would preclude the applicant from having built a commercial structure that met the requirements?

Mrs. Musante: By looking, just in what we did with the staff report and looking at the application and the existing site plan, it does not appear that there were any topographical issues or anything with them. Could they have reduced the size of the building? Probably. They could have fit everything on there.

Mr. Apicella: And from what I can see, and from what I see in the staff report, it was well within the applicant's business model or building plans to pursue and option that would have met the requirements absent this issue of the grass. And they could have built vertically as an option to meet the 9,000 square feet.

Mrs. Musante: They could have gone up.

Mr. Apicella: Or they could have built a smaller building or set of buildings on that parcel...

Mrs. Musante: Correct.

Mr. Apicella: ...and also met the open space requirement. So, just to kind of summarize, the applicant had a wide range of options to meet the county's open space requirements. There are no unique physical or topographical issues that we can see.

Mrs. Musante: Not to my knowledge.

Mr. Apicella: The applicant wasn't stopped from building a commercial structure on this parcel.

Mrs. Musante: Correct.

Mr. Apicella: They had discretion to propose an alternative site plan that met all of the county's requirements.

Mrs. Musante: Correct.

Mr. Apicella: So again, it seems like the core issue here is the grass and they don't want to reestablish the grass as open space or some other means to meet the open space requirement, and that's why they want a reduction.

Mrs. Musante: Correct. We, Susan and I, were part of the discussions that the applicant had with the development side of our office, so I'm not sure, truthfully, how we got to this point, other than we do

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know that the grass pavers were allowed for the open space requirements. So, all of those things that you just stated is correct, but there may be more information, but there may be more information that the applicant can provide to us, that we're not aware of.

Mr. Apicella: Okay, thank you.

Ms. Brown: Mr. Chairman, I have a question.

Mr. Grimes: Yes.

Ms. Brown: For staff. When the site plan was submitted and approved, did we know what type of businesses were planned for there?

Mrs. Musante: Give me just a second.

Ms. Brown: Okay.

Mrs. Musante: The site plan came in as proposed use restaurants sit down and low medium intensity commercial retails.

Ms. Brown: Okay, so did we know it was going to be a Chipotle, a fast food restaurant...? And I guess, did we know what side is going to go on? Did we know what side it was going to go on? I mean, did we know that the square footage was going to be divided up like it was at that time?

Mrs. Musante: If you look at the site plan that's in your packet, page 5, attachment 4, page 5 of 5 shows you which side the restaurant is on. It does not call out a Chipotle.

Ms. Brown: Okay. One of these plans had a date of like 2015 on it, like today, or something, I thought.

Mrs. Musante: The site plan date is actually July 2013. You'll see in the packet his variance open space plan.

Ms. Brown: Yeah, I think that's what it was. Like it was already approved or something, or we were thinking it was going to be approved.

Mrs. Musante: No. That's what we ask for them to submit with a current date, because that's what the request is.

Ms. Brown: So when we approved it, we didn't know it was going to be a Chipotle. We just knew it was going to be some kind of retail and a sit down restaurant.

Mrs. Musante: I can't answer for the development review section, because they are the ones that actually reviewed this. They may have known it was a Chipotle, but the application came in as a restaurant.

Ms. Brown: Okay.

Mrs. Musante: And that's what we calculate the parking on.

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Ms. Brown: Do we different parking requirements for different types of restaurants?

Mrs. Musante: Yes.

Ms. Brown: Like high volume restaurants versus like a fast food restaurant versus a regular...

Mrs. Musante: Sit down is 11 spaces per 1,000, fast food is 15, and restaurant with a delivery is 13 per 1,000.

Ms. Brown: Okay, thank you.

Mr. Grimes: I'm looking at the parking tabulation that's provided on the site plan that was given here. The tabulation used the restaurant as 11 spaces, so they did calculate the parking as a sit down restaurant and it said they were required to provide 56 spaces, I'm having trouble reading this, but I think that's what that says, and that they provided 74?

Mrs. Musante: That is correct.

Mr. Grimes: And since the open area is being used to also park, if that open area was removed, do we know how many spaces they would lose?

Mrs. Musante: I do not know that.

Mr. Grimes: Or I should ask the question differently. How many spaces are provided in that open area?

Mrs. Musante: I'm not sure of that either. The applicant may be able to answer that.

Mr. Grimes: Okay. Any other questions for staff? Hearing none, we'll go ahead and open up the public hearing. Will the applicant or his representative please come forward to present their case?

Mr. Phelps: Good evening, my name is Parris Phelps, I'm a P.E. here in Virginia. I am president of PA Phelps Consulting. I am, again, the president of PA Phelps and brought this project here to Stafford. And so I understand from listening to the comments for the staff, I'd like to really try to clarify those, if I can, and I know they'll generate additional questions and I'm just here to try and clarify and satisfy whatever your requirements are. I'd like to begin by talking just briefly about the mechanisms that bring in commercial work and how we perceive retailers and what they're looking for in order to take a project and bring it here. And one of the things is, you've got, essentially, a one acre site that says, hey, in order to get this project off the ground you need a building of x and you need the parking to go with it. And when you start to design work and try to figure out how to balance that with all of the zoning requirements and the bulk requirements. This particular lot had...there were 2 separate lots. We consolidated those lots through the standard lot consolidation process. Excuse me. We looked at many, many different variations of trying to set this building on this lot, that would be functional. There was requirements to have a pass through lot which would be an inter parcel connection. We couldn't get that from the adjacent neighbors, so we had to essentially add a lane to go entirely around the building for firefighting purposes. I heard someone speak as to why we didn't go to stories. Commercial development, trying to put a restaurant or a corporate store on a second floor to do business is not a model that most national corporations perceive nor would they even entertain it period. So the genesis of this, you had to have 9,440 square foot and better than 70 parking spaces or the deal, in bringing these restaurants and this corporate store to this mecca would not have occurred.

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So that was our marching orders, and that's what we tried to do. The question is whether staff knew this was going to be a Chipotle, the answer to that is yes, but we didn't reveal that to the public until the national organization was ready to release that information. Corporate Verizon store is huge business in any market place, and to get one is really a kudos for any municipality that has one. This is the largest one on the eastern sea board that I know of. So 7,000 square feet is a really good prototype model. In dealing with the open space, and probably the genesis of that, I have placed grass pavers in every municipality from...throughout Virginia with exception of Stafford County. This was the first one I put it in. We regularly and in other counties, and in other cities such as Alexandria and Arlington, we use a lot...we utilize variable means in order to try to attain open space. And the definition of open space is different from each municipality in which you work. In Stafford County, yes, it has to be green and lush, and it is has to be untouched and part of what we were trying to achieve, if you look closely in the comments that were generated from our first submission, we were trying to put rooftop greenspace, which is allowed, not under our current zoning ordinance for Stafford County, but it's allowed under DCR 7 of the state reference for stormwater management and try to meet that issue. So as a method of trying to adhere to both, we had several discussion with staff how to try to reach that, and with the business development portion of Stafford County in how do we try to meet and balance what your requirements with bringing this project here. Decision was made that we could use grass pavers and we did just that. There was zero lot line development four sides, both sides and building setback and buffer areas are two different things. So the buffer area for the rear lot, which is on Prosperity Lane is only 5 foot grass space and that was achieved. On the front we had HCOD, which the corridor was met by reduction in the width, by providing a 5 foot berm, which we met. Zero lot line development from each side. We actually put green space in between our neighbor at 90 Prosperity Lane and our site to try to keep peace and be good neighbors. The site...I'll tell you this, the ownership is, I thought, in good faith installed these elements and tried to do everything we could to make it work. Were there some missteps? I would probably say yes. I think one of the missteps was, it was December when we actually planted and there was a period of time between when the GC and the turnovers from tenants occurred that they weren't protected enough. And that's the truth of the matter. Unlike many engineers, I kind of like the balance of nature and development. I think it should be a fair tradeoff. And so I asked, what have these guys done to, you know, kind of mitigate that, and so I've you've just been recently out there, you would have seen that part of one of the remedies when you have a failure of this mechanism, is to either plant plugs or you plant patches of grass over the top of it and you wait till they seed and you compress it, and then you restripe. And they have initiated that without wondering about whether this process is going to take, because they're trying to be good stewards of the land they're responsible for. They have started and they've got pretty much a third of the lot done by resodding it and protecting it to get grass growing, but the problem is that when you have a failure mechanism and it has failed, and it's a good likelihood that this one will as well, and so in coming here to this Board is for a future remedy. So we won't have to come back again. I will guarantee you this, is that we're going to stay on the course of sodding this thing and getting it striped so that it can be utilized because we figured this is a corner stone of Stafford Marketplace. It's a beautiful site. It's a bustling business and we want it to work. But at the same respect, we're looking for what happens if it fails again. This is not a concentration of whether or not the client is throwing money against trying to remedy it. It's the continuous process of throwing money to render something that may fail again. And what we're looking for is relief that should it occur, we don't have to come back here. We replace it with the same pores asphalt that is under DCR 7 as one of the three pores pavement methods in order to install, which was an acceptable replacement. Is it green? No, it is not. It is high dollar, high maintenance endeavor that is the only acceptable concept that I can come up with, and I've been doing this for about 30 years, and if there's no other questions, I'll be quiet or you can feel free to throw them at me.

Mr. Grimes: Does any of the Board questions for the applicant?

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Ms. Brown: I do.

Mr. Grimes: Yes.

Ms. Brown: Sorry, I couldn't see your face, if you were looking at me or not. My question is, when you decided to do the grass pavers, we have in our packet, we have installation guidelines from NDS. You're familiar with that?

Mr. Phelps: Yes, ma'am, I am.

Ms. Brown: Okay, because I read on the back, I just want to know, you said you've put these in many times, just not in Stafford County before?

Mr. Phelps: Not just NDS, but several versions from different manufacturers.

Ms. Brown: Okay, and you said you knew about the Chipotle and the businesses, but you just didn't want to announce that yet?

Mr. Phelps: No, ma'am. The county knew. We spoke to county staff and told them what was going in there. They knew.

Ms. Brown: Okay, so you knew.

Mr. Phelps: Sure.

Ms. Brown: Because I just...were you familiar with one of the paragraphs, it was on page 11...

Mr. Phelps: Which talks about the density of traffic and the type of traffic mix that should be parked on.

Ms. Brown: Yeah, the sentence that caught my attention was, if someone parks over at the same spot every day, the grass simply cannot survive. Turf requires light and the requirement cannot be met unless parking areas are used less than daily or rotated.

Mr. Phelps: Yeah, that's one of them and another concept that they have in their specifications that you don't see, they actually talk about the seeding mix that can render you a really hearty mix. And what was happening was, we did what is called a triple fescue mix. The triple fescue mix in the winter time should have budded at least one of the fescues until one of them died and generated the second one, and then generated the final third. It did not occur.

Ms. Brown: I think I read about that, the different types of grass for bouncing back, but overall it was for light traffic. It wasn't for every day hard use, as we're getting now.

Mr. Phelps: I mean, you can perceive it that way, but what we did additionally is, we brought out the specialist from 3 different nurseries to come down there who have planted them all throughout Virginia, and we had a site meeting and discussed it and they said, this will grow, this will work.

Ms. Brown: Right, it'll grow but...

Mr. Phelps: ...and be functional.

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Ms. Brown: ...for the kind of traffic that we ended up with?

Mr. Phelps: Yes, ma'am.

Ms. Brown: ...which is, you know, fast food, high traffic, not the low traffic where you're alternating, rotating the parking spaces.

Mr. Phelps: Well, you know, if you're open 12 hours a day, that means 12 hours you're empty. I mean there's...you can look at it couple of different ways. Is it high volume, high traffic...yeah. I got to tell you, I have never seen that many people eat Chipotle in my life. I'm glad it's successful. I'm glad there is high density there, because I think that's good for Stafford. It is...I can tell you my best solution would have been my initial solution, which would have been to put it on the roof, but the county doesn't have an ordinance which allows me to put an additional 5,000...with 9,440 square foot, I'd put 7,000 and they would have been growing vegetables on it.

Ms. Brown: Did you consider a smaller building?

Mr. Phelps: In my initial statement to you, unfortunately the project could not get off the ground without having a 9,440 minimum square foot building.

Ms. Brown: Couldn't get off the ground why?

Mr. Phelps: Most retailers look at GLA. If you can't afford the rent, if you can't get the rent that you need, you can't pay for the project. So, it's a...it's no more than me deciding I want to buy a house. I go to look at it. The house is 3,000 square foot, but they want 2,000 per square foot. I can't afford it, but I can afford 100,000, I'm not buying the house. So in this particular instance you can only do what you can do with what you have. And I don't know if that quite answers the question...

Ms. Brown: No, it does.

Mr. Phelps: ...but we were given a template, and that was the only template we could build by.

Ms. Brown: Okay, thank you.

Mr. Apicella: Mr. Chairman?

Mr. Grimes: Yes.

Mr. Apicella: I'm sorry, Sir, I didn't catch your name.

Mr. Phelps: I'm sorry. It's Parris Phelps.

Mr. Apicella: Mr. Phelps, thank you. So, one more time as part of this process, either you or the applicant knew of the 25% open space requirement.

Mr. Phelps: Absolutely.

Mr. Apicella: And you and/or county staff agreed that the grass pavers was one means of meeting that requirement as you proceeded forward with the specific structure that you decided to go forward with. And I say you, I mean the applicant.

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Mr. Phelps: I understand. That is correct and it was our second submission. Our initial submission we were under the impression that we could submit this in doing the green roof.

Mr. Apicella: What gave you the idea that that was allowable under Stafford County's current requirements?

Mr. Phelps: Well, Stafford County is one county, but it still falls under the state which allows us to do green roof processes under stormwater management.

Mr. Apicella: Well, they might allow it, but it's not...I mean it's not a state code requirement. I don't think DCR's allowability to do something like that is a mandate that we necessarily adopt those options.

Mr. Phelps: Understood. No, I understand what you're saying. We made an assumption that we would be able to do that since it's allowed by state and it wasn't allowed in this jurisdiction.

Mr. Apicella: Did you discuss it with staff? Did they...

Mr. Phelps: Yes, we did.

Mr. Apicella: And what did they say?

Mr. Phelps: They said a green roof is not allowed.

Mr. Apicella: So again, you knew at some point in time that that wasn't an option for you.

Mr. Phelps: Right, by the time we...right, absolutely. Like I said, it was on our initial submission. So then we came back to the drawing table and we said, you know, there's...one of the reasons that we were going to be allowed to put the grass pavers in this, because we had an abundance of parking above the required 59. So because we had an above 59 that portion essentially met or assisted us in being able to use those as green space.

Mr. Apicella: Have you used grass pavers for a similar type use, a heavy volume restaurant, in the past?

Mr. Phelps: Oh yes, Sir.

Mr. Apicella: And that seems to work fine in this kind of environment?

Mr. Phelps: It works good in many locations. Like I said...I'm a champion of trying to balance construction and nature. I like doing it. I look forward to doing it. And this one, I feel like we failed, because it didn't do it.

Mr. Apicella: But that option is still there to proceed forward with the grass pavers as a means to meet the open space requirement.

Mr. Phelps: Yes, Sir.

Mr. Apicella: Okay. And did you submit the application on behalf...the variance application on behalf of the applicant?

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Mr. Phelps: I did.

Mr. Apicella: So, under variance justification on page 7, I don't know if you have the package in front of you, part A, I'm just going to, again, with the Chairman's indulgence, read what it says. It says under note the Board of Zoning Appeals may grant only, if the applicant can clearly demonstrate a hardship. A demonstrated hardship refers to the shape and topographical conditions or to some other unique characteristic of the property, for example if a rear yard has a sharp drop off, or hilly terrain where an addition could otherwise be located legally, or the property has three front yards. A demonstrated hardship is not, for example, having a large family in a two bedroom house or that you need a first floor bedroom and a bath. Might be good reasons for a variance but does not constitute a hardship. So, again, I'm trying to understand the nexus by which you're coming to the conclusion that there is something unique about this specific parcel that causes it to be a hardship under the state code. We didn't create that definition. The state code creates that definition of what a hardship is. I realize this is a complicated issue. I'm just trying...we have certain perimeters that we have to work within in order to be able to grant a variance and I, from the application and from what you said so far, I don't personally don't see something unique about the property. Whether there's grass or no grass, to me that's not a unique condition or topographical issue. So again, please help me understand how you all have come to the conclusion that that's a hardship within the state code definition.

Mr. Phelps: You know, that's a very good question. I'm going to let the owner, one of the owners try to address that. I would tell you that it's never difficult coming up in front of someone and asking you for something, or whichever body you are. I tell you that, at some point in time, if a building was eroding and the foundation was falling, the first thing we'd say was, did we put enough subgrade in there to make sure that that building was going to stand, and did we verify the concrete pours, and the slump test of the concrete, and all the other requirements that's under the building code, and everybody would say yes, yes, and we core bore something and pull it out and then we'd see and finally find what the failure mechanisms were. And lo and behold there's an aquifer beneath the lot. And you say, well you should have known that from the geotechnical borings and...so what's the cause? Maybe part of the cause is, it's the actual soil makeup that's underneath here, that was not as congruent. It's possible. It's possible that there was too much acid in the soil that did not allow this grass to grow and maybe no grass to grow. Is that a hardship? Well, only, I mean, you know, if the intended purpose was to make it green, obviously that will never be achieved, but I'm going to try to let the owner...

Mr. Apicella: So I'm going to ask a follow up question. There is two tests, it's one or the other. The other one is that you would not otherwise had been able to utilize this property. In fact, what I see from the record is that the county, in my view, kind of bent over backwards to allow you to use the property by allowing you to use the grass pavers, which is something we don't normally do, so would you at least agree that in terms of the second criteria, that the county didn't stop you from using some...from building a commercial structure on this property.

Mr. Phelps: Well, absolutely, they did not try to stop us.

Mr. Apicella: So now we're back to the first option or test, which again, I'd like some more information on why you think it's a hardship.

Mr. Phelps: Sure. Okay.

Mr. Harcourt: My name is Sean Harcourt. When I read this definition, the second part says, or to some other unique characteristic of the property. And I tend to agree with, we're here now because we were allowed to develop using the grass pavers and one of the hardships we're experiencing is, besides

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the fact that the site doesn't look good which is a shame because it's in a great location and the entrance to, you know, a very busy part of Stafford. But the second reason is that due to its failing and do to the grass not growing, we're experiencing many sections where when cars are driving over the grid system, which is not supposed to actually support car wheels, are touching car wheels, and so when you're turning in an out of these parking spaces, they're digging up, the plastic is breaking, and, you know, it's failing. And so what we're having to do is, not only are we in default with both of our tenants and potentially not receiving rent, but we're also...we've had two people slip and fall and right now it's being taken care of within Verizon, but you know, we've also got some threatened legal action on that and I think to Parris's point, what we really want to do, and to those who have visited the site within the last couple of days can see we've gone back and we've picked everything up that we did. We put gravel back down and we've re-compacted. We put the grid back down and now we're going over it with, you know, just sod. It looks like a lawn out there and you can also see that it's closed off. So we're going back to kind of proof to ourselves at least that even if it was done not in December, not with construction traffic, you know, that it's not the right fit for this project. And we want it to work, because we think it looks great. You know, I happen to be an environmentalist and when this green roof came into the discussion I was excited, my partners were excited, Chipotle was very excited, Verizon does lead certified buildings, they were excited. Everybody kind of gathered around a wanted this to work. I guess in full circle the hardship now is that, you know, we had approval to build this and it's built and it's not functioning as open space or a parking lot at this point. It's a mess when it rains, and the one thing it is doing is draining, which we can also achieve with pores pavement.

Mr. Apicella: So, with all due respect, and believe me I appreciate that we have a Chipotle's, I go there all the time, maybe not that specific one, but I think it's a great place and my service provider is Verizon, but to me that's not the issue here. I'm still trying to understand, I'm sorry Mr. Chairman, I'm still trying to understand that this wasn't a hardship of your own making, because this is the way you chose to do two things, which was...

Mr. Harcourt: No, no, no, no.

Mr. Apicella: Sir, hear me out. This is the way that you chose to do two things, meet the requirement for open space and also your parking. That's not a characteristic of the property. I can't grow grass in my yard. That's not unique. That probably happens all over Stafford. I can grow weeds, but I can't grow grass. So, that's, in my view and during the years that I've been on this panel, when we're talking about a hardship associated with the land, there's something strange about the property. It's got steep slopes. You know, the angle of the property, or as the application says, there's 3 sides, not 4 sides to the parcel. Again, from what I'm seeing, a conscious decision was made by the applicant, irrespective of the economic circumstances that chose you to build this structure and the way that you built it for whatever reason that you chose to build it, again, ultimately you decided that your mechanism for achieving open space was these grass pavers and at the same time putting cars on it. To me it just didn't seem the right way to go, because I think it could have been foreseen that a heavy traffic restaurant and most uses would have a problem with lots of traffic parking on grass and maintaining that grass over the long haul. So I'm still giving you one last chance to help me understand how that's a hardship associated with the topography of the parcel, because I'm not seeing it. Especially because I have a picture of what that parcel looked like before it was built upon.

Mr. Harcourt: Okay, so in all due respect, Steven, I think what we're getting back to is, you keep referring to leading up to it and yes, going into it my eyes were wide open, but now, the site characteristic is a failed grass pave system. So you can either, you know, say you should have known going into it, and you know, if that's the answer, okay, but I've seen it many times, I went out and

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visited many spot where they're doing well, in other parts of the country, leading up to this and also on the east coast. But now, okay, I have a by-right project that's built that's, you know, meets all the code regulations, but it's failing. And so what I'm asking you for now is relief from a hardship that is created by these grass pavers, which, yes, I put in, but I don't think you can go back and say, since you did it, you know, you have to bear the brunt of that not working when it was a conscious decision that we all went into together.

Mr. Ingalls: Mr. Chairman?

Mr. Grimes: Yes.

Mr. Ingalls: A couple of questions. It almost seems like you worked backwards on this lot. You said, I need a 9,000 square foot building. I need 74 parking spaces.

Mr. Harcourt: No, that's what I told my civil engineer.

Mr. Ingalls: Well, then maybe you should have given him the right story because if you started with that, okay, I've got...and as my colleague has pointed out, there's nothing crazy about this lot. It's probably the perfect 1 acre. It's almost square. It doesn't have any funny angles to much of it. It is a perfect lot to build on. You know. Okay, well it's about an acre.

Mr. Harcourt: Well, it had a little topo in the beginning but definitely not enough to cause a hardship.

Mr. Ingalls: If you're a developer, and I assume...it sounds like you are and you know ordinances. I read the ordinance...25% open space. Okay, I got to have 25% open space. Now can I get a 9,000 square foot building with 74 parking spaces on here? Or how many you ever wanted. Even the 58...I read it as 58, my partner says 56 and I'll talk to the staff about something I can't read, but that's another story, but it seems to me, you started with I got to put a 9,000 square feet building on this with this amount of parking and you were determined to do it, rather than saying, you know what, in your leasing terms, or whatever, buying this lot, you said, that lot's too small for me. I cannot utilize it on based on the county code. That would have been a thought process I thought you would have went through. Or you had said, well, I can't build nine, but I can build seven. Something that would have said, I can make it work with 7. Or either the guy who is selling you the property has to reduce the price or something has to go on to make it a viable project. We all understand what you were trying to get in. I look at that site, I haven't seen many of the in this area and I read all the stuff by the manufacturer and for high traffic areas it's a tough deal, to make that work. It's nice for overflow parking. It's nice for areas that get a few parking. I was in China at the three gorges dam, and the parking lot that they have for visitors, they had these pavers, almost I think exactly like these, and it was working fine. They had nice grass, but that was a parking lot that was probably $\frac{3}{4}$ empty when I was there and it's probably going to stay about that. Nobody parks at the same place. The bus comes in, you park over here one time, over there...so it works. And these things, if you read the technical literature there, the way I understand it, there's two ways to build this thing. One is, you put these pavers down and you put grass on top of it and it's used just like an auxiliary fire lane that would only be used once and hopefully never that the fire truck could drive around your building on this grass and they wouldn't sink down in the mud because these pavers are underneath the grass. In this particular case, the way I read the specs, those pavers actually set up a quarter of an inch and your grass, where the roots are, are actually going to be below the edge. So when you drive on them, you actually drive...the tires rest on the pavers themselves. What you got out there where the grass is, the way I read the specs, you're going to have to go and either water or do something and roll it to get that grass to get down in those pavers. If you expect just to take those red brooms and rub it, or whether they're

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pink or they're orange, take that down and park on them, you're going to have a mess. It's going to go away in the first week, I think. So the way...there's a couple of designs, and if you look at that information, what...so when...you said cars turning on them. They're going to ride on them. And it sounded like they had to be anchored right and this, that, and the other, and your engineer has said, he had lots of information. Everybody said it's going to work, but something went wrong. Now whether it was a failure of the contractor, or a failure, you know, planting grass in December is kind of an iffy project...process. I don't know whether you get it to grow, especially last year. We had pretty cold weather. I guess asking us...

Mr. Harcourt: We got I call peach fuzz, but it never came in.

Mr. Ingalls: What you need is grass that growth up through the asphalt in my driveway. Get some of that and put it...maybe it'll work. But that's...I mean, when your engineer, when he proposed it, did you think about, gee-whiz, this is going to be a maintenance issue. You realized when...

Mr. Harcourt: I did a lot of homework.

Mr. Ingalls: You know it snows in Stafford once in a while and you may have to plow the lot I'd assume.

Mr. Harcourt: Not this part. We hand sweep it with a broom.

Mr. Ingalls: Well, what it said was, you take the blade and you put it up 2 inches high and you leave two inches of snow, which turns into 2 inches of ice.

Mr. Harcourt: And our consultant advised against that, yes.

Mr. Ingalls: So, you know. There are a lot of issues, from the very beginning, even if we thought this was going to work in any way, I assume you should have considered, or did, maybe you considered them all, and still said, let's go for it, rather than, let's do something else. Is there...

Mr. Harcourt: I'm not sure there was a question in there. I can't remember what it is, but I will try to...I'll try to address it.

Mr. Ingalls: Let me ask you one thing. You talk about maybe he's...well the engineer said, well you had to have 74. The way I read the ordinance, you have to have 58. Can you...I mean, why wouldn't we just reduce it down to 58 and meet... that would meet your parking requirements. Still doesn't get you to, and make the 16 spaces, make them islands in there and put some landscaping and make the site look like you want it to look. And you said you wanted to make it a show place, you want to make it very nice, it's very prominent. And you're right, it doesn't look that way today, and some of it is because it doesn't have any interior parking lot landscaping and that type of thing, that you would consider, well maybe we could reduce down to the minimum.

Mr. Harcourt: We...and that's a great question, we currently have about 30 and change spots that are grass pavers. If we got rid of 20 of them, we would not meet the open space requirement. So...

Mr. Ingalls: I know you still wouldn't, but it would come closer.

Mr. Harcourt: Right, and what would that do for us?

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Mr. Ingalls: I don't know yet.

Mr. Harcourt: I agree. It would come closer, but I think we also know that Chipotle needs all the spots it can get and customers want those spots. And you're exactly correct, I tend, usually when I develop, I build more parking than code requires because in this case, regardless of how many per 1,000 square feet, anybody Chipotle needs...I've been there, I know, you know, that if...they can use 50 spots.

Mr. Ingalls: When I was in the business, I'd ask my developer, like you, tell me how many parking spaces you need, not what the ordinance says. You go from what you think you need and then you look at the ordinance, because you're right, sometimes the ordinance doesn't give you enough, and sometimes it gives you too many. You really need to...that's the question to start off with, but I still say, you almost started backwards and decided I'm going to build a 9,000 square foot building with how many parking spaces you thought you'd need, but...

Mr. Harcourt: Well, kind of an answer to that question. When I started on this project 4 years ago representing the owner, Mr. Jay Rule, I don't know if any of you know him, and at that point is under contract from TD Bank for 3.8 million and of course that didn't happen and the property sat there and I kept telling him to develop it, and he finally said, you do it. But, I guess, where I don't want to end up is, I don't want everybody to think I have this cute idea and it doesn't work and now I'm coming back and saying it doesn't work. It should be that...the idea was something that was approved and I guess I'm coming here today saying, what was approved is not working, and that, you know, that is what I think the hardship is. That the grass paver system, you know, is not serving as green space and it's a hardship on the site, as far as my tenants are concerned and, you know, Stafford County residents or residents from anywhere who are coming on this lot. I'd be much more comfortable if they were stepping out on something other than the grass piece system that's out there now.

Mr. Ingalls: Yeah, ladies with high heels have a problem, even if grass was there.

Mr. Grimes: Do we have any other questions for the applicant?

Ms. Brown: I have one. We discussed this earlier with staff, I just wanted to reiterate and make sure I understood this right. When you initially filed for approval for this, you filed it as a sit down restaurant, not as a fast food restaurant?

Mr. Harcourt: Yes, and it's because of the way the utensils are classified. I think it comes down to if you have real silver ware, you're considered a sit down restaurant, and if you have plastic ware you're considered fast food. So, traffic-wise I agree with you, you know, as Larry said, I knew they needed more than 11 spots per 1,000 square feet, probably need more than 15 per 1,000 square feet, but they are classified in Stafford County as a sit-down restaurant.

Ms. Brown: Are they classified that everywhere else too? I thought Chipotle was considered a fast food restaurant.

Mr. Harcourt: Actually the correct classification, what they call themselves is a QSR, a quick service restaurant, which is, you know, your Firehouse Subs, your Panera Breads, those kind of places all go under the QSR, quick service. So you're ordering from somebody, you know, you're not getting table service, but you're taking your food and you're sitting down.

Mr. Phelps: The majority of them, there's a minimum of 50 seats, and that's 50 seat plus whatever outdoor, it's always going to be classified as sit-downs.

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Ms. Brown: I was in there today and the place has been open, I think, since December. It opened some time in the winter. My family has never been able to eat there because we can never get inside the parking lot. The way the parking lot is set up, the cars can go both directions and the corners are too tight, and so what happens is, the cars get stuck in there and have to back out and that's hard when you have 3 or 4 cars behind you. Today I actually walked into Chipotle for the very first time and looked in there. How you can get 50 seats in there, I don't know. Looks like there was 4 common tables, you know, large rectangles and then there was some seating outside next to the trashcan in the parking lots. 50 seats? I don't, but I tell you what, the parking lot, I was there to visit Verizon and I've had to go there twice in the last week and I have had difficulty finding a parking spot. I almost had to park across the street and walk and I got lucky, and I actually parked where the pavers are coming up over in the corner, by the exit to the market places and I saw that. And I have seen the pavers used in Stafford. We have them in my neighborhood as a matter of fact on the stormwater easement access. I've also seen them out at Willowmere Park, and they do seem to be working fine. So, they're not working now, because I think there's just too much traffic there, but, okay, thank you.

Mr. Grimes: Any other questions for the applicant?

Mr. Ingalls: Are you telling us that you don't want any...make another attempt to...the grass pavers, you just want to get rid of them?

Mr. Harcourt: No, in fact the opposite. Regardless of cost, you know, all this stuff is not cheap, but knowing that I had a zoning hearing tonight, we started two weeks ago...three weeks ago on...as Dana could probably see out there...redoing, you know. Regardless of what happens here tonight, we want to make sure that we did everything we could. And because we initially planted in winter, we were told to do the multi seed stuff and now that it's...we have better whether, you know, the thing to try is the sod. So, you know, we're going to try and if it works, I want to keep it, because if it works I don't want to go back in and spend more money and pave it, but what I want to be is, in a position to, if something does happen, or if more litigation is threatened, somebody gets hurt, something happens, and I want to prepared for the next time, you know, to do something that I think will work.

Mr. Ingalls: You want to make that decision?

Mr. Harcourt: Yes. Yes. But in the meantime I am doing everything I can. What grass are we using now? Bermuda. There was a big discussion between Zoysia and Bermuda. And we decided to go in with Bermuda, because it's hardier and you know, Zoysia may have stronger roots. I don't know. But we're doing our homework and you know, we have consultants. You know, we really are trying to make it work.

Mr. Grimes: So is it your intention to redo all of the pavers and this is not just a...because I was there, and I could see the remediation has started, but you've only picked a spot, which I can understand. You can't do the whole lot.

Mr. Harcourt: You understand why. Correct.

Mr. Grimes: But it is your intent to remediate all of those to make them work?

Mr. Harcourt: Yes, it's actually three stages. So you saw stage one. The ropes actually come off, I think, Thursday for one section and then we move to the other side. The entire parking lot will be done in three weeks and all parking spots will be open in four to five weeks.

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Ms. Brown: So you don't plan on doing the manufacturer specs of rotating the spots?

Mr. Harcourt: No, no, we are.

Ms. Brown: I mean going forward, you're going to always be closing off a section at some point?

Mr. Harcourt: So there's never going to be full open parking in there?

Mr. Harcourt: Oh no, no, no, I'm sorry. Once the grass takes, you know, the way the parking lot is designed, we feel like the...there's enough that it will naturally rotate.

Ms. Brown: Is enough...?

Mr. Harcourt: There's enough parking spots. Being over parked, you know, to the extend...we are.

Ms. Brown: I just want to read...I'll read it one more time, page 11, last paragraph. If someone parks over the same spot every day, the grass simply cannot survive. Turf requires light and that requirement cannot be met unless parking areas are used less than daily or are rotated. So you have no intention of doing that, right? You're just going to use every spot every day, after you've got the sod going?

Mr. Harcourt: Every spot will be...once the construction fencing is taken off then it'll be, you know, all be open like a normal parking lot.

Ms. Brown: Okay.

Mr. Ingalls: Why not come back in three month when you tried it and...

Mr. Harcourt: Well, I pulled the application once. You know, when it initially went in and in and I saw it wasn't working, you know, the immediate reaction was, you know, we have to fix it now and Parris talked me off the ledge. We ended up doing the section in front of Chipotle instead of grass pavers we did the porous pavement and that made me feel better, but you know, now that we've gotten a couple of letters, the concern is there. And I guess, you know, why now? Because I don't think anything's going to change and if it does, we know what our solution is. It's clear that if the grass works I'm not in the business of putting in asphalt because I like asphalt more. If the grass works...we're spending good money and I want it to work, and I'd love to see it take. I really would.

Mr. Phelps: We've noticed in analyzing this lot that the only place that's really not utilized is the loading areas. They're very under-utilized. I think I've seen one vehicle there today and you probably get one vehicle there per every month or so. What we could do, I think it represents about 700 square feet. We had discussed this that if allowed to, if this revamping of the lot doesn't...is not sufficient, it doesn't work and we're allowed to put in porous pavement back where the grass pavers were, we could cut that 700 square feet out of the loading space and make it a reinforced grass paver section for loading spaces, since it's rarely used. And that would be in concert with page 11 fully.

Ms. Brown: You said you're loading only once a month? Chipotle doesn't get lettuce a couple of times a week?

Mr. Phelps: You know that's a completely different conversation about loading spaces, but no one uses loading spaces correctly. I mean, no one ever uses them correctly. No matter how much you define them, you design them. They just drive up in the middle, drop stuff off, and we've even had

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code enforcement see this kind of stuff, so you can't make them use it. I mean, we can't enforce it. We just have to have it available for them, but, you know, if it's sitting there, we might as well use it for something. And we certainly don't mind incorporating that in this.

Mr. Ingalls: Have...switch a little bit...have you considered using a different paving system, going with the concrete with the holes in it?

Mr. Phelps: Yes. Lattice work.

Mr. Ingalls: Same scenario.

Mr. Phelps: Yes, Sir. It's a little more hardier.

Mr. Ingalls: A little more hardy. At least You could drive on it. You might never grow grass in it but you would more than likely have a surface that doesn't look like what you have today and...

Ms. Phelps: Yes, this is true. Yes, it was looked at.

Mr. Ingalls: You know, especially if I was going to do a new one, I might think about a different manufacturer, a different type just to give myself...

Mr. Phelps: You're right. There's about 6 or 7 different national manufacturers out there that have a variety of different methods and different materials you could use. And we did look at the lattice work, the concrete ones. And ultimately lots of things come down to the end of if of dollars and cents and what you can afford and those things are 5 times the cost of the NDS system. And the NDS system was not on the bottom rung of the pricing scale. Of those...believe it or not...

Mr. Grimes: Would you mind...just...we'll take a break while Ms. Brown is taking care of the bee [wasp] issue and why don't we go ahead and take a 5 minute pause here to allow Ms. Brown to gather herself.

Recess 8:20 PM – 8:27 PM

Mr. Grimes: Okay, I think we'll call the meeting back to order here. That's quite alright. Alright, does any of the Board members have any more questions for the applicant? Did you want to continue where you left of? Okay. Thank you, Sir. Any member of the public who wishes to speak in support of the application please come forward. None noted. Any member of the public who wishes to speak in opposition to the application, please come forward. None noted. Does the applicant wish to respond or add any additional information?

Mr. Harcourt: The only thing I wanted to add was that in...I guess what I don't want to be missed is...

Mr. Grimes: Would you mind stepping to the microphone please? Thank you.

Mr. Harcourt: In the spirit of all this, I don't have green grass growth now, but I do have something that meets code and is draining effectively. So I just wanted to point out that the porous pavement would serve the exact same, you know, stormwater management runoff capacity, everything, all the drains underneath there would still be service by porous pavement and it would only be the open space requirement.

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Mr. Grimes: Thank you. We'll now close the public hearing for this application and bring the matter to the Board for motions and decision. Do I have any motions?

Mr. Ingalls: Mr. Chairman, after hearing all the evidence, it is my opinion that this does not meet the qualifications of a variance so therefor I'm going to make a motion that we deny the request for a variance and changing of the open space from 25% to 12.8.

Ms. Brown: I'll second that.

Mr. Grimes: I have a motion made by Mr. Ingalls and seconded by Ms. Brown to deny the request for the variance as stated in case number V15-01/15150713. All those in favor of the motion signify...

Mr. Apicella: Mr. Chairman, are we going to have a chance to comment?

Mr. Grimes: Sure, we can have some discussion. I apologize.

Mr. Apicella: I think it normally goes to the first motion and the second motion and then everyone else.

Mr. Grimes: Do I have a second motion?

Mr. Apicella: I mean in terms of comments, it's normally the person who makes the motion.

Mr. Grimes: Thank you.

Mr. Ingalls: Mr. Chairman, again, I made the motion because if I read the new definition of the granting of a variance by the state code that this particular site does not meet the requirements that are set forth under that new code section. I think the applicant has an option that he hasn't explored yet. He's still working on it and I think he may succeed. He needs a chance to succeed. If he can succeed then he doesn't need to see us, but right now, it just doesn't meet it, so that's the reason I made the motion.

Mr. Grimes: Ms. Brown?

Ms. Brown: I don't believe...I think the hardship was caused by himself and I don't think the lot had any issues. The hardship didn't exist. I think that they tried to put too much building on too little lot and inappropriate businesses. And there's too much traffic for these pavers. I think they're going to have to cut back on the traffic. I'm not sure, but this certainly in my opinion was self-caused. So it would not meet the definition of the variance.

Mr. Grimes: Any other comment or discussion?

Mr. Apicella: Mr. Chairman, I appreciate that the open space requirements of the county may not best meet the needs and the desires of the applicant in this instance. But I too do not believe that they presented a case that meets the state code definition for granting a variance, which is very limited and sets certain criteria that have to be met in granting a variance, which, again, I don't think they met that threshold requirement. So from the material that was provided today I don't find that there's anything unique about the parcel in terms of its physical conditions or topography. I don't believe that their ability to maintain grass now or in the future is a hardship contemplated by the state code. I certainly applaud their efforts. This is a business friendly community and the BZA has supported commercial

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enterprises but that's not really the issue in front of us. The issue, again, goes down to whether the state code requirements have been met. We have a responsibility to ensure that building requirements are satisfied and only in rare cases are those requirements waived when the circumstances are truly unique and the criteria have been met. I think there are good and sound reasons why we have setback and open space requirements. It appears to me that you had many options, the applicant had many options and wide discretion to build one or more commercial structures on the parcel without the variance of the open space requirement. They chose to do what they did. They chose to build this building and the way that they built it, and the configuration that they wanted, and meeting both the open space requirement and the parking conjointly, which in my view, based on the use that was ultimately decided upon and built upon don't seem to mesh. I didn't see or hear anything that would lead us to conclude there is a hardship or limitations associated with, again, the topography. And again, while we want to support economic development and the commercial endeavor here, we shouldn't be relaxing building requirements just because it doesn't completely align with the applicant's desires. It's unfortunate the building is built and they can't easily fix the situation, but would also reiterate that there are numerous other businesses throughout the county, and particularly adjacent to this parcel, that had met or must meet these requirements in their site plans and their building activities. I sincerely wish you the best in your success and endeavors. I don't know if you have any other options to pursue to satisfy the County's requirements, but I don't believe a variance is the right path to go now or quite frankly in the future if the grass doesn't grow, because again, I think the conditions for a variance are very limited and we shouldn't be granting relief from those requirements in the specific case that was presented to us based on the facts. Those are my reasons, Mr. Chairman, that I'm going to support the motion to deny the variance request.

Mr. Grimes: Thank you. Any other comments or discussion. I'd like to add that I have to agree with the other Board members that I don't think the request rises to the level of need for granting a variance. I think this hardship was created by the owner and the ownership. So it doesn't meet the requirements that we would need to allow a variance. I do wish you the best of luck and I hope that this grass and this mitigation plan of yours is successful because I do frequent that area quite often and I'd like to see that work, but I do think you would have to come back and have some different approach and we really need to comply with the zoning code as it's presented. With that, any other comments or discussion? With that I have a motion made by Mr. Ingalls and seconded by Ms. Brown to deny the request for a variance in this case. All those in favor of the motion signify by saying aye.

Mr. Apicella: Aye.

Mr. Davis: Aye.

Dr. Ackermann: Aye.

Mr. Ingalls: Aye.

Ms. Brown: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye. All those opposed signify by saying nay. Let the record reflect that the motion is denied by a 7-0 vote.

Mr. Apicella: Mr. Chairman, the motion itself was passed, the motion to deny.

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Mr. Grimes: The motion was passed. Thank you. On to unfinished business.

Mr. Phelps: Thank you very much.

Mr. Grimes: Thank you.

UNFINISHED BUSINESS

Mr. Grimes: Melody, do we have any unfinished business?

Mrs. Musante: I'm sorry. No, we don't.

Grimes: Thank you.

OTHER BUSINESS

Mr. Grimes: Other business?

Mrs. Musante: Nothing.

ADOPTION OF MINUTES

May 26, 2015

Mr. Grimes: We have the meeting minutes from May 26, 2015. Does anyone have any clarifications to the minutes?

Mr. Apicella: Mr. Chairman, I have a few changes. On page 20 of 45, under my comments row 973 where it says currently "life", I think what I said was live, I mean live, ask a live person. A couple of others. Page 28 of 45, I'm sorry, no this is petty, under 1359, "at this point in time I think to the extent that the board decides"...I think the word is "wants" not "want". Under, on page 42 of 45, line 2043, "I hear you but I'm kind of with...not Hether, Heather. Sorry. Just trying to figure out who Hether was, but I couldn't. That's it for this one. I do have some comments or changes on the other one.

Mr. Grimes: Any other clarifications on the minutes from May 26th? Do I hear a motion and second to approve the minutes for May 26, 2015?

Mr. Apicella: So moved Mr. Chairman, with the changes I requested.

Mr. Grimes: Do we have a second?

Ms. Brown: Second.

Mr. Grimes: All approve the meeting minutes say aye.

Mr. Apicella: Aye.

Mr. Davis: Aye.

Dr. Ackermann: Aye.

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Mr. Ingalls: Aye.

Ms. Brown: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye.

June 23, 2015

Mr. Grimes: Any clarifications to the June 23rd, 2015 minutes?

Mr. Apicella: Mr. Chairman, on page 15 of 32 on line 719 I think the “to” is actually “t-w-o” not “t-o” and that’s my only change, Mr. Chairman, on this.

Mr. Grimes: Any other comments, clarifications to the minutes from June 23rd, 2015? Do I hear a motion and second to approve the minutes to approve the minutes for June 23rd, 2015?

Mr. Apicella: So moved, Mr. Chairman, with the change I requested.

Mr. Grimes: Second?

Mr. Ingalls: Second.

Mr. Grimes: All approve to the meeting minutes for June 23rd, 2015 say aye.

Mr. Apicella: Aye.

Mr. Davis: Aye.

Dr. Ackermann: Aye.

Mr. Ingalls: Aye.

Ms. Brown: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye. Alright, on your agenda, Melody, anything else?

ZONING ADMINISTRATOR’S REPORT

Mr. Grimes: Zoning Administrator’s Report?

Mrs. Blackburn: Mr. Chairman, I was going to have a report tonight, but I’ve decided to wait till we have all the members of the Board back and hopefully at the next meeting we will do that. And it was basically concerning the new regulations within the state code dealing with the ex parte communications and just some advice that we have been given concerning that.

Mr. Grimes: Great, so we can defer that to the next meeting?

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Mrs. Blackburn: Yes.

Mr. Grimes: Should we have the alternates attend to that as well?

Mrs. Blackburn: Yes. Yes.

Mr. Grimes: Okay. Thank you.

Mr. Apicella: Mr. Chairman, may I ask if there is any status updates of any of the court matters.

Mrs. Blackburn: I haven't checked it recently.

Mr. Apicella: I thought there was one case that was dismissed by the court.

Mrs. Blackburn: Oh. The appeal of the BZA decision by the Wild Run Brewery was dismissed by the courts and we are in the process of then turning around and following through with our notice of violation for the business operating without an approved special exception. And so they're getting ready to file those papers in court. Pardon me?

Mr. Davis: Is there a fine involved?

Mrs. Blackburn: That will be by the judges...that will happen in court, yes.

Mrs. Stefl: And with that dismissal, did they put any kind of injunction on operations? Because they're still in operation. So there's no cease and desist?

Mrs. Blackburn: No, the appeal was just dismissed. They appealed the BZA's decision and so our attorney...the attorneys are going to...they're getting the court papers ready and they're going to file any moment. As far as I know, they were getting it all together to get it filed in court to proceed then, hopefully, for an injunction to have them cease operations.

Mrs. Stefl: Oh okay. Thank you.

Mrs. Blackburn: That would be the next step.

Mr. Grimes: Great. Thank you for the update.

ADJOURNMENT

Mr. Grimes: Do I hear a motion to adjourn?

Dr. Ackermann: So moved.

Mrs. Stefl: Do we have another case coming up?

Mrs. Musante: We have 3, possibly 4.

Mr. Grimes: Second to adjourn?

Mrs. Stefl: Second.

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Mr. Grimes: Say Aye.

Mr. Apicella: Aye.

Mr. Davis: Aye.

Dr. Ackermann: Aye.

Mr. Ingalls: Aye.

Ms. Brown: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye. Meeting adjourned.

With no further business to discuss, the meeting adjourned at 8:44 p.m.