

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
October 27, 2015

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, October 27, 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: Dean Larson, Larry Ingalls, Robert Grimes, Danny Kim, and Dana Brown

MEMBERS ABSENT: Ernest Ackermann, Ray Davis, Steven Apicella, and Heather Stefl

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

DETERMINATION OF QUORUM

Dr. Larson: Good evening ladies and gentleman, and welcome to this meeting of the Stafford County Board of Zoning Appeals. The BZA is a quasi-judicial body whose members are volunteers appointed by the Circuit Court of Stafford County. The purpose of the BZA is to Hear and decide appeals from any order, requirement, decision or determination made by the Zoning Administrator. Hear and decide upon requests for Variance from the Zoning Ordinance, when a literal enforcement of the ordinance would result in unnecessary hardship to the owners of a property. And hear and decide on requests for Special Exceptions where the zoning ordinance allows for Special Exceptions. The Board consists of seven regular members and two alternate members. An alternate member may be called to participate when a regular member is unable to hear a case. Let the record reflect that we have a quorum tonight, with 5 members sitting. The members present are Mr. Larry Ingalls, all the way to my right. Mr. Danny Kim next to him, I am Dean Larson. This is Mr. Robert Grimes and Ms. Dana Brown. So, the county staff is represented tonight by our Zoning Administrator, Mrs. Susan Blackburn and our Zoning Manager, Mrs. Melody Musante and well, Denise Knighting, our Administrative Manager. Okay, so the hearings will be conducted in the following order, the Chair will ask the staff to read the case and members of the Board may ask questions of the staff. The Chair shall ask the applicant or their representative to come forward and state their name and address, and present their case to the Board. The presentation shall not exceed 10 minutes unless additional time is granted by the Board. Members of the Board may ask questions of the applicant to clarify or better understand the case. The Chair will then ask for any member of the public who wishes to speak in "support" of the application to come forward and speak. There shall be a 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 will 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 applicant's representative is required to submit relevant material to the Department of Zoning and Planning 10 business days prior to this the hearing to be included in the staff report. The Board may accept additional relevant material from the applicant or the applicant's representative during the hearing; however, large amounts of additional material may require a deferral, at the Board's option, on behalf of the applicant to allow the Board time to consider that additional material. Members of the

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public and/or Staff may also submit relevant material during the hearing. The applicant should be aware that tonight we have 5 members voting, and you must have 4 affirmative votes to approve an application. If you do not think that there are enough members present tonight that will enable you to receive a fair hearing, then you have a right to defer the hearing until another meeting. However, you may defer the hearing for this reason only once in any twelve-month period. Deferral requests are granted at the sole discretion of the Board. The applicant may also withdraw his or her application at any time prior to a vote to approve or deny the application provided that the applicant has not withdrawn a substantially similar application within the previous twelve months. Any person or persons, who do not agree with a 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 exemption that is substantially the same request, for least one year from the date of our decision. Now I ask that anyone who has a cell phone, pager or other electronic device please silence it. It is the custom of this Board to require that any person who wishes to speak before this Board be administered an oath. Therefore, I ask that anyone who wishes to speak tonight to stand and raise your right hand. Do you hereby swear or affirm that all 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 our recording secretary can have an accurate record of the speakers. Also, please sign the form on the table at the rear of the room. Thank You. Are there any changes or additions to the advertised agenda?

Mrs. Musante: There are no changes.

DECLARATIONS OF DISQUALIFICATION

Dr. Larson: Before we hear the first case, does any Board Member wish to make any declaration or statement concerning any cases to be heard before this Board tonight? Hearing none, I will ask the Secretary to read the first case.

PUBLIC HEARINGS

1. A15-06/15150922 - H. Clark Leming for Shazad Buksh - Appeal of a notice of violation dated June 25, 2015, of Stafford County Code, Section 28-35, Table 3.1, "District Uses and Standards," for a use not permitted (duplex) in the A-1, Agricultural zoning district on Tax Map Parcel No. 45-293. The property is zoned A-1, Agricultural, located at 54 Stafford Indians Lane.

Mrs. Musante: Case A15-06/15150922, applicant H. Clark Leming for Shazad Buksh. Appeal of a notice of violation dated June 25, 2015, of Stafford County Code, Section 28-35, Table 3.1, "District Uses and Standards," for a use not permitted (duplex) in the A-1, Agricultural zoning district on Tax Map Parcel No. 45-293. The property is zoned A-1, Agricultural, located at 54 Stafford Indians Lane.

Dr. Larson: Thank you. This case was brought to my attention earlier, before the umm... just before the ad went in for the cases to be heard tonight. And it violated the recent by-law that we passed, which I will read now. **7-7**, The Board may defer any case prior to submitting the advertisement for a meeting. The deferral request must be received by the BZA before the close of business on the Monday, 22 days prior to the regularly scheduled BZA meeting on the 4th Tuesday of the month. The Chairman will poll the members of the Board and a referral decision will be based on the agreement of at least four of the members voting. Regular members will be polled first, and alternates may be polled

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if required. The whole purpose behind that by-law was to avoid exactly the situation that presented itself for this referral request, because I got the request roughly 2 to 3 hours before the ad had to be submitted to the paper. So, again this was the whole reason why we adopted this by-law in the first place. So, I did not circulate a request to vote to defer that. So, I got an email from the applicant, the applicant's representative after that stating that neither he nor the applicant could make this meeting and so he, the applicant's representative, asked us to consider deferring the case now. So that is what I am going to ask the Board to do. Does anybody need any information from staff?

Mr. Ingalls: Are we deferring it until next month?

Dr. Larson: That is what I would suggest.

Ms. Brown: Do you need a motion for that?

Dr. Larson: I do.

Ms. Brown: Okay, then I would like to motion that we defer this case until November and that would be A15-06/15150922.

Dr. Larson: Is there a second?

Mr. Ingalls: Second.

Dr. Larson: Is there any discussion or questions?

Mr. Ingalls: We are deferring it at the request of the applicant?

Dr. Larson: Yes.

Mr. Ingalls: Okay.

Mr. Kim: And it is only deferred next month, it is not going to be one of these deferrals after deferral?

Dr. Larson: It is deferred until next month.

Mr. Kim: Okay.

Dr. Larson: That is what the motion is.

Mr. Kim: Perfect.

Dr. Larson: Any other discussion or questions?

Ms. Brown: Does the applicant know that is Thanksgiving week?

Mrs. Musante: Yes, they do.

Ms. Brown: Okay.

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Dr. Larson: Any other discussion or questions? Those in favor of the motion say aye.

Mr. Grimes: Aye.

Mr. Ingalls: Aye.

Mr. Kim: Aye.

Ms. Brown: Aye.

Dr. Larson: Aye. Opposed? Motion carries 5 to 0. (Dr. Ackermann and Mr. Davis were absent). Would you read the next case please?

2. A15-05/15150921 - Daniel J. Eagan - Appeal of a Notice of Violation dated June 5, 2015, of Stafford County Code, Section 28-35, Table 3.1, "District Uses and Standards," for the keeping of poultry as an agricultural use on Tax Map Parcel No. 21B-1808. The property is zoned R-1, Suburban Residential, located at 2011 Midshipman Drive, Aquia Harbour Subdivision.

Mrs. Musante: Case A15-05/15150921, applicant, Daniel J. Eagan, appeal of a Notice of Violation dated June 5, 2015, of Stafford County Code, Section 28-35, Table 3.1, "District Uses and Standards," for the keeping of poultry as an agricultural use on Tax Map Parcel No. 21B-1808. The property is zoned R-1, Suburban Residential, located at 2011 Midshipman Drive, Aquia Harbour Subdivision. You have the application, a copy of the violation notice dated June 5, 2015, definitions and a copy of the A-1 and R-1 table. The applicant is appealing a Notice of Violation dated June 5, 2015 regarding Section 28-35, Table 3.1, "District Uses and Standards," for the keeping of poultry as an agricultural use on Tax Map Parcel No. 21B-1808. After investigating a complaint, a notice of violation was issued to the owner of Tax Map Parcel No. 21B-1808 located on Midshipman Drive for the keeping of poultry as an agricultural use. The property owner has exercised the right to appeal the notice of violation and has submitted justification of the appeal. The applicant submitted a letter dated June 15, 2015, stating his reasons the notice of violation is invalid. He states he has 4 pet chickens that are a part of the family and are not being used for either profit or utility. The applicant further states they spoil the chickens with expensive treats like dried meal worms and baked corn muffins while they provide hours of pleasure and silliness as we watch each hen with her own unique personality interact with each other girls and search about our yard for bugs and other natural treats. He references the definitions included in Stafford County Code, Chapter 5, Animals, Section 5.1 Definitions to substantiate his appeal. The definitions cited are the terms for animal and pet which are as follows: **Animal** means any nonhuman vertebrate species except fish. For the purpose of Article III, animal means any species susceptible to rabies. For the purpose of Section 5-7, animal means any nonhuman vertebrate species including fish except those fish captured and killed or disposed of in a reasonable and customary manner. **Pet** means any animal kept for pleasure rather than utility. The Chapter further defines animal as: **Agricultural animals** means any livestock and poultry. A **Companion animal** means any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, nonvenomous reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal which is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law, as research animals shall not be considered companion animals for the purposes of this chapter. These definitions describe a pet as an animal that is kept for pleasure rather than utility and is not an agricultural animal and further stipulates that the animal is a species susceptible to rabies. According to the Center for Disease Control and Prevention (CDC), mammals

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are the only species susceptible to rabies, therefore chickens or fowl are exempt from the animal definition and the pet definition, and are included in the definitions of agriculture animals. These definitions are not in the zoning ordinance, which is the chapter of the county code cited for the violation but they do clarify that chickens are not considered pets in Chapter 5 of the County Code. The violation, cited under the provision of the Zoning Ordinance Table 3.1 Table of uses and standards was for the keeping of chickens as an agriculture use in the in the R-1, Suburban Residential zoning district. These uses are permitted in the A-1, Agriculture and A-2, Rural Residential zoning districts and not in the R-1, Suburban Residential zoning district. Agriculture is defined as follows: ***Agriculture.*** See "*Agricultural operation.*" ***Agricultural operation.*** An operation devoted to the bona fide production of crops, or animals, or fowl including the production of fruits and vegetables of all kinds; meat, dairy and poultry products; nuts, tobacco, nursery and floral products; and the production and harvest of products from silviculture activity. Nursery operations are considered agricultural operations in addition to apiaries. Agricultural operations do not include establishments engaged in the processing of agricultural or silvicultural products or the above ground application or storage of sewage sludge. And for further clarification, the Merriam-Webster dictionary defines poultry as birds, such as chickens and ducks, that are raised on farms for their eggs or meat. Therefore, the keeping of chickens as an agricultural use is not permitted in the R-1, Suburban Residential zoning district and the notice of violation was issued correctly.

Dr. Larson: Are there any questions for staff? Hearing none, I'll open the public hearing. Will the applicant or his or her representative please come forward to present their case?

Mr. Eagan: Good evening. Start anytime?

Dr. Larson: Uh, yes, state your name and address.

Mr. Eagan: Oh, Dan Eagan. Well, that's a lot to take in as far as codes and ordinances for chickens. So I laid something out to make it a little easier to apprehend perhaps and correct a couple of the, uh, codes mentioned by Melody over there. My wife and I wanted... my wife wanted chickens as a pet. She has no interest in breeding chickens, eating them, or even eating their eggs. She just liked the comfort they gave her, ease of ownership, and spoiling them. Prior to buying our pet chickens, we researched the local zoning codes and saw that while there was nothing that actually discussed owning chickens, there was also nothing that prevented us from owning them. So we bought four little girls and brought them home as pets. Since then we've lost a couple to wild predators so we now have two sweet little girls named Betty and Mr. Boogie. For some reason she likes giving boy names sometimes. We do not have a rooster for the obvious reasons. In the simplest part of the code, as Melody mentioned, the pets and animals are defined under Chapter 5, pet meaning any animal kept for pleasure rather than utility -- pretty straightforward -- and an animal meaning any non-human vertebrate species except fish. The only part that I have that differs from what Melody put forth is she mentioned that animal means any species susceptible to rabies. Well, the code actually says, that's in reference to the chapter on rabid animals. So that definition only pertains to that chapter and not the general chapter on animals. So, once again, for that, chickens qualify. The notice of violation received, as she stated, violation Section 28-35, Table 3.1, District uses and standards, and I guess you have the tables up there, the table lists permitted rights, conditional uses, exceptions, some requirements like intensity and measurements. Interestingly, Table 3.1 does not list the right to keep pets, nor does it specify anything about agricultural use. But it does mention, under exceptions, that the keeping of horses and ponies on a 3-acre or larger lot is acceptable. But no chickens. So, apparently they are understanding that there might be some agricultural animals in an R-1 zone, but for horses you need more acreage. Makes sense; they need to roam. Under the violation, it further states

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the Stafford County code does not permit agricultural use on properties zoned R-1. Agricultural uses include the raising of poultry and livestock. And, by the way, our girls really take offense of being called poultry because they think we're going to eat them (inaudible). The verbiage as used is actually a paraphrase of the code; it's not a quote. The phrase raising poultry is not used under Chapter 28 or in the definition of agriculture. Since I cannot dispute what is not in the code, I looked further into the Zoning Ordinance, Chapter 28, which allows the horses as an exception. In Chapter 28, the definitions, as Melody again already covered but the agriculture says see agriculture operation, and under agricultural operation it states, an operation devoted to the bona fide production or crops or animals or fowl, including the production of fruits and vegetables of all kinds, meat, dairy and poultry products, nuts, tobacco, nurseries, and so forth. So, the key points there is, is an operation devoted to the bona fide production of animals or fowl. So, to produce an animal I have to breed that animal, meaning a rooster, which we don't have, and allow it to give birth to a new animal that I can then use in my agricultural operation. Or perhaps I'm selling its meat or its eggs. And since this definition does not refer to agricultural animals, oddly enough, it only refers to animals. So you could easily say that breeding dogs could be considered an agricultural operation. If someone is raising poultry in their back yard, eating their eggs and eventually the chickens, is this really an operation devoted to the bona fide production of fowl? That's not what we're doing, but I'm just making the point. Wouldn't an operation include a profit or some kind of gain from the production? Wouldn't the producer devoted to a bona fide production at least file a Schedule F for farm operations with their tax return to take advantage of the tax laws for agricultural operations? Maybe that much is a gray area. But, at the very least, I think we could all agree that simply keeping some chickens as pets and eating the by-product, the eggs -- which I haven't figured out how to make them stop laying eggs -- is not an operation devoted to the bona fide production of fowl or animals. No more than growing vegetables and being accused of production of crops. Or owning trees and being accused of silviculture production. We personally have over 25 trees in our back yard and no one has ever accused us of using our property for agricultural purposes. So I think this reads pretty clear in this situation as well. So, as I read the code, there is no violation of agricultural use or operations on our property. No more than perhaps it would be if I had a chicken in a cage in my house, such as people keep parrots or other birds. In closing, I'd just like to add the following. There are few pets that not only bring comfort and joy to their owner, but also help the environment in several ways. Our girls love to eat bugs, such as fleas, ticks, spiders, and grubs. We've been able to cancel our pest service because the chickens do it naturally when we let them free-range around the yard. The reduction of chemicals coming off our property and into the watershed far outweighs any concern about chicken droppings that naturally break down and add nutrients into the soil. The chicken droppings from our birds that we use is combined with a small pile of leaves and brush in their pen, and the chickens work it daily by scratching in it and looking for bugs. And it speeds up the natural compost process and turns it into a natural nutrient rich fertilizer that we use for our plants. Once again, allowing me to use a natural process rather than one laced with chemicals. And my favorite environmental part is that they make me a healthy and process-free breakfast every day. I believe that somewhere along the way somebody read only part of the code and decided that chickens do not belong in residential areas. But we can learn from neighboring counties, like Spotsylvania and Fairfax, that raising can not only help the environment, they bring happiness to their owners. Fairfax County even has a website to help owners raise their chickens and do it environmentally safe fashion. And that county has a density seven times that of Stafford County. I've been harassed by people that don't even live near me on social media for having chickens in R-1, which I find pretty silly since they've never even seen them or understand the situation. Uh, I lost track of what I was going to say just then. I guess I have two and a half minutes to figure it out.

Dr. Larson: Take your time sir.

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Mr. Eagan: Thank you. It wasn't in my script, so I guess I shouldn't ad lib. Any thoughts? Did I miss anything?

(Inaudible from the audience).

Dr. Larson: Excuse me, I'm sorry ma'am. If you'd like to speak, you can speak after... when I open the public hearing to other speakers.

Mr. Eagan: Um, sorry, still trying to gain my thought on the other one. Hmm. Well, anyway, I've made my case. Uh, the main thing is just pointing out that the remarks made about animals only being those that have rabies don't apply to this case, because that only applies to the chapter on rabid animals. And, um, that the agricultural operation is not something that we're performing. And I hope I've made at least that part clear. And with that, I'm done.

Dr. Larson: Thank you sir. Are there any questions for the applicant? If I could just get a clarification -- you said that there are now two chickens rather than four?

Mr. Eagan: Yes sir.

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

Mr. Kim: Are you planning to get more?

Mr. Eagan: Uh, well, we'd like to go back to four but I wasn't going to do it until we find out your opinion on all this. I mean, and when I read the rules they seem pretty clear. But if you take pieces out of different chapters and have a focus towards not allowing it, I can easily see where it could go that way. But I really don't see where there's any, um, anything in the code where it says you can't. And if you could ask me something specific to that, I'd be happy to embellish.

Mr. Ingalls: You mentioned the other counties, Fairfax City, Spotsylvania. I don't know about Fairfax but I know the City and Spotsylvania both adopted a special ordinance that sets forth standards for having poultry in their R zones. It's just not a by-right, it's by-right with conditions that you have to follow before you can have those. So it's not just... you can't just have them without following whatever conditions they've set, and I don't recall right off what they are. But they are controlled by the conditions of that section of the code that allows for them. It's not just you can come and do what you want to do with chickens.

Mr. Eagan: Right, that's because their general code, I think, has specific laws in there that avoid it whereas ours don't.

Mr. Ingalls: Yeah, but they passed a specific ordinance for chickens in a residential zone, to allow it.

Mr. Eagan: Right.

Mr. Ingalls: They did not allow them up until they passed that special code.

Mr. Eagan: Correct. Which would be good to clear the air and if we could do the same thing here in Stafford County, but the way it stands right now, there's no need to other than the desire to maybe put better controls on it like Fairfax. They charge \$435 for an application fee to have chickens in less than

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2 acres. So, obviously if you're going to pay that money, you have pets; just like the \$600 I paid to be here today and all the food and stuff we buy for our chickens, I'd be a moron to think I was running an operation and trying to get a benefit out of it other than owning a pet.

Mr. Ingalls: But again, I think, where they allow it, they allow it with conditions and I don't know what they are but I'm sure there are conditions on the numbers you can have, where the pens must be, different things to protect neighbors so they know that... because it sounds like the people in the city who are doing this, they're doing it kind of like you. They have a few chickens, they can raise them, they can have eggs and so forth. That's just for their own personal use. And you know, nowadays with free range chickens and all that going on, they want to let them do it and they've passed an ordinance. But I don't believe our County allows it just by-right. If what... if you think just having chickens, can you have 10, 15, 20 chickens?

Mr. Eagan: Well, that's just it. Can you have 10, 15, or 20 dogs? It doesn't say anything about pets in R-1 and it doesn't say anything about not having a chicken as a pet. So, you've left it wide open, or the County has, and you could give it more control. But the way it's written now, it's honestly okay to have any number of chickens, you know. At some point you're going to have a nuisance and you're going to fall under the nuisance rules. Maybe larger numbers of chickens would be noisier; you have noise ordinances. There's other things that come into play. So you can't just run amuck with this. But, to have some, you know, additional ordinances that speak to this would be helpful. But, as it stands right now, there's nothing to prevent it. But the Board has... I've looked at the three other cases prior to me coming here. Nobody's run an appeal, so I guess it hasn't come this far before to have to discuss.

Mr. Ingalls: I assume you provided some of these definitions in our packet tonight and one of them was agricultural animals, which in the definition means all livestock and poultry.

Mr. Eagan: Mm-hmm.

Mr. Ingalls: And then there was another definition called companion animals which means dog, domestic or feral dogs, domestic cats, non-human primates, whatever. But it also adds agricultural animals, game species, or any animal regulated under federal law as research shall not be considered companion animal for this purpose. So, chickens... livestock and poultry are...

Mr. Eagan: You're absolutely correct. But, nowhere in there does it say you can't have a company... or a non-companion animal as a pet. That's just a definition you're reading. Until you use it in the code, it's a definition. And the reason it's put in companion animals is because it comes under cruelty to animals and things like that where, if you've got livestock and poultry, typically so they don't mix up with the agricultural rules, you're, you know, slaughtering them and producing them. So they've given them different names. But it doesn't mean you can't have a chicken. It just means that's the definition of a companion animal. And that's in the state code.

Mr. Ingalls: Well, our ordinance, it tells you where you can put horses.

Mr. Eagan: Yes it does.

Mr. Ingalls: It says you can put horses here and here. It doesn't say you can't have them some place, but it tells you where you can have them. And that's the same way I read our ordinance about poultry. It's telling you where you can have poultry, not... you can have it in agricultural land. That's because

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it doesn't go down and say in the ordinance where you can have... you can have a dog but you can't poultry. It doesn't say. But it tells us where you can have it.

Mr. Eagan: And to that I'd say where does it say you can have a dog?

Mr. Ingalls: I don't know about that one.

Mr. Eagan: So why is a dog different than a chicken?

Mr. Ingalls: Maybe it's state law, I don't know, you can have a dog. Probably state law.

Mr. Eagan: Well, you were talking about the table and now you're not. So I'm trying to keep us on the same track. Table 3.1, look through the list, it says nothing about keeping pets. So you could infer from that that you can't keep pets in an R-1.

Mr. Ingalls: Well, maybe a poultry isn't considered a pet.

Mr. Eagan: Any animal kept for pleasure rather than utility.

Mr. Ingalls: But you are getting eggs. You are still using it for... it's a minor, minor thing that you're using it for but it's not...

Mr. Eagan: You can't prevent a chicken from laying eggs.

Mr. Ingalls: I can't have a pet...

Mr. Eagan: People use a dog to hunt...

Mr. Ingalls: Can I have a pet cow?

Mr. Eagan: ... a seeing eye dog. There's utility in dogs. It's a completely different thing. If I could prevent the chicken from laying eggs, then we would do it, to keep them as pets. But it's a by-product. We're not eating the chickens. They'll stop laying eggs about a year from now and we'll still have those chickens. They only lay for a couple of years. But they live to be about 8.

Mr. Ingalls: Yeah, but you could... well, the way you're talking, you could add many chickens as you wanted. You say there's no regulation. I'm going to have 25 pet chickens.

Mr. Eagan: Sir, it's your code. It's how it reads. There's nothing to regulate the number of chickens other than (inaudible).

Mr. Ingalls: Well, I don't agree with that statement.

Mr. Eagan: Well please point it out to me where it says that because...

Mr. Ingalls: It doesn't say it's allowed.

Mr. Eagan: In the absence of the law, it should be allowed. Unless it breaks some other law, state, federal. That's how life works, isn't it?

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Ms. Brown: I think when code it silent, it's no. I have a comment when you're done Larry. I'd like to comment.

Mr. Ingalls: I'll rest for a while.

Ms. Brown: I just... this is just, you know, strictly as a point of information. I just wanted to say that any decision made by this Board does not override, trump, or negate any restrictions that you may have on your HOA covenants. And I did look those up and it does say that you are not allowed to have animals or fowl. And that's under your nuisance and general prohibitions and requirements. So, no matter what we rule here...

Mr. Eagan: It just said animals or fowl.

Ms. Brown: It says under nuisance and general prohibitions and requirements, it says, no animals, fowl, or livestock shall be kept or maintained on said lot except a reasonable number of household pets.

Mr. Eagan: Pets. And what is a dog? Not a fowl, it's not livestock, it is an animal.

Ms. Brown: This is just something you'll have to deal with, irregardless of our decision, I just wanted to point that out that you have...

Mr. Eagan: I'm good with them.

Ms. Brown: ... covenants.

Dr. Larson: Does anybody have any other questions for the applicant?

Mr. Kim: (Inaudible - microphone not on) I have a question for staff if that's okay, Mr. Chairman?

Dr. Larson: Let me just ask one more question of the applicant. So, in the pictures I see that you have sort of a chicken coop constructed for the chickens. But you mentioned earlier that you allow them to go freely around the yard?

Mr. Eagan: At times of the day, we let them out when we're back there.

Dr. Larson: Okay. And how does that... how do you control them? I've not had chickens.

Mr. Eagan: Oh, they're just adorable. They follow me around everywhere. Usually if I'm working in the back yard to let them out, because if they... if I'm digging in something, they want to see what I'm finding, looking for bugs. I have a little video if you'd like to see it. Can I show it to you?

Dr. Larson: I'm not sure we have that capability.

Mr. Eagan: I mean, it's on my phone. Just to give you an idea. I don't know... Can you see that? Can I come up or...?

Dr. Larson: Uh, actually I can see it.

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Mr. Eagan: They think I have grapes.

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

Mr. Eagan: Thank you very much.

Dr. Larson: Would any member of the public like to speak in support of the applicant?

Mrs. Eagan: I'm Georgia Eagan. I just want to express to each and every one of you, these are my beloved pets. We had four; two died. Three died. Jay died, Elvis died, and Pepper died. Betty was left alone and we immediately went and got another chicken the next day -- not to replace our other girls that had died, but for Betty. Because they're not solitary animals. So we got Mr. Boogie and I know my... what my husband is trying to say. But to answer your question directly, Mr. Kim, um, I'm good with my two girls. They, um, they like each other. They didn't at first; she was... Betty was very bossy. But they got to know each other. They are absolutely my pets. They will stop producing and we... that will make no difference to us. That we don't keep them for their eggs. I myself don't eat them; I don't want to be that close to my food source. It kinda freaks me out. My husband does but we won't treat them any differently when they stop producing, which will be for Betty, she's got a year left. Misters has got probably got two... they lay for about two, two years. But, um, they follow me. You were asking how do you control them. I do a chicken call and they will come running. They absolutely understand when I've got treats in my hand. They, um, oh, they'll hop up on your shoulder. If he's digging, Misters gets on his back and just perches there. They're... they're very intelligent. They're very sweet. I love my chickens just like other people love their animals. I know that that's kind of hard to understand. When they died, I was, um, I was just grief-stricken. It was horrible. They each have individual personalities. Um, I understand what people are saying about pets, that, you know, they're kept indoors or they're plenty of people that keep dogs and never let... my sister is one of them... never let that dog, I think it's awful, ever inside of her house, ever. There are people that do that. Just because our girlies are outdoor pets, they are kept in a beautiful coop. They are spoiled. They are very well loved, very well tended to. We do not plan at all on getting 25 chickens or even... I can't see myself getting any more than... actually I like just the two because the two have bonded. I guess that's it. I just kind of wanted to... Oh, they put themselves to bed. I don't know if you know that about chickens. They put themselves to bed. They get up as the sun rises. When the sun starts setting, no matter where they are, they will put themselves in the coop. They put themselves to bed. They go upstairs. We go in and check on them, lock them up, and um, they just know where that coop is. They never go any further than they can see their coop.

Dr. Larson: You mentioned that you've lost three chickens. Could you review how they died?

Mrs. Eagan: Yeah, um, Jay, it was during the day. They were out because I was home. I don't know when it happened. Jay was a Rhode Island Red and he had... he was handicapped. He had something wrong with his foot. So, chickens don't fly. They can kind of get off the ground for a few feet. I think a hawk or an eagle... I think a bird of prey got him just from no body, his feathers everywhere. I think the rest of the girls were able to get away. And he simply got caught because he was slower than the rest of them. When we got them, we knew that that would be the number one threat to our girls would be predators. The other... then we were left with three; Betty, Elvis, and Pepper. Danny and I went out of town and, um, my daughter went to put the girls away and apparently she thought they were in the coop. It was dark and they were not. Betty was in, Elvis and Pepper weren't. They were behind the coop. And she thought that... when she looked in, she thought she saw all of them in there. And the next morning they were dead; they'd been attacked. Their bodies... just whatever it was just killed

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them. Didn't even take their bodies. So that's what happened to them. And we got Misters the next day because Betty was obviously extremely upset and, you know, she just lost her family.

Dr. Larson: Thank you.

Mrs. Eagan: Thank you very much. Is there anything else?

Dr. Larson: Any other questions for this witness?

Ms. Brown: How long have you been keeping chickens?

Mrs. Eagan: We got the girls April... last, this past April would have been one year. And when we got them, they were 16 to 18 weeks old. They're called pullets at that age, and they started laying about 4 weeks after we got them.

Ms. Brown: Thank you.

Mrs. Eagan: Thank you. Thank you everybody.

Dr. Larson: Any other questions for this witness? Thank you ma'am.

Mrs. Eagan: Thank you.

Dr. Larson: Would anybody else from the public like to speak in support of the applicant? Seeing none, is there any member of the public who wishes to speak in opposition? Okay, seeing none, I'll now close the public hearing for this application and bring the matter back to the Board for motions and decision. First, are there any other questions for staff?

Mr. Kim: I do, Mr. Chairman. How did we hear this, because I know two other people that own chickens in Aquia Harbour. I mean, it's a complaint; I understand it's a complaint. I mean, what was the complaint? I didn't see that or I might have missed it, that brought this case up.

Mrs. Musante: We work, as you know, on a complaint basis only. It could have come through phone, email; I'm not sure exactly how this one came through. We do take anonymous complaints. But once we do receive the complaint, we have to act on it. And again, like I said, we do work on complaint basis only.

Mr. Grimes: I have a question for staff.

Dr. Larson: Go ahead.

Mr. Grimes: In the County code of ordinances, the definitions, the definition for companion animal; isn't that the definition of a pet?

Mrs. Musante: We have a definition of pet that says, means any animal kept for pleasure rather than utility. The companion animal is pretty much the same thing, except when you get down to where it talks about the agricultural animals.

Mr. Grimes: But in reference to the actual definition of pet, is that in the code of ordinances?

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Mrs. Musante: Yes, from Chapter 5, which is the animal chapter.

Mr. Grimes: But we didn't receive a copy of that portion, correct?

Mrs. Musante: We do not have that as an attachment.

(Inaudible - microphone not on).

Mrs. Musante: She has her iPad if you want to come over and look at it real quick. Okay.

Mr. Ingalls: The applicant provided I thought... these were definitions from, it says Stafford County Code of companion animal and agricultural animal. Is that not from our code?

Mrs. Musante: They are, but those are definitions that we supplied, not the applicant.

Mr. Ingalls: Oh, you supplied these?

Mrs. Musante: We did.

Mr. Ingalls: Okay, so you did provide us this.

Mrs. Musante: Yes.

Mr. Ingalls: Okay.

Mrs. Musante: The only thing that you received from the applicant was his application and this letter dated June 15th. Everything else staff provided.

Mr. Ingalls: Okay, alright. I'm sorry, I kind of got... didn't seem like it was all in the same spot. And you gave us this, right?

Mrs. Musante: Yes.

Mr. Ingalls: The table and district standards, so that also from you. While you're looking at that, maybe I should ask staff. Our ordinance tells us what we can do, right?

Mrs. Musante: Correct.

Mr. Ingalls: It says uses permitted by-right.

Mrs. Musante: Correct.

Mr. Ingalls: I mean, raising chickens is not listed in the R-1 as a permitted by-right.

Mrs. Musante: That is correct.

Mr. Ingalls: In the Agricultural district, it talks about one of the uses that is permitted by-right is agriculture.

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Mrs. Musante: Correct.

Mr. Ingalls: And in agriculture, the raising of chickens would be permitted.

Mrs. Musante: Correct.

Mr. Ingalls: So, we have a place where chickens belong in the ordinance.

Mrs. Musante: Yes.

Mr. Ingalls: But I'm sure if I went to all the other zones, none of them was going to say you can't have chickens.

Mrs. Musante: Correct.

Mr. Ingalls: So, but they also wouldn't say you could have them.

Mrs. Musante: That is correct.

Mr. Ingalls: So, if you can't... as the ordinance is set up to tell you the things that are permitted, and here's what's permitted in the R-1 zone and raising of chickens is not a permitted use in the R-1 zone.

Mrs. Musante: Correct.

Mr. Grimes: Okay, I found the definitions; thank you.

Mrs. Musante: Thank you.

Dr. Larson: Would you like to add anything to what we already have Mr. Grimes?

Mr. Grimes: I was just trying to find in the code of ordinances if there was two definitions; one for pet, one for companion animal. And there is and they're both in the animal Section 5, in addition to the other references. So, I was just trying to verify that there was actually a separate definition for pet from companion animal.

Mr. Kim: Would you mind reading (inaudible - microphone not on).

Mr. Grimes: It was actually included in the County report. The definition pet is on the bottom of the page 2 of the case. Pet means any animal kept for pleasure rather than utility. And then companion animal definition is on the next page, which Melody read earlier.

Ms. Brown: I'd like to add, too, I was looking at the definitions because in our report it says agricultural animals means livestock and poultry. Under our definitions, poultry says the definition as includes all domestic fowl and game birds raised in captivity.

Mr. Kim: I can definitely... oh, I'm sorry Mr. Chairman.

Dr. Larson: Go ahead.

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Mr. Kim: I can definitely see the discrepancy, you know, because they're not... if they were raising chickens for utilities purposes, I would... this would be a pretty easy case. But they're not raising them; they're keeping them as pets. And it's obviously for pleasure because, you know, she was very distraught on the killing of the other chickens. So, I want more of a clear definition. But as I read the definitions here, I can see it both ways. I don't know.

Ms. Brown: It seems clear to me, you know; agriculture animal is livestock and poultry, and poultry means domestic fowl raised in captivity.

Mr. Kim: But also in... for pet purposes, it says pleasure, you know, then utilities and there is no utility use in this. That's where confusion... well, that's where I'm a little stuck.

Ms. Brown: To me it falls under poultry and livestock, to me because chickens are definitely poultry -- for me.

Dr. Larson: Yeah, what about a cow?

Ms. Brown: It would be livestock.

Mr. Kim: Well, one of the biggest reasons, I mean, if you had the room and the specific... I mean, I understand that that's a fine line. I mean, you know, I've seen people have pigs for pets.

Dr. Larson: I (inaudible) it, they're indoor pets actually, the ones I...

Mr. Kim: Oh, you have two?

Dr. Larson: I don't have any. I have also known people that have pigs for pets but their indoor pets.

Mr. Kim: Yeah, I wish our definition was more clear. I mean, I understand; it's just mine, when you look at a definition of pets, I mean, there's no utility use. I'm just I guess making more of a statement on where my difficult... where I'm kind of having a hard time here because I understand. I mean, if it was simply they're selling eggs or they had a rooster and they're making chickens or chicks and they're selling them, then, yeah, this is obviously very simple. But... I don't know. I just, I guess, wanted to make that statement. That's the one part that I have, in the definition, because yes, it does say poultry and yes, poultry is chicken. But then it also said, in pets, it's for, you know, pleasure and not utilities and there's no utility use here; it's just simple pets which, I don't know -- I'm just making my statement. I just wanted to point that out.

Mr. Grimes: And another question for staff. In the codes, is there any limitation on the number of pets you can keep in an R-1? Is it quantified?

Mrs. Blackburn: Yes sir, there is.

Mr. Grimes: And what is that?

Mrs. Blackburn: In the definitions, we have kennel, commercial and non-commercial.

Mr. Grimes: Right.

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Mrs. Blackburn: And kennel, non-commercial, is 6 or less animals, dogs. And I do want to add in September of 2013, we brought an item to the CEDC, which is the Community Economic Development Committee for the Board of Supervisors, to do a zoning amendment for allowing chickens. As Mr. Eagan brought up, in Spotsylvania County they do allow them under certain regulations; and in Fredericksburg and in Prince William. And the Committee voted not to take it forward.

Mr. Ingalls: Say that again?

Mrs. Blackburn: The Committee voted not to take it forward.

Mr. Ingalls: Not to take it forward.

Mrs. Blackburn: Right. Which would be take it to the Board for discussion, yes.

Mr. Ingalls: If you brought that up as something they needed to pass, then somebody thinks that chickens aren't allowed. Is that right?

Mrs. Blackburn: Well, yes.

Mr. Ingalls: I mean, unless they felt well it isn't necessary because they expect that you can have them. I don't think that was their answer, was it?

Mrs. Blackburn: No, that was not their answer.

Mr. Ingalls: So the answer was that they didn't want to see chickens right now as a permitted use in...

Mrs. Blackburn: Yes, they did not want to take it forward to the Board to discuss chickens in a residential zone.

Mr. Ingalls: Okay.

Dr. Larson: Would anybody like to offer a motion on this case?

Ms. Brown: I'll do it. I'd like to make a motion to deny the appeal. I think this clearly falls into poultry/livestock and not allowed in an R-1 under companion animals. It's clear to me that it's not to be considered for the purposes of the chapter.

Dr. Larson: Is there a second?

Mr. Ingalls: I'll second it.

Dr. Larson: Ms. Brown, do you want to say anything else about why you floated the motion?

Ms. Brown: The way I interpret the code, it seems very clear to me in the definitions that these chickens are poultry and they are considered agriculture animals and agriculture animals are not to be considered companion animals in an R-1.

Dr. Larson: Mr. Ingalls, would you like to say any comment about your second?

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Mr. Ingalls: I also feel like that the ordinance tells us what we can have, and it does not permit the raising of agricultural activities in the R-1 zone. There are zones that you can have, you know, chickens in. A lot of times I know we run into a problem with zoning on this because it never mentions a certain, like a new industry or something, it doesn't mention that. So you have to figure out well, just because the ordinance didn't mention that particular one, it can go anywhere it wants. No it can't. It's got to be... the ordinance says okay, here's what you can have. So I think what I feel like the ordinance is saying to us is that there's a place for raising of chickens and that is in our Agricultural district. Let me also say that, you know, my feeling, if I was on the Board of Supervisors, I would say we need to come up with a chicken ordinance and try to figure this out because I don't have chickens and I don't intend to have chickens. But it sounds like, from listening to people and reading articles about it, the ones that are going on in the city and, you know, you'd think in the middle of Fredericksburg, gee whiz, it would be a problem. But what I read and hear about, it's not a problem. But the reason it's not a problem, they have these conditions that they have put on these people that have them. I know the chicken pen has to be a certain distance from the property line and things like that, and maybe the keeping of the food. Chickens, like our applicant has experienced, can attract other animals that would maybe do harm to chickens; you know, raccoons and other animals besides the birds of prey. So there are some downsides that why you have to be careful about putting this agricultural use, even though it's a minor use and pets. And I'm sure if you asked any of these people in the city, they would consider them also like a pet also. But I think the right way to go is still develop an ordinance. I'm sorry to hear that somebody doesn't want to go forward with one, but, like I say, I understand the applicant's conditions here and how they like to have these as pets. And there are a lot of us who would like to have a lot of things as pets, but sometimes we can't do it. And I think this happens to be one of them.

Mr. Kim: May I ask the staff one more question?

Dr. Larson: Sure.

Mr. Kim: Okay. I'm sorry. Is there any way we would know what the complaint was to the applicant? No way of knowing? Like it's just a complaint, you know, chickens ate their... I mean, any kind of complaint?

Mrs. Musante: I don't have that information. Normally when a complaint comes in, it comes into one of our inspectors; it does not come in directly to me. And they'll act on the complaint. And in prior cases with chickens, it's just been people that know the code that know that chickens are not allowed in a residential area. I can't assume that that was the case here, but that's been the case in prior situations.

Mr. Kim: Thank you.

Mr. Ingalls: Have you had other complaints about chickens in residential areas?

Mrs. Musante: Yes we have.

Mr. Ingalls: And what's been the outcome of that?

Mrs. Musante: They either remove the chickens or we send them a violation and then they remove the chickens. We have not had any other appeals.

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Mr. Ingalls: Okay, thank you.

Mr. Kim: Do you know what the other complaints were so that maybe I can get an idea? I unfortunately didn't really look at what the devastating effects of chickens can be on neighborhoods.

Mrs. Musante: I don't have the violations handy.

Mr. Kim: Sorry; I know it's kind of late.

Mrs. Musante: Mr. Eagan was supplied with those so he may be able to give you that information. I don't have the copies with me.

Mr. Eagan: I didn't get anything about a complaint.

Mrs. Musante: You didn't get the violation notices?

Mr. Eagan: I got a... an animal control officer came by the house one day and said somebody complained about the chickens and he came in the back and he said well these are obviously pets, have a good day.

Mrs. Musante: Can you... right. The FOIA request that you submitted, do you have those documents that we sent you?

Mr. Eagan: I didn't bring them but they're all the same documents that I, you know... the code; there wasn't anything that said there was a complaint. I didn't see any written complaint.

Mr. Kim: Well it could be oral too. The complaints could be oral or written, right?

Mrs. Musante: They can. What you should have received was a copy of the violation notices in the FOIA request.

Mr. Eagan: Yeah, well you have that in your packet too, the violation...

Mrs. Musante: No, the ones that... the FOIA request that you asked for on other violations.

Mr. Eagan: Oh right. I didn't see a violation notice. I did go in front of the Homeowner's Association, that was the first thing. And then when I pointed out in their code, it says the definition of pet was the same as the County, they said well you need to take it up with the County then and we'll go along with whatever they say.

Mrs. Musante: So that was what your HOA said?

Mr. Eagan: Yes. Can I add one more thing? These definitions, Ms. Brown, companion animal, they gave it that definition because it's used in other parts of the code that have nothing to do with the ownership of pets, but just to kind of box in certain types of animals that can be referred to in other parts of the code. It has nothing to...

Ms. Brown: I'm sorry, to me it's very clear. We have to go by what our definitions are. We can't just make up our own rules and (inaudible).

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Mr. Eagan: I'm not making it up; it's law. Thank you.

Dr. Larson: Any other discussion by Board members on this motion? I'm going to support the motion -- reluctantly. It's obvious that the applicant loves her pets and I don't think that's in dispute. The problem is the nature of the pets. And I think somebody else pointed out that you could have different kinds of pets that might be actually hazardous; I mean, some people have dangerous animals for pets. I mean, because it's a pet doesn't make it allowable in an R-1 district. And I believe that the logic train that was explained by Ms. Brown and Mr. Ingalls, in my view, is correct, of the code. Any other discussion?

Mr. Kim: I'm also going to reluctantly support this motion because of the way the code's written. And I wish I could find something else that maybe the Board of Supervisors wanted to change or for, but I just wanted to put that out.

Dr. Larson: Any other discussion?

Ms. Brown: I would like to add it is obvious that you do love your chickens. We just... we can't go against what our rules are. And I'm sorry. And I hope you can find good homes for them.

Mrs. Eagan: Oh, I'm not getting rid of my pets. That would be cruel. That would be... would you get rid of your beloved pet.

Ms. Brown: Well, I would hope I wouldn't get one that I was not allowed to have in my neighborhood.

Mrs. Eagan: We disagree with you very respective... we disagree (inaudible).

Ms. Brown: Okay.

Mrs. Eagan: I would just... I guess we're going to have to take it up even further.

Dr. Larson: Okay, I'm going to call for the question. Those in favor of the motion say aye.

Mr. Ingalls: Aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Ms. Brown: Aye.

Dr. Larson: Aye. Any opposed? Okay, the motion passes 5-0.

Mr. Ingalls: Mr. Chairman?

Dr. Larson: Yes sir.

Mr. Ingalls: Before we move on to something else, could we make a recommendation to the Board of Supervisors that they address this issue of chickens in residential zones? I mean, it sounds like they...

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one organization has already tried it but maybe somebody would maybe listen to us. Maybe we've got...

Dr. Larson: I think that's a very reasonable suggestion.

Mr. Ingalls: You know, the part of our duties is when we see things that are not working to say, okay, let's notify the Board that hey, we need to look at this part of the ordinance and say, well, does that need to be addressed. And they may give us the same answer they gave somebody else, but I feel like it would be a step trying to... so we don't have this as a continuing problem.

Mr. Kim: Can I also make a suggestion? I agree with you completely. Now, this might be very unconventional but is there any chance we can see how the... because unfortunately we can't go, I mean, just like Ms. Brown said, we can't go against the Stafford County code. But the Board of Supervisors can change that code, which we cannot do. That's why I'm very reluctant and I'm actually saddened that I have to, you know, vote this way. But, is there any chance in the unconventional part, can we wait until we talk? No? Okay, forget it.

Dr. Larson: We don't have that authority.

Mr. Kim: We don't have the authority, okay. Just trying to come up with solutions.

Dr. Larson: We have the authority with what we've just done and that's it.

Mr. Kim: Okay.

Dr. Larson: Mr. Ingalls, would you like to draft something for the Board of Supervisors that we could... you could maybe pass around or maybe work with our Zoning Administrator to draft something that we could take a look at for the Board of Supervisors?

Mr. Ingalls: For the next meeting?

Dr. Larson: Or whenever you can get to it but, yeah, before the next meeting would be good.

Mr. Ingalls: Yeah, okay, I'll try to put something together or we can talk with staff and see what we can come up with.

Dr. Larson: I think that's a very reasonable thing to do.

Mr. Ingalls: Yeah, let's see if we can solve...

Dr. Larson: At least they could consider it at that point.

Mr. Ingalls: If they will consider it, yeah.

Mr. Grimes: I support that movement to make some change or to support some change. There is a huge movement right now for sustainable living, raising your own, being able to support yourself, gardening, raising chickens... that's all part of that. The fact that they're pets, and it's obvious that they're pets to you. From the code definition, it's an agriculture animal so we have to support that. But, if we can help try to affect some change to the ordinance that would allow that with conditions to

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be applied so that there isn't an abuse, right? I mean, that's... the codes are there to prevent abuse and to damage the quality of life of your neighbors and not just what you think it should be. So getting something changed in the ordinance that would allow it, with conditions, makes a lot of sense to me.

Dr. Larson: Any other discussion on this issue before we press on? Thank you. Okay, we have no... well, maybe some Unfinished Business. I'd like to pass around the plaque for Mr. Poss just so everybody gets a chance to see it. In recent years, we've begun a tradition of giving members of the Board...

Mrs. Musante: Excuse me, Mr. Chair, can we stop just a second? You all are free to go. What will happen is you'll get a letter in the mail from me in the next couple of days that'll explain the next process. Okay?

Mr. Eagan: Thank you ma'am.

Mrs. Musante: You're welcome.

UNFINISHED BUSINESS

Dr. Larson: Thank you. Within the last couple of years we've started a process of giving members of the Board that leave the Board a plaque showing our appreciation for their service to the County, and this is Mr. Poss's. Zoning Administrator's Report?

ZONING ADMINISTRATOR'S REPORT

Mrs. Blackburn: I actually have a report today.

Dr. Larson: Please.

Mrs. Blackburn: We're in the process of working on the budget coming up. And, as you as are I think well aware, there were some changes to the Virginia State Code concerning ex parte communications concerning appeals and variances that come before this Board. We have received... we've asked for guidance; we've received several things from various sources. The majority of the responses is that we cannot talk to you -- we are not legal staff -- when it comes to a case. We can talk about meeting dates, we can talk about various things like that. But that has been the majority response. I would suggest that you ask your legal counsel for his interpretation of that law so it's if he's your counsel, he will guide you. We've gotten it from different seminars and things we've gone to because it's been an issue. It's something everyone is talking about in the zoning world. And on the same note, because of this new law, it may be wise for the Chairman to maybe have a discussion with the Board members as you did before, talking about getting funding for legal services, and maybe revisiting the amount of that. Because you may end up having to rely on your legal counsel more than you have in the past.

Dr. Larson: I have a couple of questions.

Mrs. Blackburn: Okay.

Dr. Larson: First, the ex parte communications clearly apply to variances.

Mrs. Blackburn: Yes.

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Dr. Larson: Clearly does not apply to special exceptions.

Mrs. Blackburn: Exactly.

Dr. Larson: What about appeals?

Mrs. Blackburn: We have been informed, as I said to various sources, appeals are with the variances (inaudible)...

Dr. Larson: Okay, ex parte applies.

Mrs. Blackburn: ... truly legal... it's a legal action and it is a subject to law. Special exceptions are more, are they working it out well to be able to have that use there. It's more of a design application than it is did you need the letter of the law. And I think that's why they've exempted them from that.

Dr. Larson: Yes. I don't have my notes and I don't recall the quotes, but when I asked Andrew at the meeting that we had about this, and what about Melody in particular, and I'm pretty sure his response was she was okay, that she could talk with us.

Mrs. Blackburn: Well, that's actually changed.

Dr. Larson: Has it changed or somebody... I mean, has Andrew changed his mind?

Mrs. Musante: I have actually not discussed this with Andrew since that meeting. We have been in conversation with our own County Attorney. And back when he gave the presentation, everything was new so a lot of this language is coming about now because they've had some time to...

Mrs. Blackburn: Really chat about it.

Mrs. Musante: ... work on it, yeah.

Mrs. Blackburn: So that's why I suggest that you maybe put the question to your attorney, and then you can use that.

Dr. Larson: So, I'm just trying to understand if... so you're saying if we have a question on an upcoming case, that we can't ask Melody the question?

Mrs. Blackburn: No, you cannot. If you look at it, people have said... I mean, this has been discussed in the APA Conferences, this has been discussed a lot of places. And that's why I suggest consulting your attorney. They've equated it with a judge. You all are the judges. A judge does not have a conversation with staff unless they are another attorney about a case. Whenever they talk about a case, they have both people present. And so that was kind of the scenario that has been discussed.

Dr. Larson: Of course, in that case, those people are legal professionals and none of us are.

Mrs. Blackburn: I know! But you are a quasi-judicial Board. So, that's just my report.

Ms. Brown: But this is from our County... your County... Stafford County Attorney? This is not from other attorneys, this is from the Stafford County Attorney.

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Mrs. Blackburn: Well, our County Attorney originally said if you email something, email it to everybody. They came back from an APA Conference; the planners went to the APA Conference. It was no, you can't talk to anybody; they can only talk to attorneys. And we had something going on... was it another thing with VAZO?

Mrs. Musante: (Inaudible - microphone not on).

Mrs. Blackburn: Yes, and he said you can't talk to anybody. So, like I said, we're getting different stuff. And the majority of it is we can't... you can't talk to us. So, just to settle everything for you all, that's why I suggested that you maybe contact your own attorney who will do it in your best interests and he is your legal counsel. And then you can take whatever he says.

Dr. Larson: So, pretty much my question to him is going to be to what extent can we use the County staff.

Mrs. Blackburn: For these, yes.

Dr. Larson: For those two instances.

Mrs. Blackburn: Yes, yes. That you can discuss the case with us. We can put staff reports together and things like that. And we can talk to the clients; we can talk to the applicants. But we are only asking questions, you know, submit this to complete a case. We have no decision-making ability whatsoever.

Mr. Kim: So we can't even ask you how has the County decided (inaudible - microphone not on)?

Mrs. Blackburn: Those kind of things is what I think should be in the question to him, and then again, maybe revisiting the dollar amounts that have been allocated for this. Because you may be needing to rely on him more on some of these things.

Dr. Larson: What about questions of law? Or... for example, in the past, Steven Apicella has been pretty famous for this but he'll come up with a lot of questions about what does the code say about this, what does the code say about that.

Mrs. Blackburn: I would also ask the attorney that. I would hope that unless he is specifically asking about stuff about this case, that a general question of what does it say in Section blah blah blah blah would be permissible. But I would ask that just to make sure, because I know you all don't want to do anything that would later jeopardize the decision one way or another. That's not what you guys do.

Ms. Brown: I have a question. I was down in my trading class right when this law changed, and it was new and Greg Campter was there and Andrew. It was all about the variance. Nothing about the appeal. So, I'm clear on the fact that I can't go out to a site if I wanted to look at what they want the variance on unless I'm going with you all. Where does it say that on the appeal? Like, if I needed to go out and look at the chickens. I actually didn't because I just wanted to find my way back in time for seven o'clock. But where does it say that I can't go out and do that? So I can no longer go out and view...

Mrs. Blackburn: Yeah, I don't...

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Ms. Brown: ... like the junkyard last week. I mean, I went out and viewed that because I emailed one of you.

Dr. Larson: I think you can view it, you just can't talk to them. Nothing. You can't say anything as far as I know.

Ms. Brown: And if somebody like sees me, because sometimes you have to see things in the back yard. Like the chickens. I wouldn't have been able to see those from the road so I would have had to knock on the door to do that. I don't see anything in the information I got with the new laws that talked about the appeals. It was strictly about the variances. So I just wondered why they were determining that appeals were lumped in with this.

Mrs. Blackburn: Because they're not special exceptions I think is where that's coming from.

Ms. Brown: But I didn't see it mentioned specifically in the law.

Mrs. Blackburn: Yeah, so...

Ms. Brown: So, I mean, yeah...

Mrs. Blackburn: Like I said, that's another thing and it may be that they're just trying to be safe. I don't know.

Ms. Brown: Okay.

Mr. Kim: Can I make a procedural suggestion if that's okay?

Dr. Larson: Go ahead.

Mr. Kim: I don't know who we want to designate to... I think if we had seven members, two alternates, that had open reign to an attorney that charges us, it might get a little costly. Can we have one designated, maybe Chairman or somebody, that specifically only deals with the attorney?

Dr. Larson: Yeah, I think we...

Mr. Kim: Did we discuss that?

Dr. Larson: We already made that deal among the Board that I was... that questions would be funneled through me

Mr. Kim: So you would only... okay, great.

Dr. Larson: I'm the only one that asks, directly asks the... or tasks the attorney with a question I guess is the right way to say it. The one thing I want to clarify, too, for the Board is that if we have a discussion about a case, we have to have the discussion in an open forum. We can't have a one-on-one and talk about a case, if it deals with a variance or an appeal. If we have information that we have on a case that we're going to consider, then I suggest that we email that to the rest of the Board and the applicant, or give it to them during the hearing. And that's for, again, I think it's sort of required for variances and appeals. I just suggest that we do that for special exceptions, too; maybe there's not as

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strict a guideline on that, but I think in fairness to the applicant, if there's something we're going to consider that impacts their case, they should also understand what we're considering that might impact our decision so they can address that if they have the opportunity.

Ms. Brown: I've got a suggestion.

Dr. Larson: Go ahead.

Ms. Brown: I understand, agree we're going to funnel all our legal requests through the Chairman. However, since we have to pay by the hour, I would be interested, especially on this variance issue and the appeal and the talking to staff part, could we pay him for, or whoever we have, for an hour to come speak with us just on that one issue? I don't mean on every issue but because this is such a gray area, we're getting such different legal advice and opinions I'd...

Dr. Larson: I think we could do that if we had a meeting like this where we had apparently some time after the meeting.

Ms. Brown: I'd be willing to limit it just strictly to that, you know, whether we could talk to staff on appeals. And if you wanted to throw in special exceptions, that's fine.

Dr. Larson: I wouldn't be against that if the members of the Board would like to have that as well. That would be fine. So it'd be sort of a... his opinion that we could then ask him questions and interface with him while he's explaining that. The only proviso is we really should limit that.

Ms. Brown: Yeah; thirty minutes or I don't know, whatever you think (inaudible).

Dr. Larson: Well, and his transportation actually counts too.

Ms. Brown: Are they local?

Dr. Larson: Ah... where?

Mrs. Musante: Woodbridge.

Dr. Larson: Okay, so it's not bad; if it's not rush hour it's not bad. So I wouldn't be against that. Just a quick question: the County has already put in a request for next year for us for the same amount as it has been before. And Susan, I appreciate your suggestion that if, especially if this is going to be difficult, that we may need to have more for just small things that we thought we could ask you guys. So I appreciate that.

Mr. Grimes: Do we have a report on how much of that budget we spent?

Mrs. Musante: I don't have the exact numbers with me but we still have between \$10 and \$13,000 left because we had an overage from the year before.

Mr. Grimes: Okay, so they rolled our overage over.

Mrs. Musante: Mm-hmm.

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Mr. Kim: Oh, I didn't know they carried it over.

Ms. Brown: I didn't know they did that too.

Dr. Larson: Well, once... there is an accounting thing that they do...

Mrs. Musante: Yes.

Dr. Larson: ... that allows us to do that. No, it's perfectly legal. So, yeah, so I think this will be the third year that we've done it, so we've actually spent \$17,000 in the past on our legal support. So, it's working... it seems to work at this level if we don't need a higher level of support. So, again, I will ask the attorney about that and I'll ask him if he could...

Mr. Grimes: Well, my next question to follow-up on that would be if we've already applied for the funds for next year, do we have a vehicle to change that request amount? What is our deadline?

Mrs. Musante: Now.

Mr. Grimes: That's what I was worried about.

Dr. Larson: Alright, so I will get in touch with the attorney as soon as possible and get his response as soon as I can. We may have to have our Board interaction with him at a later date. And what I would suggest then is looking for a time when maybe we only have one case. Or maybe even no cases, without calling a special meeting and doing this.

Mrs. Musante: We have two for November.

Dr. Larson: Right, okay.

Mr. Grimes: Including the deferred case?

Mrs. Musante: Yes, that includes the deferred case.

Dr. Larson: And we don't historically meet in December.

Mrs. Musante: No, and we need to vote on that tonight as well, to cancel the December meeting. Something else too; I'm switching gears a little bit here. With the meeting being the week of Thanksgiving, we do have the option of changing the meeting date. With that being said, we do not have enough time to get the ad prepared to do it the week before, but we can do it the week after. So it would be the first week of December, and we have December the 2nd and the 3rd -- if you want to change the date. I don't know who plans on being here and who's not; I have not gotten any feedback from any of the members yet.

Dr. Larson: I'd rather not change that. In my experience, people were expecting certain things and certain times and it's like a big aircraft carrier and it's really hard to turn and I'd rather not change it. In fact, part of our By-laws, the section I just read tonight, is based on the fourth Tuesday of the month. So, that would be in error then. I personally would not like to change the date.

Mrs. Musante: You, as the Chairman, have the right to change the meeting date.

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Ms. Brown: I would be concerned on not having quorum. I'll be here... if we have a meeting, I'll be here. But I don't know... I'd hate to schedule all this and then we find out the day before.

Dr. Larson: Well, let's do this. If... but it's a Tuesday and Thursday is Thanksgiving, right?

Ms. Brown: Yes.

Mrs. Musante: Yes.

Dr. Larson: Well, maybe we could... could you... I think I can ask you this. Could you poll the Board and see who will be in the area and available for the next meeting if it is held on the fourth Tuesday?

Mrs. Musante: Yes.

Dr. Larson: Let's just... let's just play it that way and see what we have, okay?

Mr. Kim: Didn't we already vote not to have a December meeting?

Mrs. Musante: I don't think we did. We normally do it the October meeting. It states in the By-laws that we... you can have a meeting or can't. So, normally the October meeting is when we vote to whatever you want to do.

Dr. Larson: Is there a motion on the December meeting?

Mr. Grimes: I would move that we skip the December meeting.

Mr. Kim: I second that.

Dr. Larson: Is there any discussion on the motion?

Ms. Brown: Yes. Do we want to wait and see if we need to move our November meeting to December 2nd?

Dr. Larson: I think they're talking about the fourth Tuesday meeting...

Mr. Kim: Yeah, not the November meeting.

Ms. Brown: Right, but if you say we're not going to have any meetings in December.

Dr. Larson: Maybe you should specify a little more on what your motion is. What do you intend to say with your motion?

Mr. Grimes: I'll clarify my motion to cancel the meeting that would occur on the fourth Tuesday of December.

Mr. Kim: I second that.

Dr. Larson: Is there any discussion on the motion? Those in favor say aye.

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Mr. Ingalls: Aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Ms. Brown: Aye.

Dr. Larson: Aye. Opposed? Okay, that motion passes. Thank you for that Zoning Administrator's Report by the way. We have minutes to look at. Does anybody have any...?

ADOPTION OF MINUTES

September 22, 2015

Mr. Grimes: I have a few.

Dr. Larson: You have the floor.

Mr. Grimes: I'd say the biggest one that, I'm not sure what happened, but on page 62 of 65, we held a vote and Mr. Larson noted on 3022, those in favor raise your hand; those opposed; okay, motion passes 5-2. I don't see the vote recorded anywhere in those minutes. Normally we have Mr. Grimes says yay or nay and... because I was actually trying to remember where we landed on that particular case. And then on 1484...

Mrs. Musante: What was the line?

Mr. Grimes: 1484. The site plan itself also defines, and there's a word on there; I don't think that's there. Defines the building type itself. Yes, the word "on" after "defines", I don't think it's there. And I know this is a little one, but on 1684, where it says "apartments in addition to" and I believe it's supposed to be "retail" not "retails". Although I could have said retails; and if I did, you can leave it. That was all the changes I had.

Dr. Larson: I have a couple. The first one is on line 2303 where I say "I lust to read". I do like to read, but I think I said "just" read.

Mr. Grimes: Let's go to the tape.

Mr. Kim: Yeah, I want to hear this one.

Dr. Larson: Well, I think j and l are close together on the typewriter. I do like to read, I'll admit that. And then on line 2831, I had just asked a question, I'm having a dialogue with Mr. Leming and I think 2831 was Mr. Leming's response. Could you check that please? Those are the only two I found.

Mrs. Musante: Mr. Chairman, I have a list from Steven. Do you want me to read them or just incorporate them into the minutes? And I do think, with the changes, since the vote wasn't on the minutes we should not vote on them tonight. Let us go back and make the changes and bring them back to you at the next meeting.

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Dr. Larson: Okay.

Mr. Grimes: That would be wonderful.

Mrs. Musante: Now, with Steven's, do you want me to read them or just... can we just state that we'll incorporate them into the...?

Dr. Larson: Are they grammatical [grammatical] or are they substantial?

Mrs. Musante: A little bit of both.

Dr. Larson: How about if you use some discretion and just read the ones you think are substantial.

Mrs. Musante: Okay; 257 should say "Long and Lane" instead of "Longley".

Dr. Larson: Sorry, where was that?

Mrs. Musante: 257. Should say "Long and Lane" instead of "Longley".

Dr. Larson: Okay.

Mrs. Musante: 258 should say "Goyanaga" instead of "Goya Naga".

Dr. Larson: Okay.

Mrs. Musante: 259 should say "Greengael", spelled g-a-e-l instead of "Greengale", spelled g-a-l-e.

Dr. Larson: Okay.

Mrs. Musante: 510 is "parameter" instead of "perimeter". 624 is "involved" instead of "evolved". 1389 is "notification" instead of "notation".

Dr. Larson: Could I get you to slow down a second? The 600 level, what one was that?

Mrs. Musante: 624. Should be "involved" instead of "evolved".

Dr. Larson: Okay.

Mrs. Musante: 1389 should say "notification" instead of "notation".

Dr. Larson: Okay.

Mrs. Musante: Lines 293 and 294, we have the same sentence in there twice.

Dr. Larson: So you're going backwards? 293?

Mrs. Musante: I'm sorry, 2093 and 2094.

Dr. Larson: Okay.

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Mrs. Musante: 2946, take out the “09r”.

Ms. Brown: You said 2946?

Mrs. Musante: 2946.

Dr. Larson: Any idea what that should have been?

Mrs. Musante: No. It’s a typo on our part.

Ms. Brown: Probably just “or”.

Dr. Larson: Yeah, I bet she’s right. It’s probably “or”.

Mrs. Musante: 2953, the inaudible word is “contrivance”.

Dr. Larson: Okay. Contraband.

Mrs. Musante: Contrivance is what he told me.

Dr. Larson: Oh, contravint.

Mrs. Musante: No, he spelled it. Contrivance -- c-o-n-t-r-i-v-a-n-c-e, contrivance.

Dr. Larson: What is that?

Mrs. Musante: That’s exactly what he said. I may be pronouncing it wrong, but he spelled it for me. Because this was on the phone, this wasn’t by an email.

Dr. Larson: Oh, he might mean like in contravention or something like that; that may be the word he’s after. Although I’m not sure that’s a word either.

Mrs. Musante: Contrivance and he spelled it.

Mr. Kim: C-o-n-t-r-i-v-a-n-i-c...?

Mrs. Musante: C-o-n-t-r-i-v-a-n-c-e.

Mr. Kim: A thing that is created skillfully and inventively to serve a particular purpose.

Dr. Larson: That could be what he means. Is that what is in...?

Ms. Brown: What’s the pronunciation?

Mrs. Musante: Contrivance. Sounds good to me.

Mr. Kim: That must have been his word of the day.

Dr. Larson: What’s the next one? Any other comments or questions on the minutes?

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Ms. Brown: We can vote on this next time.

Mr. Ingalls: I have one change.

Dr. Larson: Did somebody say they had a change?

Mr. Ingalls: Yes.

Mrs. Musante: Okay.

Mr. Ingalls: I'm absent.

Mrs. Musante: Do we not... we don't have you absent, do we? Okay.

Dr. Larson: You don't appear anywhere. Okay, is there any other business? Hearing none, do I hear a motion to adjourn?

OTHER BUSINESS

None

Mr. Ingalls: So moved.

Mr. Grimes: Second.

Ms. Brown: Second.

Mr. Kim: Second.

Dr. Larson: Those in favor say aye.

Mr. Ingalls: Aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Ms. Brown: Aye.

Dr. Larson: Aye. Opposed?

With no further business to discuss, the meeting adjourned at 8:37 p.m.