

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
November 24, 2015

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, November 24, 2015, was called to order with the determination of a quorum at 7:01 p.m. by Chairman Dean Larson in the Board of Supervisors Chambers of the George L. Gordon, Jr., Government Center.

MEMBERS PRESENT: Dean Larson, Larry Ingalls, Robert Grimes, Danny Kim, Ernest Ackermann, Ray Davis, Dana Brown, and Heather Stefl

MEMBERS ABSENT: Steven Apicella

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. Note tonight that we have the seven regular members seated at the Board; we have all the way to my left Dr. Ernest Ackermann, then Mr. Larry Ingalls and Mr. Danny Kim. I am Dean Larson. This is Mr. Robert Grimes, Mr. Ray Davis and Ms. Dana Brown. Mrs. Heather Stefl is an alternate seated at the dais and she will be non-voting and non-participating in the proceedings'. The county is represented tonight by our Zoning Administrator, Mrs. Susan Blackburn. Mrs. Melody Musante, our Zoning Manager and ah, let's see, Ms. Denise Knighting, our Administrative Manager, sorry I got a little lost there. Okay, the hearings will be conducted in the following order, the Chair will ask the staff to read the case and the members of the Board may ask questions of the staff. The Chair shall then ask the applicant or their representative to come forward and state their name and address, and present their case to the Board. The presentation shall not exceed 10 minutes unless additional time is granted by the Board. Members of the Board may ask questions of the applicant to clarify or better understand the case. The Chair will then ask for any member of the public who wishes to speak in "support" of the application to come forward and speak. There shall be a 3-minute limit for each individual speaker, and a 5-minute 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 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 public and/or Staff may also submit relevant material during the hearing. The applicant

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should be aware that we have 7 members voting, and you must have 4 affirmative votes in order to approve the application. The applicant may 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 exception which is substantially the same request, for least one year from the date of our decision. I now ask that anyone who has a cell phone, pager or other electronic device please silence it. It is the custom of the Board to require that any person who wishes to speak before this Board shall be administered an oath. Therefore, I ask that anyone who wishes to speak tonight stand and raise your right hand. Do you hereby swear or affirm that all testimony before this Board shall be nothing but the truth?

Response from audience members: Yes, I swear

Dr. Larson: Thank you, and be seated. The Chair asks that when you come down to the podium to speak, please first give your name and address clearly into the microphone so that our recording secretary can have an accurate record of the speakers. I should also note that you need to always speak into the microphone so that we can get properly for the minutes. Also, please sign the form at the back on the table, if you speak, at the rear of the room. Thank You. Are there any changes or additions to the advertised agenda?

Mrs. Musante: There are, case number 2, SE15-07/15150954, applicant Carol Elkins has withdrawn her application.

Dr. Larson: Thank you. Any others? Before we hear the first case, does any member of the Board wish to make any declaration or statement concerning any cases to be heard before this Board tonight? Dana?

DECLARATIONS OF DISQUALIFICATION

Ms. Brown: Yes, I just wanted to state that I did visit the property at 54 Stafford Indian Lane today. I also went to 270 Telegraph Road. I did not go in or speak to anyone. And I also just wanted to point out that Mr. Leming's wife is my School Board representative, but this does not affect my ability to be impartial. Thank you.

Dr. Larson: Thank you. Any others?

Mr. Ingalls: Mr. Chairman, I visited the site for the first case A15-06/15150922. I did not speak to anybody and I just viewed the site.

Dr. Larson: Thank you. Any others? Hearing none, I will now 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 - 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. You have the Application and the Owner's Consent Form a copy of Violation Notice dated June 25, 2015, a copy of the Accessory Dwelling Affidavit dated November 16, 2010 and a Zillow listing. The applicant is appealing a Notice of Violation dated June 25, 2015 regarding Section 28-35, Table 3.1 "District Uses and Standards," for a use not permitted (duplex) on Tax Map Parcel No. 45-293. After investigating a complaint, a notice of violation was issued to the owner of Tax Map Parcel No. 45-293 located at 54 Stafford Indians Lane for converting a single-family dwelling into a duplex. The property owner has exercised the right to appeal the notice of violation and has submitted justification of the appeal. The applicant has submitted background information that states the property was purchased in 2007. At that time, the first floor of the structure consisted of two separate living units. Each unit was and continues to be accessed by a separate entry. Staff cannot verify if the separate living units were legally permitted by the County. The applicant states there was significant fire damage to the home in 2010. A building permit was applied for on October 28, 2010, to repair fire damage to the electrical system, drywall, ceiling, walls, wall repair, and window frame. The applicant states repairs were only to the larger dwelling unit, which measures about 1,800 square feet. The smaller unit did not require any repairs. The original zoning review was waived because it was interior renovations caused by fire damage. The plan reviewer notified zoning on November 9, 2010, of an apartment shown on the plans. On that same date, zoning contacted the applicant to request an accessory dwelling affidavit. An accessory dwelling affidavit is an ancillary dwelling unit limited to such uses as family member apartment, guest house, for occasional visits by family or friends, or maid's quarters and shall conform to the following: (a) An accessory dwelling shall not exceed twenty-five percent of the total gross floor area of the principal dwelling unit; (b) no more than one accessory dwelling per lot; (c) when the accessory dwelling is located in the principal dwelling, the entry to the unit and its design shall be such that the appearance of the building shall remain a one family residence; and (d) an accessory dwelling shall have the same address as the principal dwelling. The applicant agreed to submit the form which showed an apartment with 256 square feet which meets the 25 percent accessory dwelling requirement. The affidavit was signed by the owner and notarized on November 6, 2010, which was prior to the building plan review approval. By the applicant signing the affidavit stating only one accessory dwelling unit existed in the structure, compliance with the Zoning Ordinance was met and zoning approved the permit on November 17, 2010. The applicant states the residential building plan reviewer requested a change in the building plans on November 5, 2010, requiring the two dwelling units on the first floor to be separated by a one-hour fire wall. This is a building code requirement, not a zoning requirement and does not approve the use. The reviewer also stated "contact zoning department about the apartment dwelling" which was done. The applicant states he relied on the County's determination and expended at least \$6,000 for the design, repair, and additional fees for the firewall for this structure, based on the County reviewer's comments, again a building code requirement, not a zoning requirement. He stated based on the affirmative County approval and determination combined with the applicant's reliance on this approval and material change of position, the County cannot serve a notice of violation based on the two dwellings. Again, the zoning reviewer approved the zoning review after the accessory dwelling affidavit was submitted and approved. Staff found a listing on Zillow that states: "Investor's property, was a single family home converted into 3 units in 2010, 2 two bedrooms and 1 bath and 1 studio." This confirms the applicant's intent to use this property for other than what the Zoning Ordinance allows, which is a single-family dwelling with one accessory dwelling unit. Staff is unaware of how three units were created. In conclusion, the applicant states approval of the final building inspection on April 11, 2011, authorizes the continued use of this structure as two separate apartments. The building inspection approves the construction of the structure, not the use within the structure. The zoning approval relied on the signed affidavit stating only one accessory dwelling was located within the structure, not two. Therefore, based on the information provided, staff feels the notice of violation was issued correctly.

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Dr. Larson: Thank you. Any questions for staff? Dana.

Ms. Brown: I have a couple of questions. The pictures that were provided in our report, when were those taken? There was four pictures, do we know when those were taken? Page 4.

Mrs. Musante: It looks like it was October the 23, 2015, but I can't verify that without going upstairs and looking at the larger photos.

Ms. Brown: Okay, okay you know what, I did not see that until just now. Okay thank you. And then, I was very confused when I looked this up on the records. What is the total finished square footage of this property? I had read several ads on the web it was 1170, somewhere it was 1800 something.

Mrs. Musante: We don't have a copy of the Commissioner of Revenue's records with us.

Ms. Brown: That is this right here? That?

Mrs. Musante: That is it.

Ms. Brown: So what does it say on here, the square footage? Do we know? Mr. Chairman, they are going to get that for me.

Dr. Larson: Okay.

Ms. Brown: So that was all I have for now until they get that.

Dr. Larson: Thank you. I have a question for staff. In the background, paragraph 3 it says the property was purchased in 2007 and at that time the first floor structure consisted of two separate living units. Was that in accordance with the Zoning Ordinance back then?

Mrs. Musante: It was not. That information was actually submitted by the applicant. We cannot verify that these apartments were ever legally done prior to the accessory affidavit that was signed in 2010.

Dr. Larson: So in 2007, was an accessory dwelling okay?

Mrs. Musante: They were permitted, yes.

Dr. Larson: But not the duplex.

Mrs. Musante: Correct.

Dr. Larson: Thank you. Any other questions for staff?

Mr. Ingalls: I have a couple. Do we know when this was constructed? Do the county records indicate when this building first showed up on the tax records?

Mrs. Musante: The house was constructed in 1971 as a modular, according to the land records... land cards.

Mr. Ingalls: 1971?

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Mrs. Musante: Yes.

Mr. Ingalls: As a modular home?

Mrs. Musante: Correct.

Mr. Ingalls: Okay, and zoning took affect when?

Mrs. Musante: 1964.

Mr. Ingalls: 1964, okay. Have duplexes ever been allowed in the A-1 zone to your knowledge?

Mrs. Musante: Not to my knowledge.

Mr. Ingalls: We talk about it as a duplex, but it appears there are three units there. One in the lower floor and two on the upper floor, am I...

Mrs. Musante: That is correct.

Mr. Ingalls: Why do we keep talking about a duplex? It seems to me it is a three unit apartment building. It is kind of semantics but to me it is not a duplex, but anyway.

Mrs. Musante: The original notice was written as a duplex.

Mr. Ingalls: Right, I read the violation.

Mrs. Musante: Correct.

Mr. Ingalls: But it appears it's more a three unit apartment building.

Mrs. Blackburn: Mr. Ingalls, if I may, an accessory dwelling is as by definition for a family member or a caretaker, which is not considered like a separate, out in the world, open to the general public unit. So it's a single family home with an accessory unit and then this other unit that is not accounted for in any way shape or form.

Mr. Ingalls: I can have what could look like an apartment, but as long as the use of it is one of these accessory dwellings for family and friends or maids or whatever, I would be okay.

Mrs. Blackburn: We would not consider that a duplex.

Mr. Ingalls: Right. Can I rent a room to somebody in a R-1, Residential, can I have a... since it is just me and my wife now and I have a spare bedroom, can I rent a room to somebody.

Mrs. Musante: As long as it is not a separate living unit and you meet the definition of family in our Zoning Ordinance.

Mr. Ingalls: I mean can I rent it to a non-family member? Can I rent a room to a non-family member?

Mrs. Musante: That use if not specifically listed in our Zoning Ordinance.

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Mr. Ingalls: Okay. So if my basement may have a kitchen, bath, bedroom area I could rent to someone if I wanted to, maybe.

Mrs. Musante: No.

Mr. Ingalls: Oh, no.

Mrs. Musante: Because you just stated what an accessory dwelling was. You have a separate living unit.

Mr. Ingalls: So I cannot rent if... okay. That is all I have right now Mr. Chairman.

Dr. Larson: I just want to point out that the violation was... that the code does not permit duplexes. So the violation was for duplexes. So we are considering an appeal to the violations, so we will need to restrict ourselves to the violation.

Mr. Grimes: I have a question for staff.

Dr. Larson: Go ahead.

Mr. Grimes: One of the paragraphs notes that the building plan reviewer required a change to the plans to add a firewall. If this was an accessory dwelling, it would not require that firewall, correct?

Mrs. Musante: We cannot answer that. That is a building code question, so I am not sure.

Mr. Grimes: Okay, thanks.

Dr. Larson: Other questions for staff?

Mrs. Musante: Mr. Chairman, I have Ms. Brown's information she requested.

Dr. Larson: Please.

Mrs. Musante: The gross floor area of the entire structure, first and second is 2,314 square feet. 1,742 of that is finished according to the Commissioner of Revenue's records.

Dr. Larson: Say the first number again please, the total area.

Mrs. Musante: Hang on.

Ms. Brown: I think it was 2,314.

Dr. Larson: Thank you.

Mrs. Musante: 2,314, yes.

Dr. Larson: Thank you. Any other questions for staff?

Ms. Brown: Just one.

Dr. Larson: Go ahead.

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Ms. Brown: The finished square footage, the 1,742, that is what the county considers finished?

Mrs. Musante: Correct.

Ms. Brown: Looking at the Commissioner of Rev... does that count like a basement, a finished basement or what is... When I look at my tax records, I have a finished basement, it is delineated separately. I don't see that delineated separately on this property's tax records. It just says it is a rambler, one story, one bathroom. That is what is on the tax records.

Mrs. Musante: The first floor gross is 1,170, finished is 1,170. The basement gross is 1,144 with 572 finished according to the tax records.

Ms. Brown: Okay, thanks.

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

Mr. Leming: Give me just a minute to get set up here please, Mr. Chairman. You have, in your packages, you have a small version of what I'm going to offer to you, Mr. Chairman. All we've done is to enlarge it. It shows the plans, the first plan that was submitted, the plan that was approved. So I'd ask permission to distribute this. We're going to talk about it and I think this is going to be a whole lot easier to read than what you have in the package.

Dr. Larson: That's fine.

Mrs. Musante: How many do you have?

Mr. Leming: There should be enough for everyone.

Mrs. Musante: Is there one for me to keep for the record?

Mr. Leming: Maybe, I don't know. How many did you make?

Mr. Buksa: Eight.

Mr. Leming: Okay, no there is not. But we will see that you get one. Mr. Chairman, also to facilitate your review there is another document within your package, this is an inspection report that is dated March the 14th. I haven't started my presentation yet. I'm just getting organized too. Alright, what we did was to try to clarify that, I think that you can verify that it is the same, but this one you can actually read. So if I may, Mr. Chairman, I would like to hand these out as well.

Dr. Larson: Go ahead.

Mr. Leming: Because we will be discussing these and then (inaudible, not talking into microphone) actually decipher what's on them. Now, alright, now I think I'm ready, Mr. Chairman, if I can find my notes here. Okay, ready. I thought it might be helpful to tidy up some of the issues that have been raised here very quickly. To Mr. Grimes' question, what we did was to go to the Stafford Building Code Official, Ms. Cary Jamison, and the very question that was asked, we posed to her, and this is, and I have copies of her response here, what we asked her was to confirm that under the 2006 Virginia Construction Code, because that would have been the one in effect in 2010 when all of this occurred, please confirm

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firewalls are required between 2-family units, parenthetical duplexes, what the violation about. Firewalls are not required to separate living quarters with a separate kitchen, housing family members or extended family member within a single family detached home accessory unit. The response, this is a correct statement as per the 2006 Virginia uniform statewide building code and as all future adopted codes still state. So, firewalls not required for an accessory. And Mr. Chairman, I'd request permission to provide the Board with this email from Ms. Jamison.

Dr. Larson: Go ahead.

Mr. Leming: Now, Mr. Chairman, the other thing that I've prepared here, and I'll be happy to share this also. We thought because this all occurred some years ago and there were a number of critical dates that a timeline would be helpful, I'm going to walk the Board through the timeline, because I think it's pretty critical to what happened here and has already been raised by staff in several contexts, see if you can find that for me. Now I also thought it would be helpful to make some concessions right up front. There is no question that you can't have duplexes in an A-1 zoning district. Maybe I stated that as a double negative. You can't have them. It's not a permitted use in an A-1 zoning district. It is also uncontested that firewalls per Ms. Jamison's statement are not required to separate living quarters, except for kitchen, housing family members or extended family members within a single family home. You don't need a firewall. It is uncontested that the building department, the building department within Stafford County that reports to the same Deputy County Administrator that the Zoning Department reports to, that the Building Department required the applicant to construct firewalls and to install other fire suppressant, or retardant items, even long after the plans were approved. The plan that was approved, the building permit was issued pursuant to a plan that clearly showed apartment and the firewalls that were to be constructed. It was revised to that effect and it was revised pursuant to the request from the building department. It is also uncontested that Mr. Buksh, did I pronounce that close, that Mr. Buksh signed an affidavit indicating that he knew it was an accessory dwelling, and I'm going to let him come up here at the appropriate time and talk to you about that, and testify about that, and what happened and what led to his phone call and what he understood as a result of that. It is uncontested that the zoning department knew about the firewalls and the zoning department knew, because it's on a Hansen report that the building department was requiring them because there were separate dwelling units on the first floor. That's exactly what the Hansen report shows... says. It is also uncontested that the building official, the inspector who sent them to the zoning department understood that there was an affidavit that was going to be signed about an accessory building. And yet he proceeded to require the firewalls and the plan was approved with the firewalls. The applicant here spent at least \$6,000 on materials alone, not to mention the labor, constructing these firewalls that according to the zoning department was not necessary, but according to the building department was necessary. Now, a little bit in the way of background here, Mr. Buksh purchased the apartment, the apartments, the duplex, the house in 2007 and it was set up in 2007 exactly as it was set up right now. Duplex, apartments, single-family detached dwelling, whatever it was, he lived on the first floor in the larger portion on the first floor with his family. In fact, you said your daughter was born there?

Mr. Buksh: Yes Sir.

Mr. Leming: The other portions of the whatever this was, were rented out. That's how he came into the property. That's what his understanding the property was used for. The fire occurred in 2010. The county came out to inspect and determine the scope of the work. That was in the summer of 2010. In October of 2010, specifically on October 28th, the applicant submitted his application for a building permit, including architectural plans. The Hansen report indicates that the case file was opened on November the 5th. On November the 10th there was a telephone call by Mr. Buksh to the building inspector, to the plan reviewer with the building department because he hadn't heard anything and he was

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informed at that time that he was going to, by plan reviewer Richard Gum, who apparently no longer works for the County, that the firewalls were going to need to be installed between the two units on the first floor because they were two separate living units, two separate dwelling units on the Hansen report, and at that time the plan reviewer asked that the plan would be revised to show these additions, these firewalls. Now there was a second recall... a second call to the plan reviewer in the building department on November the 12th, 2010 and that was a status. What's happening? Have you... are we set to go? And at that point the plan reviewer in the building department said you need to call the zoning office. The zoning technician indicated to Mr. Buksh that, the applicant, that he was required to sign and submit an affidavit about the use of one of the units as an accessory unit. So he went to the County and picked up the form. He read the form. He didn't understand the form. And as I said, I'm going to let him talk to you about that. So he called the zoning department back to find out why this was necessary. And I'm going to let you... let him tell you, after I'm finished here in a moment, about that conversation. On November the 17th the affidavit was signed the revised plans were submitted, November 17, 2010. On November 24th a building permit was issued with the revised plans, based on revised plans, and showing the firewalls. And construction began on December the 1st. On March the 14th and the handwritten document that I gave to you is, this one, is actually what was issued as a result of that inspection. And there were some additional things required at that time by the inspector and this is a little hard to read, but there's something about firestops, down at the bottom, the last item that is listed, firestops necessary because they're separate dwelling units and also kick plates. I have no idea what a kick plate is, but my understanding is also, that's something necessary because of the fire issue. And those were installed, those had to be done at that point, this as late as March the 14th, 2011. And there were two more inspections and on April the 11th the building inspector issued a final approval and an OP was issued at that time. Now that's the chronology, if it's helpful to any of you, I did actually type that up, so if it's helpful in working through that I'm happy to provide that to you. There was a mention about an advertisement. This is, as I understand this service, I didn't know anything about it before this, but it's an advertisement that you don't ask, you don't ask these people to do anything, they just go around and pick this stuff up, now where they got 2010 as some sort of starting point for a rental operation here is not clear at all. It was nothing that the owner did. Now the owner since 2010, you know since all of this was done, has moved to Chicago. He's a medical student. He's a medical student studying to be a podiatrist. He has continued to have tenants in his whatever this is in Stafford County over the past four years. The tenants operate in many respects as a single unit. There is one electric meter. He's the one that takes care of that. There is one cable. There is one septic field. There is one well. There is one post office box for this. Now the significance of that I'll get to in just a moment and I'm sorry I see the light flashing, but you know, I can't do anything in 10 minutes, Mr. Chairman, so I ask you to indulge me for a moment while I tell you what I think about all this. What we... what we have here, we have one county department directing that repairs are... certain repairs are necessary, necessary for separate dwelling units. The firewalls, the firestops, the kick plates, even certain framing necessary because of the apartments. We have another county department saying it can only be utilized as an accessory unit and not rented. No firewalls would be required under those circumstances. The building permit was issued based on plans showing the firewalls. That's the last official pronouncement by the county, except perhaps for the OP as to what was approved. What was approved were plans with a apartment, with firewalls. Regardless of what zoning thought they were doing. That's what was approved by the county. What is clear, it seems to me, that you have two departments in the same county, both reviewing the same application as indicated before, both reporting to the same deputy county administrator who make no effort whatsoever to reconcile this difference. Zoning doesn't go back to the building department and say, wait a minute, there can't be two separate units here, you know, there can only be an accessory, you don't need firewalls. Building department doesn't get back to zoning and said, well now that we need the firewalls because it's an accessory unit, they weren't there before. So that's how it ends up, and the plans go forward, the firewalls are built at the owner's expense and here we are now. The... at least what we have is a blatant communication and a rather severe penalty for the owner here. Now the staff over here, in the report,

suggests that, oh well, this is zoning and that's the building code and those are the same thing and we're just here to enforce zoning. I'll tell you why I don't think that is supportable at all. First, some of you may recall that we have a code section in Virginia, I hope you recall it, because we talked about it here before, It's Virginia code section 15.2-2311, and what this is, and I have copies of that if that would be helpful to you in your review, but we're talking about a section here that we call sub-section D, or sub-section C, here we are, and if you don't mind, Mr. Chairman, I will pass copies of this around because it's probably not something that you all have committed to memory although (inaudible, not talking into microphone) couple more hearings and maybe you... maybe you'll have it. This is a code section that's been on the books for quite a long time. It was amended in 1991. The amendment is not relevant to what we're talking about today, but I call your attention to two sections of this. First sub-section A which just deals with appeals to the Board of Zoning Appeals generally, appeal taken by any aggrieved person and it goes on to say, from any order, requirement, decision, or determination made by any other administrative officer in the administration. Any other administrative officer. That means other than the zoning administrator. Zoning administrator is named up front. But I submit to you, and I don't think... I don't think you would disagree. I don't think any court would disagree with me. The building department consists of administrative officers and they have made a determination here. It's not a here's what the zoning ordinance says determination, but it is certainly implicit. And it's written right there on the Hansen report, you have got to have firewalls because you've got an apartment here. You have got a separate dwelling unit. Now if you go down to sub-section C it says in no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer, they are all considered together here, you don't have under this code section zoning and everything else. You have everything else, these are all county officers. And I... and I really think it is disingenuous to submit that well this is our little bailiwick over here, we don't have anything to do with what is over there and too bad. What happened to the government of the people, for the people? You know these are complex applications and processes for land owners to go through. And if you can't even get two departments in one county talking to each other about the same application, what hope does the landowner have? Anyway, C I think you are familiar with. No written... nothing, no written order, requirement, decision, determination made by other administrative officers shall be subject to change, modification or reversal, okay, after sixty days have lapsed from the day of that determination. In my view the determination here is the building permit. That is an official county act. It approves a building plan that shows an apartment and firewalls. There is at least an implicit zoning determination there that this is permitted. Now, the... that's the last pronouncement. Now we have a lot of other stuff going on, like the affidavit preceding that and you will hear from my client in just a minute. In any case the decision stands unless it can be shown that it was obtained through malfeasance, not misfeasance, malfeasance... we may have misfeasance here of the zoning administrator, or through fraud. There is no fraud here, you know everything is above board, everybody knew what was going on. So, that's what the code says. Now there was an interesting question that Mr. Ingalls asked a moment ago about... and this certainly has occurred to me in the context of this case, who can I rent to? You know, it certainly perplexes me that if I have a house and I've got extra room in that house that I can say okay I am going to rent out part of my house, whatever zoning district I live in and hey, guy renting it from me maybe I won't call you an tenant since the zoning ordinance doesn't let me do that. You are going to stay down in that part of the house and use that bathroom and that bedroom and maybe I will give you kitchen privileges. But the... but what is clear, I think, is that there would be no problem having an accessory unit and charging my mother-in-law to live there. She can help pay the rent, I mean surely the county would not tell me I can't do that. So the fam... but there is more to it than that in you... and this did not come out in response to Mr. Ingalls question, but there is a definition of family in the Stafford County Zoning Ordinance. And one of the, there are three, three... five different definitions of family. Number three is a group of no more than four unrelated persons living and cooking together as a single housekeeping unit though not related by blood, marriage, adoption or guardianship provided that the limitation on the number of unrelated persons and then it goes on to talk about something that is not relevant here. Now,

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do these guys... what do we have here right now? We have three persons that are renting portions of this facility, let's call it. Three persons, they are unrelated. There of two of them that work together, they work in the same place, they are both with the Marines, correct? They work in the same unit, they are renting different parts of the same house. Do they do things together? I bet you they do. Do they cook? I don't know but perhaps. There is a student that lives in another portion of the house. Those are the three... those are the three persons here. Now as I indicated, they do share a number of things in common. They... there is one post office box, there is one driveway, there is one electric meter, there is one cable, there is one well, there is one septic field, they all use the same things so, certainly not conventional apartments or duplexes, whatever those are. And there would not be a firewall there if the building department hadn't required that there be one there. But that's what... that's what we have now. So, our... my position is that one way or another that... that we have a determination by the county here. We have approved plans by the county that say apartment. They don't say family apartment, they say apartment and they show the firewall. Now that is the big document that you have in front of you. And just to orient you on what you have, the first page, were the original plans. I mean the first page after you open it up after the general notes and the site description. This was the first plan that was submitted. This is what was turned back. Now the second plan... and my client has illustrated certain things here, this is what shows the detail on the firewall and where it would be installed, I am sorry, I am sorry were you trying to say something Mr. Chairman?

Dr. Larson: You are ten minutes over...

Mr. Leming: I know, I am almost done.

Dr. Larson: ... if you could wind it up in ...

Mr. Leming: Sure.

Dr. Larson: ... about three minutes.

Mr. Leming: I will and I will... really I just wanted you to see the plans. This is what was approved. The second page of the plans that shows adjacent apartment is actually the language used here on the approved. Now I would like for my client to come up just a moment and talk to you about his conversation with the zoning staff. And what his thoughts were on this affidavit that he was... that he was forced to sign... or that he signed. He wasn't forced to sign it, he signed it. But Shazad if you would come up and introduce yourself, he has been sworn in Mr. Chairman and I would ask that he just take a moment and talk to you about what happened and what he thought he was doing.

Dr. Larson: Before we do that, are there any questions for Mr. Leming right now?

Mr. Ingalls: Probably lots of them...

Ms. Brown: I have questions.

Mr. Ingalls: Can we hear him and then we can all...

Dr. Larson: We can do that. Alright Mr. Leming, we may want you to come back for... to answer questions.

Mr. Leming: I am not going anywhere.

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Dr. Larson: Sir, if you could state your name and address please.

Mr. Buksh: Shazad Buksh, Salem, Oregon.

Dr. Larson: Okay, go ahead.

Mr. Buksh: So I guess I'm going to recount the conversation about the affidavit. From my memory the affidavit was an afterthought after repeated calls to the county about trying to get my drawings approved. And at the last moment they said, oh well, you're going to need to get us an affidavit so this way your drawings can finally be approved. And I said, well, I've already spoken to the plan reviewer and I thought everything was all fine and at that point I heard that the affidavit was about the accessory dwelling and it also said that I was not able to rent the accessory dwelling. And I told the person over the phone, I said...

Mr. Leming: Do you know who you were talking to?

Mr. Buksh: I do not know the name, I'm sorry. I tried to recall the name, but I could not remember the name. But she was the one who mailed the affidavit to me at the house. Once I received it I called her back. I discussed it with her and I said, you know, what's the purpose of all this, because this structure was already existing and I haven't really changed anything. And she said, according to the drawings this is an adjacent apartment and technically you're not allowed to rent this structure out. So I said, well, I am doing that, so I don't know if I can sign this for you. And she goes, well, it's not really such a big deal. The drawings are already approved. All we need is this affidavit from you. So I was sort of in a difficult spot. I needed to get my drawings and so I said fine, I'll do this but I'm not sure if I agree with what I'm doing here. So she had me check some boxes. Do I have a copy of that affidavit? Because I went over it and I discussed the entire affidavit with her over the phone.

Mr. Leming: It's attached to you all's packages of course.

Mr. Buksh: So she talked about it and basically she says, well, are you planning on using it for yourself or a family member. I said yes, and eventually I do, but currently it's rented out. And she goes, well, if you're going to plan on using it for a family member, you should just check family member and then that's what the future use is going to be for. So I just went ahead and did that and then the rest of the information, she requested a drawing to be submitted as well for it, which I think this was a hand sketch that I had submitted along with that. I'm not sure if that's in you package, but that also clearly shows the kitchen and a washer and a dryer, a fridge and a bathroom.

Mr. Leming: And one other question, you had detailed about 6,000 dollars in material that you spent on the firewalls, is that correct?

Mr. Buksh: Correct.

Mr. Leming: Were there expenses other than that?

Mr. Buksh: Right. So those were just pretty much material costs and once I went back and I tallied the labor costs, those were about 12,000 dollars' worth of cost total for the fire blocking that was required of me during the plan review process and during the completion of the project.

Mr. Leming: Mr. Chairman, we do have a breakdown of those expenses if you would permit me to hand those to the Board members. Anything else, Mr. Buksh?

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Mr. Buksh: I think that was...

Mr. Leming: Okay. That was what I wanted him to talk about, because, you know, candidly, that's the most difficult thing here. He signed a piece of paper saying I know this is an accessory structure, but after that point in time, the plans were approved, went right back to where he thought he started, which was an accessory, not an accessory apartment, an adjacent apartment on the plans with the firewalls. That's what was built and that's what was finally approved by the county. Now if you have questions for either of us...

Dr. Larson: Questions for the applicant or the applicant's representative from the Board?

Ms. Brown: I've got a couple.

Dr. Larson: Go ahead.

Mr. Ingalls: I've got a question for the owner here.

Dr. Larson: Yes.

Mr. Ingalls: In 2000, you bought it in 2007.

Mr. Buksh: Correct.

Mr. Ingalls: And you moved in...

Mr. Buksh: 2007.

Mr. Ingalls: In 2007. In 2007 you rented out two of the other units there?

Mr. Buksh: No, they needed some repair, Sir. There was drywall that was missing. There were portions of the carpet that were in the lower apartment that needed to be repaired. They were soggy because it was not being used. This was a foreclosed house. So there was a lot of time and degradation of some things because of it just being closed and not being taken care of. So I went ahead and repaired a quite a few of those things.

Mr. Ingalls: So you renovated what needed to be renovated?

Mr. Buksh: Correct. Some of the walls just needed to be repainted like patched, because of the holes from vandalism. Other than that, they were done probably more than two or three month of me purchasing the property.

Mr. Ingalls: Were the walls as they are there now?

Mr. Buksh: Yes. They were not changed. The structure or whatever the layout was remained the same.

Mr. Ingalls: But after you did that, then you rented out the other two units?

Mr. Buksh: Yes.

Mr. Ingalls: And sometime after you moved in, 2008 or whatever...

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Mr. Buksh: Yeah. So one of the units was the most livable one, that was the upstairs unit, and then, so I lived there while the rest of the work was being done in the lower unit and then in the adjacent unit.

Mr. Ingalls: You stated that you maybe didn't understand the form they asked you to sign.

Mr. Buksh: Correct.

Mr. Ingalls: That one...the county has whole lots of forms that I would call ambiguous. I read it, if I read it I would understand it and there's one there, I can't find it right this second, but it kind of says that if...cannot rent this apartment. Yeah it's on the second page there. It says agreement in the second paragraph right at the end there. It says...

Mr. Buksh: Right.

Mr. Ingalls: ...in parenthesis, not to be used as a rental unit.

Mr. Buksh: Correct.

Mr. Ingalls: That's pretty clear in my mind. I'm signing something that says, I'm not going to use this as a rental unit. And when you give this to the county they accept this as the truth...

Mr. Buksh: Okay.

Mr. Ingalls: ...and that's just what you signed. So, when did you get confused that, well, maybe I can't rent it? Who told you you could rent it as a rental unit?

Mr. Buksh: So when I first contacted the county's inspector to come and assess the damage from the fire, they came and gave us a report of what was needed to be repaired. And part of the repairs was this fire blocking, because he clearly saw there were two apartments there. And during that time, there was another person living in one of those apartments. So he saw that, okay, this is another person here and so therefor he asked for the fire blocking and I assumed at that point that this was okay to do. And so when I read this, I...this conversation over the phone specifically talked about that line right there and I said, you know, this is being rented currently as we talk. So I don't understand, am I supposed to tell this person to not live here anymore. I, you know, I've already told them they could because they were already doing that and she said well, it's not a big deal. You've already got somebody over there and this is simply just to get your drawings passed. And so that's what I understood.

Mr. Leming: You're talking about your conversation with the zoning department?

Mr. Buksh: Correct. The person who sent me the forms for the affidavit.

Mr. Ingalls: I guess I can understand the person that you're talking to. She thought you needed to have...the county needed to have this form to approve the drawing.

Mr. Buksh: Correct. Just to get the drawings through, because at this point I think I was going over two weeks of...since submitting my drawings, having a second set reviewed and then multiple phone calls back and forth and this actually came as a surprise, honestly, because nobody had ever mentioned this form since we ever brought in the forms to initially submit, when I submitted the first package.

Mr. Ingalls: Okay. Thank you.

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Mr. Leming: Any other questions for...

Dr. Larson: Yes. Mr. Buk-ish...

Mr. Buksh: Buksh.

Dr. Larson: Buksh. Sorry. I think Mr. Leming said that the owner lives elsewhere. What is your relationship to this property?

Mr. Buksh: I am the owner.

Mr. Leming: He is the owner.

Dr. Larson: I'm sorry, I...

Mr. Leming: He lives elsewhere. He's now a medical student in Chicago.

Dr. Larson: Oh okay. I just assumed it was another person.

Mr. Leming: So since 2010 when the fire...he was living here when all the re-building occurred, but shortly after that, in, what, 2012?

Mr. Buksh: Correct.

Mr. Leming: 2012 he moved to Chicago to start medical school and has, you know, continued to own and lease the premises that are the subject...I do have his list of expenses, Mr. Chairman, if you'd permit me to hand those out.

Dr. Larson: Go ahead. I would point out one other thing on the form that you signed. At the bottom of the first page it says, when an accessory dwelling is located in a principal dwelling, the entry to the unit and its design shall be such that the appearance of the building shall remain one family residence. I think I remember reading somewhere that meant one entrance.

Mr. Buksh: Yeah, so, I mean, that's...those are the points that I brought up to her. I said, clearly, there is a second entrance. There is no way for me to add another entrance into this apartment. It's already there and I told her, this is not part of the scope of work of the original fire repair. And so at that point essentially her reaction was, I see what you're saying, but I don't really have any, anything to ask for, because these are not part of the original scope of the work. The scope of the work was simply about the fire repair and this just happened to be a side topic essentially.

Mr. Leming: You may recall that initially, there was no zoning review, because it was all internal.

Dr. Larson: Right.

Mr. Leming: And then after the building code official looks at the...notices the apartment that requires the firewall because he has separate units. Then he says, you know, you need to go over and talk to zoning about this. Initially there was no zoning review. But then it comes back and the plan with the firewalls and the adjacent apartment on it, those are the ones that actually get approved. And of course, all that occurs after the affidavit it executed and the final plans are submitted.

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Mr. Buksh: And every time during whenever the inspector visited the property over the course of this entire project, there were four different inspectors and over almost and every inspection, they would always look for all the fire stopping for where were the wires were coming through the top plate and the bottom plate. So they would say, fire block that hole. Fix, you know, put blocking over this chase wall, or there were multiple, different locations that they would point out, essentially every time they came in. And if you notice, Mr. Leming's first set of documents that he submitted has a photograph dated March 14th. That's the first inspection of the inspector after we had already done work and even then if failed inspection because he said, it requires fire blocking.

Mr. Leming: And actually he asked for things, not just between the two upstairs apartments, if we can call them that, but between the upstairs and the downstairs. I mean, he wanted horizontal and vertical, sorry, I did that wrong, the other way around, fire suppressant. Now there was less to do because the floor was already fire quality between the basement and the first floor, but there were some holes and things in it that had to be taken care of because of electrical wiring and things.

Mr. Buksh: When we were redoing the plumbing for the bathroom, the entire subfloor was open. So he could see the ceiling for the lower apartment and it, if you're familiar with dry wall, you can see the back of a drywall will always have the rating of the drywall on there. So you could clearly see, it was rated type X, 5/8, and the thickness and all that was on there. So he says, okay, you've already got fire rating for the ceiling downstairs in the lower apartment. You need to go firestop all this holes and firestop your chase wall between the two adjacent apartments as well. So he was considering them apartments.

Dr. Larson: So there are three apartments?

Mr. Buksh: Correct, yeah, like what you've mentioned. And so this report of asking the duplex versus three apartments is pretty confusing actually.

Ms. Brown: Mr. Chairman that was one of my questions. I noticed in the pictures that there is three separate mailboxes labeled A, B, and C.

Mr. Buksh: Right.

Ms. Brown: When I drove by today, I believe it was A, was on the end of the unit?

Mr. Buksh: Yes.

Ms. Brown: And B and C were in the front. How many units are there? And where are the entrances to these?

Mr. Buksh: So A is as soon as you approach the property coming in from the Stafford Indian High School site.

Ms. Brown: Right. On the side of the building.

Mr. Buksh: Correct. So there is a block wall per se, with a patio, with a driveway, and that's for unit A, and then the one next door, immediately after, that's unit B, and unit C is, when you...is the driveway that you would take to go below on the, essentially, the back entrance of the building.

Ms. Brown: And all three boxes are on the front of the house?

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Mr. Buksh: I don't know if they were in the front.

Ms. Brown: Well, I mean, they weren't behind the house.

Mr. Leming: We have pictures of the boxes.

Mr. Buksh: The boxes, photographs are actually...the boxes are next to the door.

Ms. Brown: But it looks like there is a box for A and B on one unit.

Mr. Buksh: I don't think so. I'm not sure which photograph you're mentioning, but I can go look at that again.

Mr. Leming: There is a picture of the mail boxes, which is what we talked about...

Mr. Buksh: So the U.S. mailboxes are different than the mailbox that you're referring to.

Ms. Brown: They were just square mailboxes with A, B, and C on them on the houses.

Mr. Buksh: Right.

Ms. Brown: Not these.

Mr. Buksh: Yeah, that's the actual property mailbox that's on the street where the U.S. Mail will drop of its mail.

Mr. Leming: And is there one of...I mean, this is a whole bunch of mailboxes. Which ones of these are for this?

Mr. Buksh: Number 54, the grey one, or the greyish looking one. In the second photograph it's a little bit more clear. That's the one. It's a single mailbox.

Mr. Leming: Is there any other address for the structure?

Mr. Buksh: No, it's just 54 Stafford Indians Lane.

Mr. Leming: Okay, that's the only address for the property?

Mr. Buksh: Yes.

Mr. Leming: So the apartments don't have separate addresses?

Mr. Buksh: No. It's...the unit A, B, and C are for those people who are living in those apartments to simply say, okay, here is your mail. You may not be home, I'm just going to drop it in your box.

Ms. Brown: You get the mail and you live in Oregon or Chicago?

Mr. Buksh: It's...no, not right now. So it's whoever is living...whoever went and picked up the mail that day when they got back from work. So if they're checking the mail box, they'll look at the mail and they'll say, okay, here is my letter...

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Ms. Brown: Does the mail come addressed to the name and, you know, unit C or unit A?

Mr. Buksh: I don't think so, because the post office did not allow us to do that.

Mr. Leming: It wouldn't mean anything to the post office. They're not delivering to A, B, or C.

Mr. Buksh: It's just addressed to whoever is living there.

Ms. Brown: Okay, and just so I can be clear, what I heard you say was when you bought the property it was in foreclosure and there were no existing tenants, right?

Mr. Buksh: Right.

Ms. Brown: And, let's see here. I guess my other two questions are more for staff. So should I wait on that?

Dr. Larson: Yes, please, wait on that. I have a question for you folks as well. Do you know, well, when you moved in in 2007, how many different...how many apartments were there then?

Mr. Buksh: Three.

Dr. Larson: Three. And do we know when the structure was built?

Mr. Leming: 1971. That's on you tax records. And incidentally, another little point of confusion on what's finished. As far as he knows, the entire basement is finished, not the 570 something feet that the Commissioner's report shows. We have the report also, but the whole basement is finished. Is that correct?

Mr. Buksh: Yes. And I can answer your question about the mailboxes as soon as he's satisfied.

Dr. Larson: Go ahead.

Mr. Buksh: So on your photograph, page 4 of 6, the left, most left upper right photograph is the picture of the actual property. The A is, or the next one over on the right, that's you standing from the driveway looking towards the entrance which is not really visible from this photograph. And then B is what you can see directly from the upper left hand photograph. That's just a mailbox that's against the left entrance. And then C is on the lower...

Mr. Leming: But it is not a postal mailbox?

Mr. Buksh: No, this is just designating where who lives.

Ms. Brown: Okay, so somebody gets it from the post office, the post box on the street and then delivers it to the boxes on the...

Mr. Buksh: Whoever lives there, yeah.

Mr. Leming: Well the tenants.

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Ms. Brown: Okay, so they're distributing mail for the post office, okay. Where was the fire at? Which unit?

Mr. Buksh: It was A.

Ms. Brown: The one...

Mr. Leming: The large one upstairs.

Ms. Brown: ...the big one.

Mr. Buksh: Correct. It was due to a malfunction air-conditioning unit in the window.

Ms. Brown: Okay.

Mr. Leming: And just to be clear, at the time he purchased the house, there was no firewall between A and B.

Mr. Buksh: No, there was no firewall there.

Ms. Brown: Oh, I'm sorry, one last question, Mr. Chairman?

Dr. Larson: Go ahead.

Ms. Brown: You say the basement's all finished. Do you have permits for that?

Mr. Buksh: It was already done.

Ms. Brown: When you purchased the house?

Mr. Buksh: Yeah. I mean, the work of, let's say replacing carpet on the floor doesn't require permits.

Ms. Brown: I know that when I finished my basement I needed permits.

Mr. Buksh: I mean it wasn't...

Mr. Leming: He didn't finish it.

Mr. Buksh: Correct. I didn't go finish this basement.

Ms. Brown: Was your property sold as is?

Mr. Buksh: Yes.

Ms. Brown: So that means you took the responsibility for it. My mom's a realtor, and I know when I was shopping for a house, I didn't want to buy a house that didn't have permitted basements, because you never know if it was done right.

Mr. Buksh: Yes, I've learned my lesson after this one.

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Ms. Brown: Okay. Alright. Thank you.

Dr. Larson: Any other questions for the applicant?

Mr. Ingalls: I got a question for Clark.

Dr. Larson: Go ahead.

Mr. Ingalls: Clark, if the county had not required the firewall, where would we be today?

Mr. Leming: Wouldn't be here. If the...if the two departments had talked to each other, Mr. Shazad would have known back in 2010 what he could do and what he couldn't do. So if the firewall had not been required and a zoning issue had come up, you know, he would have been on his own. The firewall in my view legally is critically, because it has the county saying, go that way, and clearly conflicting instruction from the county, and clearly continuing, conflicting instruction, and approval by the county, even after this affidavit is taken care of, because it's after the affidavit that we have the building permit approved, based on plans showing the firewalls and the adjacent apartment. And then we have, even after that, and that's why I handed out the inspection report from March, we have the fire inspector saying, there's more stuff you got to do, because you got apartments there. So, very clearly a disconnect here. And it's unfortunate and it was...certainly I think there is culpability on the county's part, because people didn't talk to each other and get this thing straightened out so he knew where he was going at least. Well, that didn't happen. You know, and that's why I tried to give you alternative theories here. I think that is a matter of law, you have a building permit. That is a decision by the government. That is what was approved and implicit in that is the permission for him to continue with his apartments because it says that right on the plans, adjacent apartment, and includes the firewalls which the building code official has stated categorically, wouldn't have been required for an accessory unit. So, now, I mentioned the family unit because, you know, maybe that's another way to look at this and, you know, we've tried to look at things as narrowly as possible when there's just such an inequity and the law is not crystal clear. It's not a slam dunk. But we do have three individuals living in this same house. They're unrelated, you know, I think that certainly they meet the definition of a family under the county zoning ordinance. They're three unrelated, I can have four unrelated. They do share, it is a living unit in a number of respects because of the things that they share and as we've indicated, two of them actually, well, work in the same place, and I assume, rented at approximately the same point in time. So, you know, that may be a more palatable way to go that, you know, if this were... what's interesting is, if this were a family unit, you know, they can all live there in their particular parts of the house, you know. My nephew rented a house with others down in Fredericksburg, and they all paid rent, and they all had, you know, certain parts of the house that, you know, they could use. They all had their own bathroom. They all had their own bedroom. You know, they shared other things, but it certainly is not an uncommon thing for various parties to go together and rent a house. What's made this really different is the requirement for the firewalls. The structure of the house has been unaltered for years. The way the house was built, the entrances to the house, you know, that was not Shazad's doing here. So it is inequity, it's very unfortunate that it happened. It's unfortunate it didn't get caught way back when.

Mr. Ingalls: Let me ask you another question.

Mr. Leming: Yes.

Mr. Ingalls: When I have a problem with the building department over approving of my plans, my architectural plan, and I don't agree with what they're trying to tell me to do. I said, that's not right.

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Code's not right. I don't have to do that, that's the code. And they keep arguing with me. Where do you go?

Mr. Leming: You mean if you don't agree with the building...

Mr. Ingalls: I don't agree with...you tell me where you go.

Mr. Leming: Well, there are always appeals and additional levels that you can work your way up until you...try to get the answer that you want.

Mr. Ingalls: Yes, there is. Isn't there something called like a building official review that when you have a problem with the building department getting your plan approved, and you say, no, that meets the state code. I can do it that way. You don't go over here and ask zoning to say...rule on it. You go ask them and that's the body that takes and challenges whether the building official is right or wrong.

Mr. Leming: I understand what you're saying.

Mr. Ingalls: And so your client, when they said, build a firewall, he said, that's not right. I don't need to build a firewall. That's all he had to say and then he could have taken it to the building official's committee or something. It's made up of citizens just like us that reviews that. And you sit down, and you have a hearing about it. They probably don't meet very often.

Mr. Leming: I think once every two years.

Mr. Ingalls: Once every two years. Alright. Because most people don't challenge it, but he has an opportunity to challenge it right then and there. And he didn't do it.

Mr. Leming: Well, I don't think...number one, I don't think he questioned what he was being told by the building department. He assumed that, yeah, because for the simple reason that he knew he had apartments. And the building inspector is saying, because you have apartments, this is what you must have.

Mr. Ingalls: But he also signed a document that says, I'm not going to rent this out.

Mr. Leming: At the same time, all this occurred, maybe I should have given you the timeline, all this occurred over about a ten day period of time, but you also have the inspector requesting revised plans that were submitted. And all of that comes together at the same time. The affidavit, everything was part of that application that was approved. Now somebody had the whole thing in front of it at some point...

Mr. Ingalls: Zoning isn't responsible deciding whether that firewall is needed or not. Zoning doesn't decide that.

Mr. Leming: I think...I tell you this...I think in this particular case there were enough red flags where somebody...I don't know who should have talked to each other, you know, maybe you conclude, well, gee, it's the property owner's fault. He's the one that should have covered his flanks better and ask all these questions about what he was getting into. Most people don't do that. Most people accept what, except lawyers and engineers, most home owners out there, if the county says do something, they do it. Because why? They trust the county. And I think that was very evident here. He was told that he had to put together a certain set of plans in order to repair what he was doing here. It was very clear what he was trying to do. He was trying to continue to utilize his apartment. There was nothing hidden. And this is

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what the building inspector told him that he had to do because he had an apartment. Now that part of it was correct. I'm not sure where I would have gotten, if we assume that he has an apartment, where would I get with an appeal that said, but wait a minute, he doesn't need this. Now the only way that I connect the dots, Mr. Ingalls, is if I take what they tell me and what he tells me and say, well wait a minute, something doesn't add up here. But they didn't do it either.

Mr. Ingalls: Well he didn't object to it.

Mr. Leming: Well, I...

Mr. Ingalls: He didn't say, you go talk to these people. He didn't try to get them together either. We're going in different directions.

Mr. Leming: He certainly didn't suggest that they talk to each other.

Mr. Ingalls: They have this firewall between them and...themselves too. I understand.

Mr. Leming: And you can always say, it's the poor, dumb property owner. He should have done things differently. And gee, we've got these separate, isolated parts of the county that, you know, that look at everything with blinders on and they see an issue here and nobody does anything about it. And I think that's what's perplexing to me about it. Because very clearly, the building inspector understood that there was a zoning issue. He said, I'm over there. And then he goes over there and signs this affidavit, and you've heard what he said about that. That's to get his plans approved. And then he comes back to the same building inspector that sent him over there in the first place. The revised plans showing the adjacent apartment and the firewalls, so it comes back to the building inspector and he's got the affidavit at that point. That's all part of the application, and he approves the plans. Now, you know, who's supposed to watch out for who?

Mr. Ingalls: I understand.

Mr. Leming: It's not that simple, I don't think.

Mr. Ingalls: I agree with that statement.

Mr. Leming: And, but the bottom line is that, you know, you had the government act, an approved set of plans, and you had an OP that was issued based on that set of plans, so that's, you know, that's where it all ended up, for better or worse. You know, certainly it wasn't his intention to pull the wool over anybody's eyes. All he was doing was trying to do what he was told to do and he did and the county approved it. That's where it ended up. I think what's most important here is the last thing the government did. You know, not what the individual component parts of the government did, but what was the last official act of the government here? It was approving a building permit that showed what it shows and then issuing an OP when he had jumped through all the hoops that they wanted him to jump through.

Mr. Kim: Maybe I'm missing it, but do you have the OP? The occupancy permit?

Mr. Leming: Yes, oh yeah. The OP was the last thing that was issued.

Mr. Kim: No, I'm just saying you have it, because I...

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Mr. Leming: No, he got the OP, yeah, the OP was issued on April the 11th, 2011. April 7th? Okay, April 7th, 2011.

Ms. Brown: Do we know who signed any of these, because that was my question. I can't read. I thought that was the design people of the plans, the stamp? Larry, maybe you can...

Mr. Kim: I thought it was Stafford County's. I couldn't read it.

Ms. Brown: Yeah, so is that Stafford County or is that the plan people?

Mr. Ingalls: That's the engineer or architect.

Mrs. Musante: That's not our seal.

Mr. Ingalls: That's who prepared the plans.

Ms. Brown: So who do we know...who approved the plans and who...that's...

Mr. Leming: That is the architect.

Ms. Brown: Yeah that's what I thought, so who...Who in Stafford approved the plans?

Mr. Leming: The building department approved it.

Ms. Brown: Do we have that anywhere where it was actually signed and approved?

Mrs. Musante: We don't have a copy of the plans that they submitted with a stamp of approval. It's only in the computer system.

Ms. Brown: So we have no signed plans.

Mrs. Musante: Not in this...

Mr. Leming: But wait a minute. It's in your Hansen report. The Hansen report is what tracks all this and the Hansen report...would you like that?

Mrs. Musante: We don't know if these plans in the packet are what he actually approved. Was that your question?

Mr. Kim: That's my question. I thought that was Stafford County's, well that's easy.

Mrs. Musante: No.

Mr. Kim: Okay, well that makes it a bit more difficult.

Mr. Leming: Well, let's let him respond to that. Did you submit any other plans to the county?

Mr. Buksh: No, these are the plans that were approved. An I mean...

Ms. Brown: Didn't you say you submitted some hand drawn ones?

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Mr. Buksh: That was for the affidavit.

Mr. Kim: Is there any stamp of approval?

Ms. Brown: Okay.

Mr. Buksh: So that was a... Yeah, it's written with red ink and you're supposed to keep that on site when the construction is going on.

Mr. Kim: Okay. I didn't realize it was just one.

Mr. Ingalls: One or two, something like that.

Mr. Leming: I think the Hansen report is in your package, but this is the county's computer system where they track the whole process and its significant here, because the first entry is from the building code official. Do you have that in your package?

Ms. Brown: I don't think we do.

Dr. Ackermann: I think we do.

Mr. Leming: I think we included it as an exhibit.

Mrs. Musante: What did he ask for?

Mr. Leming: Let's see if we can... here we go.

Mrs. Musante: The Hansen stuff is in there.

Mr. Leming: It's exhibit 2, which is page 8 of 16.

Dr. Ackermann: Yes, there it is.

Mr. Leming: You'll notice the entries there and actually the one in your package includes... goes all the way through the inspections too.

Mr. Kim: Is there an actual (inaudible, microphone not on).

Mr. Leming: So the first entry is the one that makes reference to the dwelling unit. Dwelling unit separation must be achieved, one hour firewall. Each dwelling must be equipped with means to turn off power to each separate unit. Contact zoning department about the apartment dwelling. And there is a telephone number there. Then we have the zoning review which is what we talked about in our timeline. And that was finally approved when he signed the affidavit, then the next entry is the building plan review. The building plans were approved on the... umm November 24th. Now we also have in the package a whole series of inspection reports. So the plans were implemented, the March comments that I handed out to you are the first of those inspections which was failed, because there were additional fire requirements that had still not been met. So that is... that is the record.

Ms. Brown: I thought the Hansen report had a name of who input the information? We had one last month and it had some initials or something.

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Dr. Larson: There were initials.

Ms. Brown: Yeah.

Mr. Leming: Planning staff... planning has initials of the reviewer.

Mr. Kim: Mr. Chairman, can we hear from staff?

Dr. Larson: Any other questions for the applicant's representative? Thank you, Mr. Leming.

Mr. Leming: Yes, Sir.

Dr. Larson: Questions for staff?

Mr. Kim: I do. Sorry. Okay this is all good, but I do want to know, I mean I know the building department is the building department and we are the zoning department here, but there's a lot of material here but I don't see any stamped... like, you know, that the building inspector said, okay this is good to go. I don't, I mean, I don't see the occupancy permit.

Mrs. Musante: We cannot verify that the plans that you have in front of you are in fact the ones that the plan reviewer approved unless he provided us with stamped copies. The applicant is provided with a stamped copy.

Mr. Kim: Yes, now there was only one given to the applicant after they get approval of the plan. There is nothing that says, on our end, Hansen report of anything, that on our end, that states, hey, this is the inspector, this when it was stamped out, this is what was actually approved. Because this, I mean I can get this stuff, I could get anything drawn up by an architect if I pay them enough. So, you know, not saying that that's what's happening here, I just really want to know who approved what on our end, because I do agree with one of the sections that Mr. Leming said, you know, it's 15.2-2311, Appeals to the Board. My clarification on this is, I just want to make sure that if there's someone that is an administrator, either zoning or building, I agree with Mr. Leming, but I want to see that proof. I want to see something that the building inspector on the other end gave an okay on this. Now I understand with the firewall, I mean I kind of understand, hey look, it was foreclosed, it's as is, not even really concerned about that. My most concern... my biggest question is, I would like to know if there was actually a person that was able to give this approval gave that approval. That's kind of... there's no way we can do that?

Mrs. Blackburn: Mr. Kim, we could hopefully get prints of them that can be legible if our printer is working and we have them in the system. Another thing is, they are not required to keep building permit plans...

Mr. Kim: No they are not.

Mrs. Blackburn: ... for only two years. So we may not have a copy of that. As far as 15... I want to make a clarification though, as far as 15.2-2311, as far as administrator, it is, if you continue in that line, it says, by any decision of the zoning administrator for any other... or from any order, requirement, decision, or determination made by any other administrative officer in the administration or enforcement of this article, and that is of the zoning code. The building code is actually governed under State Code 36.105, and they talk about enforcement of the building code as Mr. Ingalls talked about. They have their own Board that they do their appeals to, so when they appeal... when we're talking about appeals, it has

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to be by someone who enforces this particular article. As he said, you don't hear the appeals of the building code.

Mr. Kim: No.

Mrs. Blackburn: That is a state code, but we can double check and see if there are any copies. Sometimes we get lucky...

Mr. Kim: I don't know... I mean I tend to...

Mrs. Blackburn: ... as far as that goes. But we can check to see if we can find stamped plans.

Mr. Kim: Can we at least have a proof... I mean do we know for sure that the firewall went up? I mean, did... we have no... I mean, that's what's making this kind of...

Ms. Blackburn: We can... yeah, I don't know. Again, as I think has been stated, the zoning ordinance deals with use...

Mr. Kim: Yeah.

Mrs. Blackburn: ... as Mr. Ingalls talked about and the building code keeps it standing.

Mr. Kim: Yeah. Thank you very much.

Ms. Brown: Okay, I have a question for staff too.

Dr. Larson: Go ahead.

Ms. Brown: Since he purchased the property in 2007, this was before the fire occurred, before the county came in and required the firewall and all the changes that was still a zoning violation from 2007 until the fire occurred. Is that correct?

Mrs. Musante: Correct.

Ms. Brown: Okay, and so as Mr. Kim says, aside from the zoning issue, we don't even know if it conforms to all building codes right now.

Mrs. Musante: We do not.

Ms. Brown: Parking, that kind of stuff.

Mrs. Musante: No.

Ms. Brown: The mailbox thing, I am a little concerned about that, because it is illegal, but we have nothing. So we have nothing and the applicant has nothing signed that it's been approved.

Mrs. Musante: Our computer system...

Ms. Brown: Signed approved plans.

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Mrs. Musante: We have nothing in the computer in the computer of prior permits where he's pulled prior permits. The computer system goes back to 1997. So, from 1997 forward, if any building permit, regardless whether it was a renovation or whatever, should have been in the computer system. I do that search when I do the staff report. The only things that was in there are the permits that he pulled for this fire damage.

Ms. Brown: But we don't even know for sure about the occupancy permit, right? Because we don't have...

Mr. Kim: We did have, I'm sorry.

Ms. Brown: Oh no. Go ahead.

Mr. Kim: I apologize.

Mrs. Musante: The computer system did show an occupancy permit was issued. I actually have the date of April 8, 2011, it was I have from the Hansen system.

Ms. Brown: But we don't know who...

Mrs. Musante: I do not have a copy of it, no.

Ms. Brown: We don't know who issued anything?

Mrs. Musante: It would have... the occupancy permit would have been issued from the building division. That's who issues occupancy permits.

Ms. Brown: And the Hansen report is also of things from the building side?

Mrs. Musante: It's both of us. We both use the Hansen system.

Ms. Brown: And we don't know who made those entries?

Mrs. Musante: Not right now, no.

Ms. Brown: I mean, it could have been a clerk, it could have been an inspector.

Mrs. Musante: The clerk does the occupancy permit. I can tell you that.

Ms. Brown: Okay, thanks.

Dr. Larson: Any other questions for staff? Are there any other questions?

Ms. Brown: Is there anybody in the audience that wants to talk about it?

Dr. Larson: Oh, I forgot to close the public hearing, didn't I? Excuse me. Would any member who wishes to speak in support of the application please come forward. And, well, does anybody in the public want to speak on this case at all? Sir? Go ahead.

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Mr. Curling: My name is Timothy Curling. I live right across the street. I'm a new property owner just moving to the neighborhood. Recently when I moved in, I had problems with a lot of the tenants and their whoever, visitors, family members parking on my side of the property and so that's when I kind of took an eye to that specific property. I don't have a choice about paying taxes. I don't have a choice about building codes. I don't have a choice about abiding to health codes. All these different things. I have an obligation as a property owner to know the ordinances that are out there. I have an obligation to know what I'm allowed to do in my particular zone. And I just don't have that choice to pick and choose. That's why we have those rules, so that the citizens can be safe and that, you know, the government is looking out for us. As far as the tenants there, there's not two Marines. The one Marine left. So this whole thing about them being a whole family, I don't understand that, how you can say that they're one family. This is a triplex. It's three separate families living in that single unit. This is a single family home and so I don't understand why we're arguing about the whole building code. Then this is a zoning issue. And I simply... all I want is for my fellow property owner to adhere to the zoning laws that are out there. They're there for a reason. So, that's all I had to say.

Dr. Larson: Any questions for Mr. Curling? Thank you, Sir. Would anybody else like to speak? Any member of the public like to speak? Mr. Leming, would you like to respond?

Mr. Leming: I'll respond just briefly, and I did ask during that presentation, do any of the tenants have families. The answer to that is no. There are three individuals that are renting. Now, do they have guests? Are there issues that are of legitimate concern to the neighbors? There may well be. Are they zoning issues? That's the question. And in this particular context, our position remains that the government made a decision. There was an effort to split some hairs here in say interpretation or decisions relating to this chapter. All parts of the county make decisions, implicit or otherwise, about the zoning ordinance and the effect of the zoning ordinance. And that's what happened here. I mean, you have the building code inspector actually pointing out that this is a dwelling here. He's the one that actually pointed that out in the Hansen report. He's the one, and he's the one that ultimately signed the plan, or approved the plan that showed the adjacent apartment and the firewalls that were necessary, which wouldn't have been necessary if there hadn't been apartments. Yes, the government is there... should be there to watch out for everybody. Now, what I would submit is that in this particular case, someone wasn't watching out here. This is a confusing situation, not one that the average homeowner could be expected to unravel or to know about appeals or second guesses. He went with what he was told and that's why we... that's why we are where we are today. So, as for your consideration on the grounds that there has been an injustice here. I don't think the county's going to pay him back the 11,000 and something dollars that he spent on the firewalls. That's when it could have been stopped, but it wasn't. So I thank you for your time and I do appreciate your indulgence because I know I go way over all your time limits. And just for the record, there is one more copy of the drawings here for umm, for the county's records.

Dr. Larson: Any other questions for the applicant's representative? Okay, I'll close the public hearing and back to the Board for motions and consideration.

Ms. Brown: I just have a comment. I don't know if this is helpful or not, but I finished my basement at my own home and I had to get inspections throughout the process, electrical, plumbing, as the process was going. I also had a deck on the back of my house which kind of was above the basement door. When they came out to do my building inspections for the basement, they might have missed that I had a deck there, perhaps without a permit, but that does not mean, because they were out there and didn't catch it at the time, that it's now all of a sudden in compliance, because they were out at my property, inspecting my basement, and the adjacent deck, that doesn't mean I'm good on the deck. In my case I had permits for everything, but my point is, is just because they miss it, doesn't mean it's approved. So...

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Dr. Larson: Okay. Is there a motion?

Mr. Kim: I motion to approve the county... umm county administrator's decision to uphold A15-06/15150922.

Dr. Larson: Okay, so are you moving to uphold the...

Mr. Kim: Uphold.

Dr. Larson: ...Zoning Administrator's decision?

Dr. Kim: Decision.

Dr. Larson: Is there a second?

Dr. Ackermann: I second that.

Dr. Larson: Would you like to explain why you offered the motion?

Mr. Kim: We're the zoning. We don't know enough about building because we're... I mean, we're supposed to be one, and I do agree with Mr. Leming, there should be something that puts them together, but at this point they don't... it's not that way. I don't want to make a decision on the building inspector or administrator. I want to go with what we're here for, which is zoning, and our zoning administrator, I feel, is correct in this decision.

Dr. Larson: Would the second like to say something?

Dr. Ackermann: I share those sentiments. I also feel fairly strongly that it's the property owner's obligation if they are confused to make sure that things are correct. I would feel, in his situation I would feel very uneasy about getting approval from someone on the phone like that. And if I... and we know, ignorance is no excuse for not following the law. And of course we, in all the cases that we've looked at or cases that we read about, or that when we go to seminars and hear about, it's not always that someone has actually done something in contrary to what the law is on purpose. But they find themselves in that situation and I think we have to uphold the ordinance.

Dr. Larson: Any other comments on the motion?

Mr. Ingalls: Mr. Chairman.

Dr. Larson: Go ahead.

Mr. Ingalls: I'm inclined to support the motion because I think, this was an illegal operation prior to this whole building permit, which, the applicant should have known. He's in the county, and he knows I'm in an A-1 zone. A-1 zones don't allow apartments or duplexes or whatever you want to call it, so he ought to have known right there I'm illegal to start with. And then, you know, when he goes and signs that affidavit, it kind of gave everybody assurances as what he was going to do. He was going to let this apartment be a family apartment in accordance with the ordinance. And if he had a problem with firewall, again, I think that is a building issue. It's not zoning. It's building. You say, I don't have to do that. And the ordinance is pretty clear and I think the code that Clark gave us from the building department says, it wouldn't have been required. It shouldn't have been required. Because the county said do it, he just said,

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okay, I'll do it and then said, oh, but now I got you, because now I got... you've approved... not only have you approved... I'll do that, but you'll have to approve my apartment for me. And I don't believe that's the way things work. So I think we should uphold the county administrator's.

Dr. Larson: Any other comments? Dana, did you have a comment?

Ms. Brown: I'm sorry, I thought that you were going to speak. Uhm, it's a little bit of a quandary, but I agree with Mr. Ingalls. He bought the property in 2007, there was no one living in it, it was not being rented. The tax records do not indicate he owns apartments, multiple units, at least the ones that I pulled off the web today. So he did that, and he did that before the fire and before the firewall. So I'm going to have to support it. I will support it.

Dr. Larson: Any other comments? I would concede confusion on the part of the applicant, but it's pretty clear in the affidavit he signed that his dwelling was not to be... quote... not to be used as a rental unit. So, and that is something he signed. There were no verbal agreements or anything there, nothing on the phone. That's an hard copy signature. Furthermore, the building inspector does not have the authority to make zoning decisions and so aside from the fact that he also altered the ordinance, you know, by doing this, if that was the interpretation, which would also be a problem, he doesn't have the authority... he has no authority in the zoning area, so there's no reasonable... granted confusion on the part of the applicant, but there is not reasonable reason to think that the building inspector could make those kinds of decisions. And I also agree with the previous arguments submitted in offering the motion, so I will support it as well. Any other comments? Seeing none, there is a motion on the table. All those in favor say aye.

Dr. Ackermann: Aye.

Mr. Ingalls: Aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Mr. Davis: Aye.

Ms. Brown: Aye.

Dr. Larson: Aye. Opposed? Motion carries 7 - 0.

Mr. Leming: Thank you for hearing me.

Dr. Larson: Thank you. We will go to the next item on the agenda. The second item was withdrawn as previously noted. Could you read the next case please?

2. SE15-08/15150964 - Carl O. Morris - Request for a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards," R-1, Suburban Residential, to allow a hair salon as a Home Business on Tax Map Parcel No. 21-147E. The property is zoned R-1, Suburban Residential, located at 270 Telegraph Road, Frederick B. Miller Subdivision.

Mrs. Musante: Yes. Case SE15-08/15150964, applicant Carl O. Morris, request for a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards," R-1, Suburban Residential, to allow a hair salon as a Home Business on Tax Map Parcel No. 21-147E. The property is

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zoned R-1, Suburban Residential, located at 270 Telegraph Road, Frederick B. Miller Subdivision. You have the application, application affidavit, plat of property and the diagram of the area to be used for the business. The applicant is requesting a Special Exception to conduct a Hair Salon as a Home Business. Requested days and hours of operation are Tuesday through Saturday from 9:00 AM to 5:00 PM with no Sunday or Monday hours. The applicant indicates he will provide five off-street parking spaces and serve five to seven clients per day with only one client at a time. According to the plat submitted and the discussion with the applicant, the driveway is fourteen feet at the narrowest part, thirty-eight feet at the widest part and approximately one hundred forty feet long which will accommodate the five spaces indicated on the application. This exceeds the parking required for a single-family dwelling and a Home Business. The ordinance requires 2 parking spaces for a single-family dwelling and does not allow utilizing garage parking to meet this requirement. The applicant indicates there will be no employees who do not reside on the premise. The regulations for a Home Business state no more than 25 percent of the gross floor area of the dwelling shall be utilized for the business. According to the applicant, 484 square feet will be used for the business which complies with this requirement as the gross floor area of the dwelling is 2,972 square feet. The applicant has stated they do not belong to an HOA. Their property is separated by trees; therefore the minimal number of visitors will not pose a nuisance to neighboring properties and should not impact traffic on Telegraph Road. The single family dwelling was constructed in 2006.

Dr. Larson: Thank you. Any questions for staff?

Mr. Grimes: I had one question. I think that under the suggested development conditions it notes clients by appointment only with only one client at a time on the premises. And did I see a drawing showing a waiting room?

Mrs. Musante: That is a question that you are going to have to ask the applicant.

Mr. Grimes: Okay. Thank you.

Dr. Larson: Any other questions for staff? Okay, hearing none, I will open the public hearing. Will the applicant or his or her representative please come forward and present their case?

Mr. Morris: Good evening. You will have to excuse me, I am not the best public speaker. I will do my best, my name is Carl Morris. My wife and I... my wife is a hairstylist of twelve years and she has progressed in her career to where she is kind of wanting to be independent. We recently in the past year, looked for a place to lease and it became quite apparent to me and her that she does not want to have employees. She just wants to be independent and before we made the leap to go out and sign a five year lease... thank goodness she explained that to me. What we thought was kind of a nice compromise was that she would be able to put in and do hair from home and be independent. That is really what this is about and to answer your questions sir, yes there is like a small sofa for a waiting area because some of the clients have children and we have actually considered putting in a little play area, there is enough room maybe to do that. And our salon designed proposed that we do like a little child's play area as well. I am not really prepared for a presentation, however I will kind of go over some of the things that I did want to point out. It is a single family home, we wanted to convert the garage as I don't really use the garage for anything but storage and we think if you have been to the property, some of the members of the Board said they have been to the property, that you could see that the garage is kind of situated at the head of the driveway and the house does also have a twenty-three hundred plus square foot unfinished basement, that is not conducive for a hair salon, but it is conducive for plenty of storage. I don't know about you but I have never parked a car in a garage, so I am not real sure what the purpose for a garage is other than a storage. But that is kind of where we want to put it. We have had a couple contractors come

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in just to look and say hey is this possible. We are trying to get the stars to align right now. There are so many things that I have to do. I have done my research and Melody was real helpful with me. This was the first place to start. So before I go do anything else and get permits and go spend a lot of money, I want to make sure that I am allowed to do this first. Really that is it. There was one, I don't know if I can make a change or request a change, but the hours. After talking to my wife, 9 to 5 is really not typical of a hair salon. There are a lot of her clients that work 9 to 5 jobs, so she has to be able to service them until about 8:00 pm. But as I did state, the idea behind this whole concept is by appointment only. She wants flexibility. We have a three year old child and her current salon that she works at today does not offer any flexibility. She is not here for that simple reason. You know if she does not have an appointment from noon to three, you turn off the open light or you lock the doors and you go do some errands, which we don't have the luxury to do right now. I work as a project manager at Fort Belvoir Virginia and I have quite the commute. But I feel like I am rambling now so I am just going to stop.

Dr. Larson: Thank you Mr. Morris. Any questions for the applicant? Go ahead.

Ms. Brown: I drove by your house today, it does sit way off the street. You have plenty of driveway for parking, where is your entrance going to be.

Mr. Morris: If you look, I don't know if I have the drawing... do you have the plan? The idea for the entrance is the garage door will be removed entirely. There will be a door on the far left of the garage door and this will all be done... I have talked to a couple of contractors and they say that is the best idea, and large picture windows where the garage door... but right on the left...

Ms. Brown: Okay, so its o the left.

Mr. Morris: One of the things I did not know until talking to contractors is they all... both of the two that I talked to today recommended that the floor be raised in there so it could be insulated and make it comfortable. So we will have to do some sort of ADA ramp to the door there, just something small. But it will be... if you picture the garage door, picture a door on the left and two large windows to fill the rest of the garage door space.

Ms. Brown: You said you wanted to change your hours. What hours were you thinking?

Mr. Morris: 10:00 to 8:00, however I want to make note and point out that she is not going to be open from 10:00 to 8:00, I hope that she does not work 10:00 to 8:00, five days a week. But she needs to be able to book appointments during those times. There will be times when she will have, you know someone won't be able to get in until 5:30 and you know a typical color/cut or color could take three hours.

Ms. Brown: So it is just going to be her?

Mr. Morris: I am sorry and hour and a half.

Ms. Brown: She is the only employee.

Mr. Morris: Yes, she will. We have not figured out how we are going to handle people making appointments yet, but some sort of online booking system is all we can think of.

Ms. Brown: In your description you mentioned styling stations plural, that is why... are you looking to expand later? Or

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Mr. Morris: That might just be a typo. Back when we... from my business plan, because I wrote a seventy-four page business plan when we were going to go out and put in large, do like a five or six station salon. We looked at a couple of places on Route 1, it wasn't... it's very expensive to try to start out down there. I think the place we looked at was \$22 a square foot per year. Which is actually not bad compared to some of them I have seen, which are \$29 a square foot. But the original plan was to do multiple styling stations. I.. this has been a pretty decent learning experience for me. Some of the things just going through this whole process, I don't think there even the ability to do even more than two stations in there. Even if you could there may not be the availability of parking. We have a pretty large parking pad, but if you consider two stylist working at the same time, let's say each of them have a client and then following appointments show up and they come 10 minutes early, you are going to run into a problem real quick. Me and my wife discussed this. I am like if you ever feel like you are ready to take on an employee or a partner, it might be time to move out. But to answer your question, I think that that's a typo.

Ms. Brown: I heard you mention that if she does not have clients all day she might turn off the open sign.

Mr. Morris: There is not going to be an open sign.

Ms. Brown: Well I was going to say because under our home business you are allowed one sign and it is not allowed to be lighted.

Mr. Morris: It's a figure of speech. No, I ...

Ms. Brown: Well, I wanted to mention that.

Mr. Morris: She would probably throw a brick at me if I said I was going to but a big neon open sign on the window.

Ms. Brown: Across the street from your property, it looked like there was another business, a plumbing business.

Mr. Morris: You know, I don't think so. I think it is a big billboard. I think someone owns the property over there. I did not even know... because the trees are so thick when the leaves are up, but now that they have fallen there is actually a burnt down house right across the street from me. And I think the fire department has actually gone out and practiced on this house, it what the neighbor told me. You know they set it on fire...

Ms. Brown: I did not see that. I just saw the sign for the plumbing business.

Mr. Morris: I did notice... and that is a really big, it's a pretty large sign. I think there are people that live over there, but... I say residential neighborhood, but you drove past it and it is technically a subdivision and I get it Zoning probably calls it that, but it doesn't really feel like a subdivision.

Ms. Brown: You are four houses down from Shirley Heim Middle School?

Mr. Morris: Yes, I am four houses down from Shirley Heim and if anyone has driven down Telegraph Road, there are no houses behind me at all for miles if you look and they are pretty separated. It was a family owned... and I learned all this after the fact of meeting the neighbors, a family owned and it was subdivided up and different family members owned a different house and over the years they moved on.

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Ms. Brown: And you just moved in last month?

Mr. Morris: We did. We actually wanted to do this before buying the house. So after... we were in lease negotiations with the owner of the old Aquia Glass place and we were asking him to subdivide the building because we did not need 3,600 square feet, that is a monster. We were looking at 1,200 square feet and he dug his feet for a really long time and my wife getting cold feet, I was like we are not going to do that. In the old house we lived in Stonebridge at Widewater, right down Telegraph Road, she asked can we put a home business here in our house, because she knows other stylist that do it. I said I don't think we can do that for a couple of reasons. One, it's an HOA, I really don't know that the HOA would allow that and two, do we really want to do that. I didn't think it was a really bad idea, I just didn't think it would be permissible. So we were actually looking for a house that might allow for something like this. You know we were wanting to buy another home anyway, get the kids a pool and that type of thing and this... I kept driving by this house and I was like maybe this will work. It looks like it would work.

Ms. Brown: Thank you.

Dr. Larson: Mr. Morris, is your garage currently heated?

Mr. Morris: Not currently, but it will be.

Dr. Larson: And how will it be heated.

Mr. Morris: It will be heated with a Mitsubishi... it a fairly new unit. Both contractors recommended this unit. The condenser... I am not a HVAC guy but it will be a wall mounted HVAC unit that is heated. There is a lot of work that has to be done to the garage. We will be ripping down all the drywall, it will be insulated properly, top, sides and bottom. Because when we raise the floor it will be insulated as well. We are looking at a 9,000 BTU unit, which is adequate to heat it. One of the challenges is it is a 12 foot... it is one of the challenges and it is one of the nice things about this space is the 12 foot ceiling in the garage. Which for a salon, it makes it feel open and nice. But for heating and cooling it is going to take a larger unit.

Dr. Larson: So are you working with the county then as far as a building permit?

Mr. Morris: Not yet. I mean I am not... I have talked to contractors and I have told them I am not doing... if this does not go well for me tonight, then it is dead in the water.

Dr. Larson: You are doing things in the right order. I just...

Mr. Morris: Exactly right.

Dr. Larson: But still...

Mr. Morris: I read, and the zoning book is not a good read. It's actually pretty boring, but I read it a lot, parts to understand R-1 and A-1 and all the different things. And home occupation verses a home business and the fact that she is going to have X amount of people coming in makes it a home business and in R-1 you have to have a Special Exception. So we can't do anything until we know if we can do it. It is a lot of money. One quote came in at \$43,000 to do it, which was way outside my budget, the other one was \$15,00 to \$20,00, a more realistic number. So I don't think the other guy really needed the work.

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

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Dr. Ackermann: If I could I would like to say we are sticklers for details on a lot of things and when... if this is approved with the development conditions, those are the conditions that you have to go with. It's not like we could say from 10:00 am to 8:00 pm and then you can decide we are going to be open Monday. So as it says if it turns out that the development conditions aren't being met then the Special Exception could be revoked for noncompliance. Just so you know that.

Mr. Morris: Yes sir, I read that and once I read it and it says basically noncompliance can get it revoked then we revisited and I made sure that I asked her is 9 to 5 good. Because that is typically not what she works now and that is why I brought it up here. It's the only thing that I see... she has to have her weekends. So Sunday and Monday's have been it historically.

Dr. Larson: What we will do, the Board will talk about the conditions we want to put on this Special Exception and then toward the end we will give you a chance to address that, how you might feel or deal with some of these conditions. If something is really onerous we can talk about that some more.

Mr. Morris: Okay, sounds good.

Dr. Larson: Any other questions for the applicant?

Mr. Ingalls: I guess I do in terms of just trying to understand the business. You stated somewhere in your application that you were not going to have any employees outside of the home.

Mr. Morris: That is correct sir.

Mr. Ingalls: Okay, if we were to make that a condition that would not bother you?

Mr. Morris: No sir that would not bother me at all.

Mr. Ingalls: It's in the writing but it is not in a condition. And I think a home business does allow one employee.

Mr. Morris: If you made it a condition I don't think it would be an issue. It would just force her out if she wanted to take on an apprentice later or something, which is not in her plans or goals. To be honest I love my wife, I am kind of glad she is not here, but...

Mr. Grimes: Just remember that all of this is on the public record.

Mr. Ingalls: We have a tape.

Mr. Morris: I don't see her wanting to be a boss.

Mr. Ingalls: Okay, the reason I asked that is if I limit you so that somewhere down the road she says gee, I would like to bring another stylist in, all of a sudden your traffic has doubled and that bothers me.

Mr. Morris: Right.

Mr. Ingalls: If I limit you to just her basically there and doing it, then I might feel a little more fuzzy and comfortable.

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Mr. Morris: Like I said right now, what we have discussed, between me and her is that she just wants to be independent...

Mr. Ingalls: Okay.

Mr. Morris: ... and doesn't want to be a boss.

Mr. Ingalls: I assume you have read the development conditions.

Mr. Morris: I did, I have them right in front of me.

Mr. Ingalls: And I assume... the Chairman has said that we are going to try to go through those and... because there are some there that you may want to talk about and look at strongly before we approve any of them. The last time I was at my hair stylist...

Mr. Davis: You had hair?

Dr. Larson: No comment.

Mr. Ingalls: She was there... and she had a store and she was there by herself, but my appointment was 11 o'clock, I arrived at a quarter to 11. She's was doing a lady's hair, coloring job or something where she did part of her hair and she put her over in the chair and then she got me in the chair and spend an hour on me. Then there come another client in, and there were three of us there at one time. And I can see that is not unreasonable unless you really work out your hours to say, like you say I have this coloring job, or whatever it takes the longest, I know I need two hours before...

Mr. Morris: You are absolutely correct. I mean that is happening and that is why there is a waiting area, that is why, you know we want to make sure there is enough to hold at least two vehicles besides hers on the premises at one time...

Mr. Ingalls: I guarantee you that you are going to have two cars there with two people, one finishing up and one waiting to get started.

Mr. Morris: And that is the overlap that I was talking about.

Mr. Ingalls: Right, you are going to have that, you can't avoid that, I don't think.

Dr. Larson: But one of the development conditions that they have for us here is clients by appointment, with only one client at a time on the premises.

Mr. Morris: Oh.

Dr. Larson: Is that a problem? Based on this discussion?

Mr. Morris: Um...

Ms. Brown: That would mean she would need 15 minutes maybe between. She would have to space her... if she has got a 30 minute color she could...

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Mr. Morris: I must have just... I think I just misunderstood. I think that will be a problem. Because what I did was provide two off street parking, which I guess I took to mean there is enough for the one that was in and one....

Dr. Larson: There were some inconsistencies with the parking and what the client plans were, that's another reason why I asked the question.

Mr. Morris: There will definitely need to be at least a little bit of overlap time to allow one, just like Mr. Ingalls said. Normally... I mean she could plan a gap, ten minutes to make sure there is time for one to leave and one to show up. I just... that is not typical. I mean normally it's... and even still she can't control how early a client will show up. They will show up sometimes 30 minutes early and sit and I would hate to put some kind of constraint on that. But again, it if is a matter of a choice between having the Special Exception or not, then we will be willing to make whatever concessions need to be made and adjust schedules accordingly to do it.

Dr. Larson: Any other questions for the applicant?

Mr. Kim: I do have one.

Dr. Larson: Go ahead.

Mr. Kim: So your wife will not work on Sunday and Monday. I just want you to... there won't be six months down the road, okay you know what everyone is asking for Sundays so we need to switch that over. I want you to be clear on what you are asking here because you know if you... as it's written if you do have a Sunday client this could be revoked... the Special Exception could be revoked.

Mr. Morris: No I understand that completely. She's had the same schedule pretty much for five years...

Mr. Kim: Oh, okay.

Mr. Morris: ... the Sunday, Monday is actually typical. Those are salon days off in a lot of cases. Some of them are open seven days a week, but that is only when you have twenty stylists that work there that they can do that. With just her... I mean she needs to have days off.

Mr. Kim: No, I agree. Okay, cool.

Mr. Morris: Sunday and Monday is typical.

Mr. Kim: Okay, thank you.

Dr. Larson: Any other questions for the applicant?

Mr. Ingalls: Yes, how are you... how is she going... not you... how is she going to get clients? How will she...

Mr. Morris: She is fully booked stylist. She going...

Mr. Ingalls: Is she working at a current place?

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Mr. Morris: Yes sir, in Stafford. She has been in Stafford... we have been here for five years, she's been working. But the natural progression for that career field is you are commission... a lot of them are paid hourly in the beginning, they move over to a forty percent base and they get to a fifty percent commission. She has been at a fifty percent commission for five years now. Fifty percent commission is, she does \$2,000 a week in sales and she gives the owner a \$1,000 that is how it works. That is the commission and then she pays taxes on her \$1,000 that she makes.

Mr. Kim: (Inaudible, microphone not on) nine employees?

Mr. Morris: She is a W-4 employee. So and then... the next... that is where she will stay forever and she will never see a pay increase. She will never see... she does not get vacation she does not have health insurance. You know those are just a part of the business but the next step and the only next step is for her to become an independent contractor or a business owner. But in Stafford there is nobody that really does booth rental in Stafford. There is only one salon and it's not... it is latterly two doors down from her current salon.

Mr. Ingalls: She is going to take the clients...

Mr. Morris: Oh yeah...

Mr. Ingalls: She is hoping the clients will follow her.

Mr. Morris: I would say and you know it is a lot of guess work, but a lot of the reading I have is as long as she doesn't leave a five to ten mile radius of where she currently is she should retain about eighty to ninety percent of her current clients. She has worked at two salons since being here, when she left she retained about eighty-five percent of her clients when she left one salon to go to the other. There is women in the room and I know they will attest that once you find a stylist, I mean that is it.

Mr. Ingalls: So do I.

Mr. Morris: I just go first seat available. I can't wait, if this happens I will be able to walk right out to the old garage and, you know after hours... is that okay if I get my hair done in there after hours.

Dr. Ackermann: Just don't pay for it.

Mr. Kim: Oh he's paying for it.

Dr. Larson: Any other questions for the applicant?

Ms. Brown: Yes, I have one.

Dr. Larson: Go ahead.

Ms. Brown: I do go to a salon to get my hair done, and I can tell you that my stylist will work on more than just myself at the same time.

Mr. Morris: Sure it is called double booking.

Ms. Brown: Yeah, and if I am getting a color or a permanent or something like that there is a lot of sitting processing time where the stylist will have thirty minutes perhaps with nothing...

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Mr. Morris: Forty-five.

Ms. Brown: ... to do. So she will take on another client. So in the restrictions that we had listed perhaps would you be interested in something like one client at a time except normal overlap for client change? So we don't end up with two clients at a time there.

Mr. Morris: Sure. That is fine.

Ms. Brown: Something to think about.

Mr. Ingalls: I would make it two or three clients.

Mr. Morris: Yeah.

Ms. Brown: It's not as efficient for your wife, but that could cause a stack up out in the driveway.

Mr. Morris: Right, no, that is totally acceptable.

Ms. Brown: Okay.

Dr. Larson: Any other questions for the applicant? Hearing none, thank you Mr. Morris.

Mr. Morris: Thank you.

Dr. Larson: Any member of the public who wishes to speak in support of the application please come forward.

Mr. Miller: My name is Bruce Miller. I am one of three abutting property owners that own property immediately behind 270 Telegraph Road. I am here to speak in favor of Mr. Morris' application however I would like to proffer some development conditions of my own. I do recommend limiting it to one customer at a time given the horizontal and vertical alignment of Telegraph Road at that location. I would also recommend that any freestanding sign not exceed four square feet nor should it exceed six feet in height nor should it be illuminated. I would also proffer that a development condition should be placed on the approval such that the exterior... the front exterior elevation of the house remain residential in character and that there shall be no building mounted signs that are visible from Telegraph Road. And that is all I have, having heard some of the development conditions already. So I do want to speak in support of Mr. Morris' application with those proffered development conditions. Thank you.

Dr. Larson: Any questions for the witness? Thank you sir. Any other member of the public wish to speak in support of the application? Would any member of the public wish to speak in opposition of the application? Seeing none, would the applicant wish to respond with what you just heard from the public? In that case I will close the public hearing and bring it back to the Board.

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

Dr. Larson: Go ahead.

Ms. Brown: I believe I erred earlier when I was reading the definitions about the sign. I was reading rural home business. For R-1 what is the sign requirements. It looks like they don't mention it in there, like they might not be able to have one.

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Mrs. Musante: It actually does not mention...

Ms. Brown: Yeah.

Mrs. Musante: ... a sign. We have on prior allowed them to use what the home occupation requirements allow, which is a four square foot sign.

Mr. Ingalls: Two by two.

Ms. Brown: I was going to say, where does it say that? I am looking on page 21 of the home occupation. Where does it say four by four?

Mrs. Musante: Hang on just a second.

Ms. Brown: No, I know, I am reading it. I don't see anything. So did I but I was reading rural.

Mr. Grimes: It is on page 258 of the Zoning Ordinance. It would be 28-123 item 2. Home occupation signs provided that, area of the sign shall not exceed four square feet. That is in a A-1 district.

Ms. Brown: Yeah and this is not a home occupation.

Mr. Grimes: I believe it is the same in every district but...

Mrs. Musante: It is and there is also a definition of home occupation sign.

Ms. Brown: Yeah, I am looking at the definition that is why I don't see it.

Mr. Grimes: In R-1...

Mrs. Musante: Look under sign...

Ms. Brown: I am looking under home occupation. Okay. The reason I asked is because when I was out there that sign for the plumbing seemed rather large and a four by four sign in a residential neighborhood, does seem kind of big.

Dr. Larson: It would be two by two.

Mr. Ingalls: This is a two by two, four square feet.

Dr. Larson: Four square feet.

Ms. Brown: Okay not four by... okay. Okay, like a yard sign size?

Mr. Kim: Yes I would like to add not lit up signs too. If we could add that to the exception?

Dr. Larson: I guess we're...

Ms. Brown: How would that work for the right-of-ways and stuff for VDOT? Because there was not sidewalks and stuff there, it would have to go deep into the yard I suppose and there is a lot of trees.

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Mrs. Blackburn: The definition for the sign home occupation discusses being unlit, so we have that covered with that and it just needs to be out of the right-of-way. Which when they come in to do the sign permit, part of that is on the drawing showing where it is supposed to be located.

Ms. Brown: Mr. Chairman, can we find out where the applicant wanted to put the sign?

Dr. Larson: Certainly.

Ms. Brown: Can we ask him?

Dr. Larson: Okay.

Ms. Brown: I know the neighbor had some concerns about that as well.

Mr. Morris: Right, so the sign. I actually don't want a sign.

Ms. Brown: Okay.

Mr. Morris: Well, I don't want to turn it down. Here's my concern and this is what the sign would be used for and I think I mentioned it in here. I don't want people to drive by and be like oh there is a salon, let's just pull in there. So I have to figure out how to do this in a manner... but I do want her clients to know where it is when they come. Because it is a tricky... the driveway is kind of tricky... you were there, so you kind of know. When you come up on it it's like oh... even I am still having trouble finding my own driveway when I pull in. So, I don't want to advertise that this is a salon with a sign, that is not the intent and I don't know that I am even going to do one. How... this is my... you were there today so you will understand this a little bit better, so when you pull into... did you pull into the driveway?

Ms. Brown: I did not.

Mr. Morris: Okay.

Ms. Brown: I did not have any trouble finding it.

Mr. Morris: There's um... I don't know what they call it, it's like a water drain underneath...

Ms. Brown: I did see the culvert, yeah.

Mr. Morris: Right. That worries me and I am not trying to hurt my... but I plan to do some sort of nice little picket fence there protecting the edges of the driveway, right. To kind of let people know where the edge... if you are in an SUV it can be kind of hard to see the edge of the driveway. So I want to make sure I put something nice up there and I have not figured out what that is yet, to kind of show there are drops offs on the other side of this driveway.

Ms. Brown: Let me ask you, I did not see your mailbox. What kind of mailbox do you have?

Mr. Morris: It's a black metal one with a red flag. It's on the other side of the street.

Ms. Brown: Maybe a brick monument mailbox would be nice that heads...

Mr. Morris: It would be on the other side of the street though. I don't.. I mean... I guess...

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Ms. Brown: Oh it's on the other side of the street?

Mr. Morris: It is. It's scary when I check my mail.

Dr. Larson: Let's press on here.

Ms. Brown: Okay.

Dr. Larson: Any other questions for the applicant?

Mr. Ingalls: A sign...

Ms. Brown: I am concerned about the sign.

Mr. Ingalls: ... in a rural area it is good, I think it is better, safety wise to have a sign. Because if you are in a rural area and you drive past it what have you got to do? Now I have got to turn around in somebody's driveway, come back and forth up and down this road looking for it. So a sign sometimes is nice. Now if he was in a curb and gutter subdivision sixty foot wide lots I would say no. But in his case, a sign is going to be safer for... like I say I hope it doesn't say salon maybe it just says you name or something on it that your wife can tell...

Mr. Morris: It will not say salon.

Mr. Ingalls: ... that they know this is where she is. Because you don't want people driving up and down the road.

Dr. Larson: Lets... are there any more questions for the applicant? Are there any questions for staff? Okay, shall we discuss the conditions for the Special Exception now? And then we will offer them to the applicant when we are finished.

Ms. Brown: Okay.

Mr. Grimes: Do you want us to just start with number one and go down the list?

Mr. Larson: I do. We have hours of operation Tuesday through Saturday 10:00 to 8:00, is what I think I heard, no Sunday or Monday hours. We have provide two off street parking for the home and three off street parking spaces for client. No on street parking shall be permitted for clients. Any comments on that?

Mr. Kim: Why is there three off street parking spaces for clients and right after it says no on street parking shall be permitted for clients?

Ms. Brown: There is no place to park on the street.

Mr. Kim: Yeah, I think that kind of... I think we can take out the three off street parking spaces (inaudible, microphone not on)...

Mr. Grimes: That is a pretty standard development condition for...

Ms. Brown: I would like to leave it in. I would like to leave it...

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Dr. Larson: Yeah, I think they are saying something about five parking spaces on the driveway. Is that right three plus two? Okay, so then clients...

Ms. Brown: I have...

Dr. Larson: ... by appointment only... sorry.

Ms. Brown: I would like to have it clients by appointment only with only one client at a time except normal overlap for client change. I would like to change it to that, unless you object.

Dr. Larson: Any comments on that change?

Mr. Ingalls: Could we just say clients by appointment only with only two clients at a time on the premise?

Ms. Brown: No, because then she will start having a haircut while she is doing a color and then the next appointment is going to arrive. And then you have got three.

Mr. Ingalls: Well we are saying...

Dr. Larson: But that would be a violation.

Mr. Ingalls: ... only two clients... We have set... then that is a violation if she has three clients there on the premise, then that's a violation. I think she would have to work her hours... appointment hours... and basically that is what you are saying. You are saying she's got to work it out so there's...

Dr. Larson: Could you... could you repeat what you said Dana?

Ms. Brown: I kept it what it was, clients by appointment only with only one client at a time except normal overlap for client change.

Mr. Ingalls: Well how many... I could have three overlaps. A man and then have two overlaps...

Ms. Brown: No because we just said only one client at a time.

Mr. Ingalls: But you said she could have overlaps.

Ms. Brown: Overlap because there is going to be a client coming afterward. You see... we are keeping in that she can only have one at a time.

Mr. Ingalls: Yeah, we...

Ms. Brown: But we usually... if she's got a 10 o'clock and an 11 o'clock there might be some five minute overlap where one is checking out and paying and going to the bathroom and the other ones...

Mr. Ingalls: It could be...

Ms. Brown: ... parking or getting there a few... getting there... I don't get there right on time, I get there five or ten minutes early.

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Mr. Ingalls: I think it could be a thirty minute overlap of time. I mean... I don't know who's...

Ms. Brown: Well, then you get the driveway stacking...

Mr. Ingalls: How do you govern that? How do you... if I am sending... I am going to say go out there and verify that. How do you verify...

Ms. Brown: That means she cannot be scheduling...

Mr. Ingalls: ... that is not an overlap

Ms. Brown: ... two clients at a time. What I said means she cannot be scheduling two clients. She cannot have me come in for a color at 10:00 and then a haircut come in at 10:15 while I am processing.

Mr. Davis: I have a compromise. Clients by appointment only with only one client scheduled at a time.

Ms. Brown: I can live with that.

Mr. Ingalls: I can go with that.

Dr. Larson: Okay, so then... but we still might end up with overlap.

Mr. Kim: Yes.

Dr. Larson: Is the overlap language okay?

Mr. Ingalls: Well, we did not say anything about how many you can have on the premise, because there is going to be overlap. I mean...

Ms. Brown: No, there does not have to be.

Mr. Ingalls: I doesn't...

Ms. Brown: If you schedule a color for 45 minutes and not schedule her next appointment for 15 or 20 minutes after that.

Dr. Larson: Okay, okay.

Mr. Ingalls: But the person still could arrive... like you say, you could arrive 30 minutes early or whatever and that is not her fault.

Dr. Larson: But I think Ray was saying if you have one client scheduled at a time, i.e. client A from 11:30 to 12:00, client B from 12:00 to 12:30, you have scheduled one client at a time. Now client B may arrive 5 or 10 minutes early, but she has still met the requirement because she scheduled one client...

Ms. Brown: I am okay with that because that will prevent the double, you know, booking...

Dr. Larson: Yeah, I do...

Ms. Brown: ... doing two clients at a...

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Dr. Larson: Is that what you meant Ray?

Mr. Davis: Yes.

Dr. Larson: Okay. I think I am okay with that as well. Any other discussion on clients then? Okay, number 4, no retail sales of salon products other than associated with the business and must be purchased at the time of scheduled appointment. I had a big question on that. What do we mean by retail sales.

Mrs. Musante: Do you want me to answer that or do you want the applicant to answer?

Dr. Larson: Where did it come... where did that condition come from?

Mrs. Musante: Me.

Dr. Larson: Okay go ahead, you answer.

Mrs. Musante: What it means is the retail sales part is any salon you go into they have a nice little stand that has all of the hair products that the stylist uses, hairspray, shampoo, whatever. If you look at the drawing they've got a area for the products. So, instead of me driving by his house and stopping and saying oh I need hairspray, it's she can sell the product to the client at the time that they are there but they can't stop back by and purchase product. That would constitute retail sales, which is what we don't want to do.

Mr. Kim: Okay.

Ms. Brown: Agree.

Dr. Larson: Wait, okay.

Mr. Grimes: I like the way you have approached this.

Dr. Larson: Just a minute.

Mr. Kim: It's perfect.

Dr. Larson: How did you just define retail sales?

Ms. Brown: We have minutes, we will have minutes.

Dr. Larson: I... you are saying that if the client is there for the service...

Mrs. Musante: Correct.

Dr. Larson: ... and then the client says oh I like this product so much that you just used on me, do you have any. And then you are saying if she buys it then under those circumstances then that is not a retail sale.

Mrs. Musante: It is part of the service.

Dr. Ackermann: Right.

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Mr. Kim: Okay.

Mr. Ingalls: I get my hair shampoo at the same time they do my hair.

Mr. Davis: That's perfect.

Dr. Larson: I will have to think about that.

Ms. Brown: Yeah, you know what? So you are saying she can still have the shampoo shelf and the product shelf?

Mrs. Musante: Yes.

Ms. Brown: And she can sell?

Mrs. Musante: Yes, to her clients only.

Mr. Grimes: At the time of the...

Mr. Kim: At the time...

Dr. Ackermann: At the time...

Mr. Grimes: ... of the appointment.

Mrs. Musante: At the time of the scheduled appointment.

Mr. Kim: Yes, at the time of the scheduled appointment.

Mrs. Musante: They can't just drop in.

Mr. Grimes: The way that is written is going to avoid those extra trips and stops that would increase traffic at the property. I think it is great the way it is worded.

Mrs. Musante: Thank you.

Mr. Kim: Yeah, I like it.

Ms. Brown: But it is still a retail sale. It is not the service. It is subject to tax, which the service is not.

Mrs. Musante: If you all....

Ms. Brown: When I go to my salon I have to pay...

Mrs. Musante: ... want to beat that dead horse tonight go right ahead. But every salon that you go in has the product for purchase.

Ms. Brown: They do, but I only get taxed on the shampoo or the brush or the curling iron that I buy. That is a retail tax. I do not pay tax on my haircut or my color service or my haircut. So in that respect if I do buy a product then that is retail sales and the owner will be paying retail tax.

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Mr. Davis: But that is not our concern.

Mr. Kim: I wouldn't...

Ms. Brown: But our code says no retail sales and we are allowing retail sales.

Dr. Larson: Yeah, I am... I can't support that bullet.

Dr. Ackermann: Good point.

Mrs. Musante: Then we are going to have to delete it and he is going to have to delete the retail portion of his drawing.

Dr. Larson: Mr. Morris, I don't need... we don't need to talk now, but just so you know we have gone through this a lot. Our code does not allow for retail sales in residential areas and we've considered a retail sale a person coming in, getting a product and exchanging money or charging a card or something... giving compensation for it and walking out. We have defined that as a retail sale.

Mr. Morris: Tangible exchange.

Dr. Larson: You are exchanging goods at a residence.

Mr. Grimes: But it can be sold online and picked up during the appointment.

Dr. Larson: We've defined that as not a retail sale.

Ms. Brown: I don't know that the Planning Commission has defined it that way in the definitions or that the Supervisors approved...

Dr. Larson: But they haven't... nobody has disagreed with it and they all know about it.

Mr. Grimes: That is correct.

Mr. Kim: Can I ask a question Mr. Chairman?

Dr. Larson: Yes.

Mr. Kim: Sorry, this is the only question. So if I went to get my hair done, usually it cost me ten bucks, so I don't go to salons. If I get my shampoo, if she shampoos my hair... that is a normal protocol of when you get to a salon. They shampoo your hair...

Ms. Brown: Yes, that is part of the service.

Mr. Kim: Yes, so if I am like man that shampoo is excellent, can I get that? Is there a way where, I am just asking, is there a way they can say well you can have the rest of the bottle or is that sales? Because technically she is still using the product, you know what I mean?

Ms. Brown: That is just like the gas and the lawnmower for the landscaper. It is still a service. If they want to buy the shampoo, they are going to have to go to a retailer because she would be retailing that shampoo in house if she was selling it separately.

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Mr. Kim: True that. Okay, thank you.

Dr. Larson: Okay, number 5, spaced utilized for business shall be converted back to garage/storage when owner sells the property.

Mr. Grimes: Why?

Ms. Brown: Is that going to be possible?

Mr. Kim: Yes, why?

Mr. Ingalls: Why?

Dr. Larson: I don't really understand why that would be a requirement. I know that the Special Exception goes away when the owner goes away, that I understand. But why would he have to go through the expense of remodeling it back.

Mrs. Musante: Let me remind you these are suggested.

Dr. Larson: Okay.

Mr. Kim: Can we take that one out?

Dr. Larson: Yep, let's take four and five out.

Mr. Kim: Okay.

Dr. Larson: Number 6, one sign shall be permitted and shall not exceed four square feet and somebody mentioned illumination. I wouldn't have a problem with saying no illumination on it as well.

Mr. Grimes: Can we just add that it would comply with the home occupancy sign requirement?

Dr. Larson: Let's see...

Mr. Grimes: That would address all those issued.

Dr. Larson: Sure.

Ms. Brown: That wouldn't confuse or misleading that we are approving a home occupancy verses a home business?

Mr. Grimes: That is why I said it will comply with the home occupancy sign requirement.

Ms. Brown: I would read it different. I think we should not say anything. Just if you want to put in a sign, we will let him have the four square foot sign.

Mr. Grimes: I don't have any heartburn either way because I have always been the advocate of if it's in the code they have to comply with the code. The problem is it's not in the code for this zone so I am trying to establish a baseline...

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Ms. Brown: Yeah, I am just thinking if we say home occupancy, they may look back and say well that is not what you approved, you approved a home business.

Mr. Grimes: I don't believe that is what the application states.

Ms. Brown: No, I know, but if our conditions, it would be a conflict in our...

Mr. Grimes: But it is an approval for a Special Exception, how does that...

Dr. Larson: How would you phrase it Robert?

Mr. Grimes: Just that the sign would comply with the requirements of the home occupancy sign.

Dr. Larson: With home occupancy permit, is that right? Comply with the requirements of the... the sign would comply...

Mr. Grimes: The sign... the allowable sign requirements in home occupancy. It defines it under home, I am sorry, home occupation.

Mrs. Musante: So I get this, sign shall comply with home occupation sign requirements.

Dr. Larson: Yes.

Mr. Grimes: That was what I was...

Dr. Larson: I think that was what he was trying to say, yes.

Ms. Brown: Let's hope there is no issue and Mr. Leming has to get involved in.

Dr. Larson: Must comply with all State and local codes. Approval of this special exception for hair salon only will expire when this applicant vacates the property and is non-transferable. The approval may be revoked by the Board of Zoning Appeals for non-compliance of the conditions of approval. Somebody was talking about employees.

Mr. Ingalls: I would like to add one. No employees who do not reside on premise.

Mr. Grimes: You picked up my number 10.

Dr. Larson: Alright. I am not sure that is necessary, but I won't object to it.

Ms. Brown: I am fine with it. Mr. Chairman when we blew over these you said we were taking out four and five. I thought we were leaving part of four in.

Dr. Larson: What part of four did you want to leave in?

Ms. Brown: No retail sales of salon products.

Dr. Larson: Oh.

Ms. Brown: Period.

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Dr. Larson: Yeah.

Mr. Kim: Oh yeah.

Dr. Larson: Good catch.

Mr. Kim: Good one.

Mr. Grimes: If you leave salon products it would leave it up for debate.

Ms. Brown: Okay. No retail sales of products.

Dr. Larson: No retail sales.

Mr. Grimes: No retail sales.

Dr. Larson: On the premises.

Mr. Grimes: Let somebody else argue over the definition later.

Dr. Larson: Yep, we have had enough arguments.

Mr. Kim: Yes, we are done.

Dr. Larson: Any other conditions?

Mrs. Blackburn: Mr. Chairman.

Dr. Larson: Yes ma'am.

Mrs. Blackburn: I know you wanted to take number five out, I think the... well I know the rationale behind it, that we put it in there was that if this space is there and the next person buys the house and thinks they can run a hair salon without getting the appropriate approvals. And that was why, it was just to... which would really mean taking the sinks out and taking the chair out. They don't have to make it... and it may just be... and to convert it back to garage and storage. That was all, that was the requirement by that.

Mr. Grimes: Well I would modify that then to simply remove the furnishings associated with the business. Because the way this is written this would be... he is actually suggesting taking the garage door out putting in a window, putting in a door.

Dr. Ackermann: Right because he can always...

Ms. Brown: Right, Mr. Grimes I agree with you.

Mr. Ingalls: That makes a nice room available.

Dr. Ackermann: Yeah.

Mrs. Blackburn: Yeah.

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Mr. Kim: Yes, someone could make it a room or ...

Mr. Grimes: And a lot of folks convert their garages to...

Mrs. Blackburn: Yes.

Mr. Grimes: ... man caves and other.

Mrs. Blackburn: Yes.

Mr. Grimes: So I would suggest that we modify number five to note that the owner must remove all fixtures, furnishings associated with the business when the property is vacated.

Mrs. Blackburn: Okay.

Dr. Larson: I don't have a problem with that. I am just trying to think of the implications.

Mr. Grimes: I think the only concern is... was actually expressed by a member of the public, that it might change the fact that it's a residential neighborhood. He wants to keep that flavor and changing that out to what looks like or could be perceived as a store front, might be a negative. But I would say as long as the windows are added and the doors are added and they are residential in nature it should not change the quality of the appearance of the house.

Dr. Larson: So what do you think you have for number five Melody?

Mrs. Musante: For number five I have remove all furnishings associated with the business when property is vacated.

Mr. Grimes: Could you add fixtures?

Mrs. Musante: Furnishings and fixtures?

Mr. Grimes: Yes, please.

Dr. Larson: Which sounds like the sink.

Mr. Grimes: Correct. Fixtures are typically defined as lights, plumbing fixtures and otherwise.

Ms. Brown: Should we put that in there or just fixtures is fine?

Mr. Grimes: Actually all you have to do is take them out and cap them. It's pretty simple. The rough in would be left there for the next owner.

Dr. Larson: Alright, so Melody, would you mind rereading everything that you have so far.

Mrs. Musante: Number 1, days and hours of operation, Tuesday through Saturday 10:00 am to 8:00 pm. No Sunday or Monday hours. Number 2, provide 2 off-street parking spaces for the home and 3 off-street parking spaces for clients. No on street parking shall be permitted for clients. Clients by appointment only with only 1 client scheduled at a time. Number 4, no retail sales on the premise. Number 5, remove all fixtures and furnishings associated with the business when the property is vacated. Number 6, sign

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shall comply with Home Occupation sign regulations. Number 7, must comply with all State and Local Codes. Number 8, approval of this Special Exception for hair salon only will expire when this applicant vacates the property and is nontransferable. Number 9, this approval may be revoked by the Board of Zoning Appeals for noncompliance of the conditions of approval. And number 10, no employees who do not reside on the premise.

Ms. Brown: One thing, number 6, are we going to keep in on the sign, one sign shall be permitted and then what you said? Because he said he may not want a sign. I don't want to force him to have a sign.

Dr. Larson: Right, one sign shall be permitted, right? Is that...

Ms. Brown: Just like you have, and then whatever you said after that.

Mrs. Musante: That is what I had, but...

Dr. Larson: Right...

Ms. Brown: I didn't hear her, I didn't hear her say the...

Dr. Larson: That the word permitted...

Ms. Brown: ...sign shall comply with, that's all I heard.

Mrs. Musante: I didn't say the first part, I thought we had removed that and said sign shall comply with home occupation...

Ms. Brown: No, I would like to leave one sign shall be permitted in there.

Mrs. Musante: The Home Occupation sign regulations say one unlit four square foot sign, so we are being...

Dr. Larson: Right, but we are giving him the option of having a sign or not. So, the sign is either... it's permitted but it is not required.

Mrs. Musante: Okay, so number 6, one sign shall be permitted and shall comply with the Home Occupation sign regulations.

Ms. Brown: Yep.

Dr. Larson: Okay, anybody on the Board have any other comments with respect to these conditions? Applicant, Mr. Morris...

Mr. Davis: Should 9 and 10 be reversed?

Dr. Larson: Say again.

Mr. Davis: Should 9 and 10 be reversed?

Dr. Larson: Probably. You are saying the ability to revoke should be the last thing. Mr. Morris, do you have any to say about the conditions we have just gone over.

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Mr. Morris: No sir.

Dr. Larson: Very good. Is there a motion?

Ms. Brown: Motion to approve this Special Exception.

Dr. Larson: Second?

Mr. Kim: I second that.

Dr. Larson: All those in favor say...

Dr. Ackermann: Can I ask a question. I just wanted to note that we did receive this email from Mr. Jim Blesse and... just that it was in the record and we thank him for his statements and we have taken them into consideration when we make our decision.

Dr. Larson: Right, the Board received... all members of the Board received the email and I think the applicant should have gotten a copy of that as well.

Ms. Brown: Yes, I received that too.

Dr. Larson: Good, so we got everything. Okay, any other discussion on the motion? Those in favor say aye.

Dr. Ackermann: Aye.

Mr. Ingalls: Aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Mr. Davis: Aye.

Ms. Brown: Aye.

Dr. Larson: Aye. Opposed? Motion carries 7 - 0. Okay.

Mr. Davis: Good to see you Fred.

UNFINISHED BUSINESS

None

ZONING ADMINISTRATOR'S REPORT

Discussed after other business

ADOPTION OF MINUTES

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September 22, 2015

Dr. Larson: Now we have some minutes to adopt.

Mr. Davis: He used to work for the county.

Dr. Larson: The September 22nd minutes, does anybody have any comments on the September 22nd minutes?

Mr. Grimes: I believe the September 22nd minutes were the updated minutes that added the vote, or at least quantified what the count was, and that has been added. So I don't have any changes to those.

Dr. Larson: I thought they looked familiar. Okay, any other comments on the minutes? Hearing none, is there a motion to approve these minutes.

Mr. Grimes: I move to approve the September 22, 2015 meeting minutes.

Dr. Larson: Second?

Mr. Kim: I second that.

Dr. Larson: Those in favor say aye.

Dr. Ackermann: Aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Mr. Davis: Aye.

Ms. Brown: Aye.

Dr. Larson: Aye. Opposed? Motion carries 7 - 0.

Mr. Ingalls: Please note that I abstained because I wasn't present.

Dr. Larson: Okay, motion carries 6 - 0, one abstention. October 27th minutes.

October 27, 2015

Mr. Grimes: I have two corrections, on line 672...

Mr. Kim: 672...

Mr. Grimes: I think the word on is supposed to be one. And on line 983, in the middle, it says that's called part of that. I believe called is supposed to be all.

Ms. Knighting: Line 983?

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Mr. Grimes: Yes ma'am. Replace the word called with all. I am sure that is the way I probably sounded. That's the only changes I have.

Dr. Larson: Any other changes to the minutes. Hearing none is there a motion to approve the minutes.

Mr. Grimes: I would move to approve the October 27, 2015 meeting minutes.

Dr. Larson: Second?

Mr. Kim: I second the motion.

Dr. Larson: Those in favor say aye.

Dr. Larson: Second?

Mr. Kim: I second that.

Dr. Larson: Those in favor say aye.

Mr. Ingalls: Aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Ms. Brown: Aye.

Dr. Larson: Aye. Any opposed?

Mr. Davis: Abstain.

Dr. Ackermann: Abstain.

Dr. Larson: We have two abstentions. Did you get those Melody? Okay, I want to recognize Mr. Greg Poss and his service to the BZA, yeah I know. We have mailed him his plaque but we failed to recognize him at the last meeting for the minutes... for the record. So Greg served from 2012 to 2014 and we appreciate his service and we have sent him a plaque demonstrating that. Now I have another plaque to give out. Mr. Davis, please come forward.

OTHER BUSINESS

Recognition of Mr. Greg Poss
Recognition of Mr. Ray Davis

Mr. Kim: Yay.

Dr. Ackermann: Yay, Ray.

Dr. Larson: We give this to you in recognition and appreciation for all your time on the Board of Zoning Appeals.

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Mr. Davis: Thank you.

Dr. Larson: Thank you very much.

Applause

Dr. Larson: And for the record, the Board thanks Mr. Davis for his service on the Board of Zoning Appeals. That is all we have on the agenda, is there a motion to adjourn.

Mr. Ingalls: Mr. Chairman, I would like to announce that I am not going to seek reappointment, so this is my last meeting also. I thank each of y'all for your service and what you have done for me. I thank the staff for putting up with me for all these years, 35 is enough. So I am going to let y'all move along without me, but I do appreciate all y'all have done for it and I appreciate your service to the County and I know they do too. The pay is not much, but it's good.

Ms. Brown: Larry you have really been very valuable.

Dr. Ackermann: Yes, I don't think we can express how valuable your service has been on this committee and to me personally, and giving me a feel for the issues and the right questions to ask and the right approaches to take. So I really appreciate it very much.

Mr. Kim: I second that, absolutely.

Applause

Dr. Larson: That is quite a shock to me, I really hate to see you go.

Mr. Ingalls: I can't go home tonight and say I changed my mind.

Dr. Larson: I just want to add that your perspective has been invaluable the time that I have been on the Board.

Mr. Ingalls: Thank you.

Dr. Larson: And I really appreciate your opinions and viewpoints.

Mr. Kim: Mr. Chairman, before we adjourn, you skipped the Zoning Administrator's Report.

Dr. Larson: We sure did; Zoning Administrator's Report.

Mr. Kim: Sorry, I know you want to skip it but...

ZONING ADMINISTRATOR'S REPORT

Mrs. Blackburn: I have two things, well three things to say. We have received the writs for appeals to the circuit court for the Newton case and for the Austin Park case. So, the attorneys will be working on that. I also want to say have a wonderful Thanksgiving. I hope everybody is safe and eats lots of turkey. And that is it.

Dr. Larson: Thank you very much.

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Ms. Brown: The appeals were received on time?

Mrs. Blackburn: Well, yes as far as we know.

Dr. Ackermann: Definitely gets you off my list, asking for donations.

Mr. Ingalls: No don't scratch me off your list.

Mr. Kim: Can I make a motion Mr. Chairman?

Dr. Larson: Yes.

ADJOURNMENT

Mr. Kim: I motion to adjourn.

Dr. Larson: Is there a second?

Mr. Grimes: Second.

Dr. Larson: Those in favor say aye.

Dr. Ackermann: Aye.

Mr. Ingalls: Aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Mr. Davis: Aye.

Ms. Brown: Aye.

Dr. Larson: Aye. Opposed? Okay, we are adjourned.

The motion passed 7 - 0.

With no further business to discuss, the meeting adjourned at 9:43 p.m.