

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES

May 26, 2009

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, May 26, 2009, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Robert C. Gibbons in the Board of Supervisors Chambers. Mr. Gibbons introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Mr. Gibbons stated the Bylaws of this Board state the applicant would be allowed up to ten minutes to state their case, the other speakers would be allowed three minutes to testify, and the applicant would be allowed three minutes for rebuttal.

Members Present: Ernest Ackermann, Ray Davis, Robert Gibbons, Larry Ingalls, Karl D. Larson and Marty Hudson

Members Absent: Steve Beauch

Staff Present: Rachel Hudson, Zoning Administrator
Melody Musante, Senior Zoning Technician
Aisha Hamock, Recording Secretary

Mr. Gibbons: Are there any changes to the advertised agenda.

Mrs. Musante: There are no changes.

DECLARATIONS OF DISQUALIFICATIONS

Mr. Gibbons: Before we hear the first case, does any Board member wish to make any declaration or statement concerning any case to be heard tonight? Thank you, I now ask the Secretary to read the first case.

PUBLIC HEARINGS

1. **SE09-2/2900130 - JOSHUA O. PACHECO** - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses and Standards", to allow an addition to an existing nonconforming single family dwelling on Assessor's Parcel 26-11A. The property is zoned A-1, Agricultural, located at 592 Hartwood Road.

Mrs. Musante: Case SE09-2/2900130, Joshua O. Pacheco, Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses and Standards", to allow an addition to an existing nonconforming single family dwelling on Assessor's Parcel 26-11A. The property is zoned A-1, Agricultural, located at 592 Hartwood Road. You have the application, application affidavit, plat of the property, construction plans, photos of the property, copy of 1986, 1995 and 2000 ordinance, tax map and vicinity map. The applicant is requesting a Special Exception to construct a thirty-six (36) by twenty (20) foot addition on an existing nonconforming single-family dwelling. The existing dwelling sits ten (10) feet from one side property line, which does not meet the requirement of twenty (20) feet. The proposed addition is on the opposite side of the non-conformity, therefore, there will be no further encroachment into the nonconforming area. At the time the single-family dwelling was constructed, the side yard requirement was fifteen (15) feet. The side yard requirement changed in 1997 to ten (10) feet and then 2000 to twenty (20) for the A-1 Zoning District. The single-family dwelling was constructed in 1988.

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The permit for addition was applied for on April 2, 2008. The permit was denied pending approval from the Board of Zoning Appeals.

Mr. Gibbons: Any questions of staff before we open the public hearing?

Mr. Ingalls: I have one Mr. Chairman. Does the county real estate tax records indicate how big the existing house is?

Mrs. Musante: The existing dwelling is fifty-eight (58) by twenty-eight (28).

Mr. Ingalls: Fifty-eight (58) by twenty-eight (28)?

Mrs. Musante: That is correct.

Mr. Ackermann arrived at 7:07 PM.

Mr. Gibbons: Sir, Mr. Ackermann just came, so he is the sixth member present tonight. Okay, I will open the public hearing and would the applicant come forward.

Joshua Pacheco: My name is Joshua Pacheco and I applied for the permit because I would like to add an addition on to my house. We would like to add a playroom, computer room and make our master bedroom larger. So like I said, one side of the land is ten (10) feet from the property line, the side that we are building on is on the opposite side. So we believe there would be no problem with that.

Mr. Gibbons: Since you are very young, did you have this built in 1988?

Mr. Pacheco: No, I didn't.

Mr. Gibbons: So you purchased it...

Mr. Pacheco: I purchased it four (4) years ago.

Mr. Gibbons: From who?

Mr. Pacheco: I don't have the name off the top of my head.

Mr. Gibbons: But you just recently purchased it?

Mr. Pacheco: Yes.

Mr. Gibbons: Okay, Did you have a question Mr. Davis?

Mr. Davis: The unfinished garage on the front of the property, is that yours?

Mr. Pacheco: Yes.

Mr. Davis: Do you have a permit for the garage?

Mr. Pacheco: No.

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Mr. Davis: When did you start construction?

Mr. Pacheco: We started that two (2) and a half years ago and then we decided we were not going to go ahead right now with it.

Mr. Gibbons: Did you know you needed a permit?

Mr. Pacheco: No, I didn't know I needed that. When we bought the house, the slab and the footers were there and I did not know we needed a permit. We went ahead with the block wall and decided to stop it. Once we do go back to finish it, we will get a permit.

Mr. Gibbons: Do we know who was the original owner of the home when we research?

Mrs. Musante: No sir, that is not a part of our history research.

Mr. Gibbons: Okay. Any other questions from members... Okay, it is a simple request.

Mr. Ingalls: I guess I am having a little trouble, the plat you submitted showed your house being ten (10) feet of the right hand side.

Mr. Pacheco: Yes.

Mr. Ingalls: And from what the county just told me that the house is approximately fifty-eight (58) feet long. Your going to add a twenty (20) foot addition and you say on your plat that would put you seven (7) feet from the left hand property line. Is that right?

Mr. Pacheco: I am just doing the math right now.

Mr. Ingalls: That is my problem, if I add up the ten (10) feet side yard on the right, fifty-eight (58) foot house, a twenty (20) foot addition and thirty-seven (37) foot side yard, is what you said. Those numbers, I think, add up to 125 feet. My opinion is that this lot is 150 feet wide at that point and there is another twenty-five (25) feet somewhere.

Mr. Pacheco: When I measured it, if you go to the house you go into the woods and I measured it from... There is a stake all the way in the back, a metal pin, and I brought it up to the front of the pin and that is what I got when I measured it.

Mr. Ingalls: Like I said, there is still, per your measurements, a missing twenty-five (25) feet. It is either, more on the right hand side or more on the left hand side or less on one and more on the other.

Mr. Pacheco: If it would be anything, it would be more on the left hand side if you are looking at the house.

Mr. Ingalls: It would be pretty difficult for me to stand on your back corner or your front corner and look at your front or back, depending on which one I was standing on, 685 or 655, I can't quite read it, on the side that you are closest to. To see from fifty (50) or eighty-five (85) feet through the woods and say, I am on the line. That would be difficult for me to know that I was ten (10) feet off that line because I probably can't see from one to the other, but maybe you can, to get a straight line. How confident are you that you are even in violation. Maybe, twenty (20) feet off that line, I don't know because there is twenty-five (25) extra feet in there that I am concerned about. If you are more than twenty (20) feet off that line

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than you can build your house but that may put your side in jeopardy. I don't know that, it sounds like it may not but I don't usually vote on mays.

Mr. Pacheco: I went to the pin all the way in the back, looking at the house, all the way in the back left side. That is the pin I went to and there is a pin in the front of the property on the left side. On the right side, the only way that I know is that my property line is, is because there is a fence right there that divided both properties; an existing fence.

Mr. Ingalls: Is the fence yours or your neighbors?

Mr. Pacheco: It is my neighbors.

Mr. Ingalls: So you are assuming that his fence is on the property line?

Mr. Pacheco: Yes.

Mr. Ingalls: And you are approximately ten (10) feet off of the fence?

Mr. Pacheco: Yes.

Mr. Ingalls: Is the fence right beside your driveway? The picture I saw showed a concrete drive but not the outside of it.

Mr. Pacheco: Yes, it is a foot away from the edge of the driveway.

Mr. Ingalls: That is all I have right now.

Mr. Gibbons: Any other questions?

Dr. Larson: Just to clarify, when I am looking at this picture and I am looking at the front of your house. The non-conforming part is the right side of the house in this picture?

Mr. Pacheco: I don't have any idea what picture you are talking about.

Dr. Larson: Can you see that?

Mr. Pacheco: Yes, it is to the right.

Dr. Larson: Thank you.

Mr. Ackermann: This may not be a question for you but the vicinity map provided in the packets, was that provided by the county? That aerial photo.

Mrs. Musante: We provide those.

Mr. Ackermann: And number 592 with the green star, that is the property we are talking about.

Mrs. Musante: That is correct.

Mr. Ackermann: And those lines that are in there, the blues lines, where do they come from?

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Mrs. Musante: The blue line is, when you do a search on the computer, it outlines the address that we are searching. That is what the blue means.

Mr. Gibbons: I think what Mr. Ingalls said clarifies the doubt I had because my question to staff was, if the ordinance required fifteen (15) foot setback, who would give them the building permit in 1988 and have a fifteen (15) foot setback. So, right now I agree with him. It is hard and I don't know how you would go from one end to the other without a transit shot. It is a lot of woods and I don't know how you see through it. You might not be in violation. When an applicant comes in, you are just going on what he is saying?

Mrs. Musante: That is correct. Currently the ordinance does not require a house location survey on additions, therefore, we can take hand drawn plats at this time. We have to rely on the applicant to give us the accurate information.

Mr. Gibbons: The Commission of Revenue, did we look at what they had on this?

Mrs. Musante: They don't keep copies of house location plats. Currently, even today, if an applicant comes in and applies for a new single-family dwelling, we would accept the house location that they give us at the time. We do not require wall checks, nor do we require final house location surveys.

Mr. Ingalls: I guess if we were to make a condition of an approval that prior to the issuance of the building permit, that he would verify that. That would satisfy me. I feel like what he is saying is close but... As long as his addition does not encroach another twenty (20) feet, we are fine. Like I said, there is twenty-five (25) feet in there somewhere that could be something going on. It may be that all twenty-five (25) feet to the left hand side which, instead of being thirty-seven (37) feet you may be fifty (50) feet. You said you went up that line, which I find that hard, and pulled over, I think the sketch said fifty-five feet to your house from that property. It could be seventy-five (75) feet to that property line which, improves your case better. Maybe I could consider something if we required to know before we issued the building permit, that your house with the addition will not encroach on the new side line of twenty (20) feet.

Mr. Ackermann: So then we would require a survey?

Mr. Ingalls: Yes. Rather than... I mean I guess... I feel like he should have had a little more knowledge of what we should have had here tonight. But rather than hold him up for a month, if he can provide it to the county, they have to prove by a survey that it would not be encroaching into the twenty (20) feet than issue the twenty (20) feet.

Mrs. Musante: When a building permit comes in we cannot require him to have a certified house location plat.

Mr. Ingalls: Under this Special Exception, if we make that a condition, we can.

Mrs. Musante: That's correct, we cannot.

Mr. Gibbons: We can.

Mrs. Musante: Right.

Mr. Ingalls: You can't but we can.

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Mrs. Musante: Right.

Mr. Hudson: I support the concept of what's going on here but, let me plead ignorance here, how did we get here if the county accepts what he drew up and you don't require the engineering. How did we get to the Special Exception and why wouldn't he have just applied for a building permit. How did we end up here?

Mrs. Musante: They applied for a building permit that showed us a setback that did not meet our current code.

Mr. Hudson: Are you talking about the left hand side or the right hand side?

Mrs. Musante: The right hand side.

Mr. Hudson: The right hand side. So your basing it on the non-conformity?

Mrs. Musante: Correct.

Mr. Gibbons: At the time that the house was built it was fifteen (15) and currently it is twenty (20). So even it was fifteen (15) he would still be five (5) feet out of it. I think Mr. Ingalls is right. Do you understand what Mr. Ingalls is saying?

Mr. Pacheco: Yes. The one question I had was if we do it that way and I go get a survey, would I have to wait another month or another two months to come back to a meeting or once I get the survey and everything looks fine...

Mr. Gibbons: What Mr. Ingalls is saying is that we would make that a condition tonight after the vote of the Board. We would approve subject, that you when you applied for the Building Permit that you would show by a survey that you are not encroaching on the left hand side past the twenty (20) foot boundary.

Mr. Ingalls: Like I said, I don't really need for you to come back if you could prove to somebody else as a condition.

Mr. Pacheco: Okay.

Mr. Davis: When you purchased the property and finance the property, I assume that you were not required to have a survey.

Mr. Pacheco: No.

Mr. Davis: I have a problem that we have a partially built garage that was put there without county knowledge or permission. I would make that a condition that a permit be obtained for or at the same time that this permit is issued.

Mr. Gibbons: Are you following that?

Mr. Pacheco: That's fine.

Mr. Gibbons: Okay, so when you go you are going to get two (2) permits; one is for the addition and one is for the structure that you already laid the block on.

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Dr. Larson: Where is the partially built garage?

Mr. Davis: In front of the house.

Dr. Larson: Is it on the plat.

Mr. Gibbons: No. When he bought the house Doctor, he said the footings were there and he started to build the walls and then he stopped and would go on with the addition to the house first.

Dr. Larson: You say the garage is in front, is it on the right side front or the left?

Mr. Pacheco: No, it is on the left. It is about 150 feet in front of the house.

Dr. Larson: It doesn't encroach on the right side setback?

Mr. Pacheco: No, it is pretty much in the middle of the property.

Dr. Larson: Okay.

Mr. Ingalls: I guess if I had this surveyed I would ask the surveyor that you had it done by to locate that garage on the survey. From the aerial photo that we had, it doesn't appear to be closer than fifty (50) feet to the front but it may be sixty (60) feet from the front. Accessory structures can be closer to the side yard, I believe, anyway.

Mrs. Musante: Right, the detached garage would have to be fifty (50) feet from the front property line and ten (10) feet off of the side.

Mr. Pacheco: Okay. Which it is.

Mr. Ingalls: Just to verify that it is... From the aerial photo, it is certainly more than ten (10) feet, it is further away from your house than where you think the property line is, but it is somewhat closer to the front.

Mr. Gibbons: Do you have any questions of us now?

Mr. Pacheco: No.

Mr. Gibbons: Okay, so we will need a motion and than we will sum up the two requirements.

Mr. Ingalls: You have to close the public hearing.

Mr. Gibbons: Yes, so if you have no further comments I am going to close the public hearing. I will bring it back to the Board. Who would like to make the motion?

Motion:

Mr. Davis: I make the motion for approval of case SE09-2 with those two conditions.

Mrs. Musante: Will you please state the conditions again?

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Mr. Davis: That a site survey is presented with the application and that a building permit is obtained for the garage.

Mr. Larson: I second that motion.

Mr. Gibbons: Okay, so you understand that you have to get a site survey done before you go to get the building permit. When you go, you are going to have to have two, one for the addition and one for the garage. The site survey should locate the current building on it; make sure you have your front setback right. Is that clear to you?

Mr. Pacheco: Yes.

Vote:

The motion to approve the application SE09-01/2900130 with two conditions passed 6-0.

Mr. Ackermann – yes

Mr. Beauch – absent

Mr. Davis – yes

Mr. Gibbons – yes

Mr. Hudson – yes

Mr. Ingalls – yes

Dr. Larson – yes

UNFINISHED BUSINESS

2. **A08-6/2800772 - MICHAEL J & CINDY MONGRAIN** - Appeal of a Notice of Violation dated November 12, 2008 for the height of an existing fence located in the front yard on Assessor's Parcel 54L-26-336. The property is Zoned R-1, Suburban Residential, located at 2 Julie Lane, Grafton Village subdivision.

No Discussion

REPORT BY ZONING ADMINISTRATOR

No Report

ADOPTION OF MINUTES

April 28, 2009

Mr. Gibbons: The next item on the agenda is the minutes of April 28, 2009. Any corrections or addition? If not, I need a motion.

Motion:

Mr. Ackermann: I make a motion that we approve the minutes as presented.

Mr. Gibbons: Motion by Mr. Ackermann.

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Mr. Hudson: I will abstain because I was absent.

Mr. Davis: We had corrections to the minutes by email, has that been included?

Mr. Gibbons: Yes.

Mr. Davis: Second.

Vote:

The motion to approve the minutes as presented passed 5-0-1.

Mr. Ackermann – yes

Mr. Beauch – absent

Mr. Davis – yes

Mr. Gibbons – yes

Mr. Hudson – abstain

Mr. Ingalls – yes

Dr. Larson – yes

OTHER BUSINESS.

Discussion of Bylaws

Mr. Gibbons: Next is the discussion of the bylaws. So Melody, we got this from Rachel?

Mrs. Musante: Correct. She has done a memo to you all concerning the Bylaws and a the proposed ordinance for fences, walls and hedges, as well as the house bills.

Mr. Gibbons: The first thing I would like to take up is, the Board did send down the Planning Commission the recommended changes that we asked for and they are meeting in the first week of June. So, do we have any cases for next month?

Mrs. Musante: We do have an appeal that is coming forward.

Mr. Gibbons: So, if nobody would object, I would like to put this back on the agenda because we'll know what the action of the... I mean if the Board approved it to go down to be considered in the Planning Commission approves it coming back up. I'd feel comfortable that we...

Mrs. Musante: The fence ordinance, okay.

Mr. Ackermann: In that case, the application can come before us.

Mr. Gibbons: Right, we should notify him.

Mrs. Musante: So, you want Mr. Mongrain back at the June meeting.

Mr. Gibbons: Yes. We should not hold it any longer because we got what we asked for. Okay, now in the ordinance, did Rachel put anything into the language. I mean on the bylaws?

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Mrs. Musante: The bylaws changes are highlighted in yellow on the copies that you received. They were included in your package. It should have been other business.

Mr. Ingalls: Actually, 7.5 in the packets wasn't changed all the way through and Mr. Ackermann actually caught it. It talks about the four (4) votes, was there any reasoning behind that in the staff recommendations versus the... Like I said, Mr. Ackermann was a little more...

Mrs. Musante: It could have been an oversight on our part, I was not involved with the bylaws. I can gladly ask the Zoning Administrator tomorrow if there was a reason why.

Mr. Ingalls: And such motion fails, receive four (4).

Mrs. Musante: I see what you are saying.

Mr. Ingalls: It seems to me, the two (2) aren't consistent.

Mrs. Musante: Right.

Mr. Gibbons: I feel comfortable with what Ernest has done here. I would say that we reflect that and if Rachel has any objections, send an email to all the Board members. I would feel comfortable with what he had, do you have any problems?

Mr. Ingalls: The only thing, Mr. Ackermann, I noticed that in the actual law and I am not a lawyer, maybe there is somebody here who could... They had in your second part of that, "a majority of the members of the Board present", and they got "and voting" added in the law.

Mr. Ackermann: I see.

Mr. Ingalls: I don't know whether that is something we should add after your sentence of "a majority of the members of the Board present" and add the term "and voting".

Mr. Gibbons: Yeah, because the problem is if you have a conflict and you have to excuse yourself so you wouldn't be voting.

Mr. Ackermann: I see, that make perfect sense to put after "present" to say "and voting".

Mr. Ingalls: Right.

Mr. Ackermann: I think that is what Rachel had as well "Board members present and voting". And then catch the thing in section 5.5 also. I guess that is what Rachel had put in.

Mrs. Musante: Yes.

Mr. Ingalls: "And voting" would be consistent if you accepted the 5.5 that the staff recommended.

Mr. Gibbons: Right, so we've got that language. We are alright with that language?

Mr. Ackermann: You know 5.5 is kind of... I can understand when it says "shall be a majority of the entire membership".

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Mr. Ingalls: That don't read right either.

Mr. Ackermann: That means four (4) people but it says "the number of votes necessary to transact business". I don't see where that... If you are talking about something succeeding than you...

Mr. Ingalls: Well, I don't know, it says a majority would constitute a quorum.

Mr. Ackermann: A quorum is four (4) members. It might be sufficient to say... Do we have a quorum defined anywhere else? You might want to say a majority of the members of the Board shall constitute a quorum and then you don't really need to say anything about... Since we are not limited... Because this sets up the four (4) votes to do something or do we want to...

Mr. Davis: There could be other business other than 7.5.

Mr. Ackermann: So, what if we were in a situation of where we had four (4) people here and three (3) people had to excuse themselves from a decision. Would it be appropriate for one (1) person to make the decision?

Mr. Gibbons: No, they can't because it says members present and voting.

Mr. Ackermann: Yes, that is what I mean. If three (3) people excuse themselves...

Mr. Gibbons: So then they are not voting.

Mr. Ackermann: That is what I mean, then one (1) person makes the decision, is that alright?

Mr. Ingalls: No.

Mr. Gibbons: No, because it ties together, the "present and voting" ties that linkage together.

Dr. Larson: For example, the five (5) of us are here and us four (4) recues ourselves for some reason or other.

Mr. Gibbons: Then you can't take a vote.

Dr. Larson: Then we are present but we are not voting, so he is the only one present and voting, so his vote then would constitute a majority of those present and voting.

Mr. Ackermann: If you say those present and voting, then that's...

Mr. Ingalls: I don't believe that was the intent of the state law.

Mr. Ackermann: I don't believe that is the intent either and I believe that we agree. I would feel most comfortable if we say that we have to have at least three (3) members present and voting to transact business.

Dr. Larson: Isn't there a law that say that?

Mr. Ackermann: It says "no action of the Board shall be valid unless authorized by a majority vote of those present and voting". That is all it says.

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Dr. Larson: Okay.

Mrs. Musante: I can discuss this with our County Attorney and see...

Mr. Ackermann: I think the law would allow one (1) person to make the decision.

Mr. Ingalls: You think it would?

Mr. Ackermann: Yes, it says "no action shall be valid unless authorized by majority vote of those present and voting". End of case.

Dr. Larson: What I was wondering about was if it takes four of us to make a quorum.

Mr. Ingalls: Right.

Dr. Larson: But we could still have four (4) of us here to make a quorum and then three (3) of us excuse themselves for some reason, so you only have one (1) present and voting. We have four (4) present but only one present and voting on that particular issue.

Mr. Ingalls: Maybe that was the intent. I don't know that and I don't think it was...

Mr. Ackermann: The way the bylaws read before, you had to have four people here to make a decision.

Mr. Gibbons: If you read the state, she lifted it right out of there.

Mr. Ackermann: I know, it says present and voting.

Mr. Ingalls: You can convince me, you have me wavering. One (1) person could make a decision but even having two (2) people make a decision. Two (2) out of four (4) could abstain and the other...

Mr. Gibbons: Well what are the wishes, do we want to have the County Attorney go back and look at that and make sure...

Mr. Ingalls: I think so.

Dr. Larson: I would be curious to see what the attorney said.

Mr. Ingalls: I would be too.

Mr. Ackermann: About 5.5 worded this way, "of members present and voting". Maybe there is something in there that we don't see.

Mr. Gibbons: And maybe Joe could send it down to the Attorney General and say, hey listen I am lifting this out of the State Code. How do you read this? And maybe they will come back and say go ahead with this.

Mr. Ingalls: I am not so sure that you aren't right.

Mr. Hudson: There has to be something in Robert's Rules of Order. One person can't make a motion and second it and vote on it. That is impossible.

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Mr. Ackermann: I don't see why not.

Mr. Hudson: You can't second your own motion. You have to have a second to your motion.

Dr. Larson: That could be the out right there.

Mr. Ackermann: That could be, so we would need two (2) people to make a decision.

Mr. Ingalls: I think I could second a motion and I could also excuse myself I believe. I don't vote.

Dr. Larson: You can't second a motion that you have excused yourself from?

Mr. Ingalls: Abstain, maybe I could abstain.

Mr. Hudson: I don't think so.

Mr. Ingalls: I don't have to vote. I could abstain on a motion. I might say what is your reasoning.

Mr. Gibbons: But many times you can make a motion and you can second it and when it comes to the vote you can abstain and state why you are abstaining.

Mr. Ackermann: But if you are the only person to vote, you can vote to change the rules of order.

Mr. Gibbons: Lets agree that we are going to replace 7 with the comment "present and voting" and then go to Joe. We still have one more month to ask; it is a good point.

Mrs. Musante: Okay.

Mr. Gibbons: One other question, all of the other Committees and Boards we have in the County handle the public hearing just a little differently than we do. That is why, if you noticed when Mr. Crisp was here or other elected officials get confused as to when they are supposed to speak. As we say, if you are in favor of it you come up and speak and those opposed. But if somebody just wanted to make a comment, they might not be for or against it. There must have been a history, why did we do that? Because every other public hearing, you get up and speak before the Board.

Mr. Ingalls: I can only tell you that for thirty (30) years that is the only history I know of. I don't believe that our bylaws say that we have to ask that. They just say comments on this side or that side, is that how the Board does it.

Mr. Gibbons: They just open it up and anybody can make a public comment.

Mrs. Musante: So it is not for or against, it is for anybody that wishes to speak.

Mr. Ingalls: That way you don't get everybody who for it come down and everybody who is against it come down. You might get one for or one against.

Mr. Gibbons: Or one that just wants to make a comment.

Mr. Ingalls: Right, or just someone who wants to say something.

Mr. Gibbons: Like when Harry wanted to make a comment, he was sitting there because he was not for

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or against, he just wanted to make a comment.

Mr. Ackermann: If we allow the mingling then you might get more debate going. So how do we then decide the order in which people speak. Have them sign up like at the Board of Supervisors.

Mr. Gibbons: We do that, we can have a sheet for people to sign up and call them in that order. I have seen people get up and get confused when they weren't for or against anything, they just wanted to make a statement.

Mr. Hudson: My years up here in the past, when there was seven, ten or twelve cases on the agenda and thirty people sitting out there at a time; if we ever get back to building it may be like that again but if you just had an item on the agenda and at the very end offered a public comment, you might capture what you are looking for.

Mr. Ingalls: You would have to change our bylaws.

Mr. Gibbons: That is what I am saying.

Mr. Hudson: I think that is what he is recommending. The times I was here before, we never had time to have these conversations, we were getting home at twelve at night. ‘

Mr. Ingalls: 7.2(b) says the chairman shall allow interested members of the public who support and application or appeal to speak by interested members of the public who oppose the application or appeal. So the bylaws do say that is the criteria, that is the way you have to do it. Now if we want to the change it then we should consider that.

Mr. Gibbons: I would like to see a change.

Mr. Hudson: I am certainly not opposed to change. If I lived in Greenridge, what goes on at Crow's Nest affects me and I may not be caring about... But it affects me, what happens out on the river I care about. I don't see anything wrong with making the change to allow people to express their opinions.

Mr. Gibbons: Just go in the order in which they sign up.

Dr. Larson: People will still be given their opportunity to speak. I see no problem with that.

Mr. Ingalls: I am not opposed to it.

Mr. Gibbons: Okay, so could you put that wording in and give it to Joe.

Mrs. Musante: Exactly how do you want it to read?

Mr. Gibbons: Similar to what the Board has and the Planning Commission has.

Mrs. Musante: So check how theirs reads. Okay.

Mr. Ackermann: We are still going to keep 7.2 (a) the person making the application goes first?

Mr. Gibbons: Yes.

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Mr. Ackermann: Also 7.2 (c).

Mr. Gibbons: Yes. Is there any other items we want to discuss tonight? I personally wanted to say one thing, I told Larry before but I thought that at the last meeting Mr. Ingalls came very prepared with a list of good conditions. I wanted to personally as a Board member, thank you for that. It was very thoughtful. I ran into the wife of the owner of the nursery and she thought that was a very good dialogue with the applicant. She felt the County was protected as well as the family was protected, so it wasn't one sided. The methodology you had behind it, they thought they could meet them. If anything in the future were to happen they felt comfortable enough that they could come back and address the Board again. I thought you did a good job on that.

Mr. Ingalls: Thank you, Mr. Chairman.

Mr. Gibbons: You can see where experience comes through time and time again. Okay, so we have one appeal and who is that? What about Rose, is she coming forward?

Mrs. Musante: She is coming in July. The appeal for the next month is the Norman Road Salvage Yard and Clark Leming is handling that appeal.

Mr. Gibbons: Norman?

Mrs. Musante: It is the Norman Road Salvage Yard, they are appealing a Notice of Violation that Rachel sent them concerning conditions from a Conditional Use Permit (CUP) dated back to 1978, I think.

Mr. Gibbons: And where is that? Is that the one on Route 1?

Mrs. Musante: No, it is in Widewater.

Mr. Gibbons: Okay.

Mrs. Musante: We've had a lot of complaints from that salvage yard over the years and one of them has to do with buffering. That is one of the biggest issues.

Mr. Gibbons: And that is in Widewater? On what road?

Mrs. Musante: It actually backs up to Aquia Harbour, because that is where the complaints are coming from, Aquia Harbour. It is off of Widewater Road, it is called Norman's Salvage Yard.

Mr. Gibbons: Okay, so we have an appeal and Rose will come in July.

Mrs. Musante: Rose will come in July.

Mr. Gibbons: We can't get Rose to come in June?

Mrs. Musante: She is waiting on some of this reorganization of the Courthouse area property. She is using that as part of her justification for the Variance. She was hoping she was going to have an answer on that by June.

Mr. Gibbons: It hasn't been established yet.

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Mrs. Musante: I know. So she requested July and we allowed her to do that.

Mr. Gibbons: You did the right thing.

Mrs. Musante: I'll ask her if she would be willing to come in June.

Mr. Gibbons: If she says no, or maybe she said they haven't established it because the Board was supposed to establish it this month.

Mrs. Musante: Yes.

Mr. Gibbons: That committee to act on that.

Mrs. Musante: Yes.

Mr. Gibbons: And they haven't even appointed it yet, have they?

Mrs. Musante: No, not that I am aware of and as of right now, I don't know of anything that is coming up for July other than her. Normally, a couple of months in advance, I will get a heads up, you have this coming.

Mr. Gibbons: Ok, so she is appealing.

Mrs. Musante: She is requesting a Variance. She has a house that currently meets code and she wants to rezone it to a commercial zone, which is going to make her become non-conforming in setback once she rezones.

Mr. Hudson: Where is this at?

Mrs. Musante: Stafford Avenue.

Mr. Ingalls: The house is residential?

Mrs. Musante: Correct.

Mr. Ingalls: And it meets the residential setback?

Mrs. Musante: Correct.

Mr. Ingalls: When you rezone it to some B or whatever...

Mrs. Musante: You cannot create a non-conformity.

Mr. Gibbons: So she is coming here to get a variance of...

Mrs. Musante: Front yard setback.

Mr. Gibbons: Has she already been rezoned?

Mrs. Musante: No, she cannot go through the rezoning until she gets the Variance.

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Mr. Gibbons: Why would we have the cart before the horse?

Mrs. Musante: Once she does the rezoning...

Mr. Ingalls: How do we grant a Variance on a zone that doesn't exist?

Mrs. Musante: I can't answer that, that is the way we have done it before. Do you remember down on 218...

Mr. Ingalls: I don't remember doing that before.

Mrs. Musante: Well, you denied it. There was one down on 218 that Gordon Gay was representing and that one was denied. By doing the rezoning, it is going to create a non-conformity and we cannot do that. We cannot create a non-conformity. Therefore, we have to do the Variance first in order to make sure that they are going to get the setback Variance. She is thirty-six (36) feet from the property line and she has to be forty (40) is what the issue is.

Mr. Ingalls: I still don't see how we can do that. There is no violation, how can we give a Variance to something...

Mrs. Musante: She will be creating a violation if she rezones it. So are you saying that she should go to the Board and ask for the rezoning.

Mr. Ingalls: I know that Board can't do something that is in violation of our Ordinance.

Mrs. Musante: Right.

Mr. Ingalls: The only way they could give it, I would think, would be to say that you would need to tear the house down. Unless, you get a Variance.

Mr. Gibbons: The Board has done that before.

Mrs. Musante: Her application is in the planning department for the rezoning, but it is sitting.

Mr. Ingalls: Has the County Attorney talked about this... Maybe there is a way we can give you a Variance for anything.

Mr. Gibbons: Have you taken this to Joe?

Mrs. Musante: No, we've not discussed it with the County Attorney.

Mr. Gibbons: I am only one member but I would really like to see Jeff or Rachel to sit down with the legal staff and say here's where we are.

Mrs. Musante: Rachel and Jeff are very aware of this case.

Mr. Gibbons: I am not saying that, but legally.

Mrs. Musante: Right.

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Mr. Ingalls: I would have to have someone explain to me what authority I have to grant a Variance of a setback in a zone that does not exist on the property.

Mrs. Musante: Right.

Mr. Hudson: Are we trying to maximize our residential area because of the proposed development here.

Mrs. Musante: Well, let me go back, there has been a violation notice issued to her and she is currently occupying that property as a business. It is not being used as a residence and she has three (3) attorneys in there. We have given her the options: one was to rezone, one was to vacate the premise of the business, move into it as residential and come to you all for a home business permit. She chose not to do that, she chose the rezoning. For the rezoning, she is creating a non-conformity once the rezoning is done, which you can't do.

Mr. Gibbons: I would feel comfortable if you would say that these are the wishes of the Board and would you please take a look at this.

Mrs. Musante: Sure.

Mr. Gibbons: It was something that was not recommended by staff and she came up with this by herself. Is that correct?

Mrs. Musante: That's correct.

Mr. Gibbons: I guess the legal issue would be, why did we accept it.

Mrs. Musante: We cannot deny any application. If they want to come and present us with an application and money, we cannot refuse that. I can try to steer them in another direction, which I do if I know it is not going to work. If they are adamant that they are going to apply, I have to accept their application.

Mr. Gibbons: If a person came in and said they wanted to rezone this property to B-3 and gives you an application, you are saying I have to send it to the BZA when you know it belongs in a different...

Mrs. Musante: I do not see rezonings. We do not see rezonings in our section, we have a long range planning section that does that.

Mr. Hudson: I think what I heard is, we are not to create a non-conformity. We are here to hear appeals over non-conformities that exist and maybe if you guys could put a piece of paper together on just that issue when it comes forward, we might not have to... I don't want to argue with people over something that I know where I am going to end up. If it is technical in nature than we should look at it as technical in nature and deal with it that we cannot create the non-conformity. I don't think you have to get into a back and forth, people can say there piece and we can deal with what is in front of us.

Mr. Gibbons: Those lawyers are a society amongst themselves and I would go to Joe and say hey listen, this is what we've recommended, Rose has come in on a different avenue. This is kind of hard because we are using staff time and Board time, everybody's time on something that really can't happen. Maybe we can give her a call and sit down with staff again. Have you done that?

Mrs. Musante: More than once and not only myself.

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Mr. Ingalls: When she goes to the Board they could say, we want the house or whatever building on that piece of property to meet the current setback. The Board's approval of rezoning cannot say, we'll let you put there and create... The Board cannot create the non-conformity, they can certainly rezone and they have done that. The Board did that for the Life Care where the Board approved the rezoning and then we got the application for the Variance. The Board did not give them the Variance, they just approved the rezoning and part of that plan and then they came to the BZA and sought a Variance here. Unfortunately we did not give it.

Mrs. Musante: Right.

Mr. Ingalls: And I would think this would be the same situation. The Board may say, we don't want that house that close. They can say that they will approve the rezoning and they could say that you must meet the setback and then we couldn't do anything about it, I don't think. Because that would be a condition of rezoning and we can't change that.

Mr. Gibbons: The zoning does not pertain just to the building it pertains to the tract of land.

Mrs. Musante: Right.

Dr. Larson: Based on this discussion, it might be best not to have it in June. This thing sounds like it might take a while to get through.

Mr. Ackermann: Maybe what Mr. Gibbons is suggesting could be suggested one more time.

Mrs. Musante: I will gladly talk with the County Attorney to get his opinion on it. I stressed to her that in order to be granted a Variance, you have to prove a hardship and she truly believes that she had one.

Mr. Hudson: Is there some grand scheme going on on Stafford Avenue that I don't know about?

Mr. Gibbons: Well, it is part of the whole Courthouse Redevelopment.

Mrs. Musante: She's saying that the proposal for the whole area is to become commercial for office space and medical offices.

Mr. Gibbons: And that is true.

Mr. Ingalls: The Board, if they adopted some kind of plan and they say, we the Board are going to do a Comprehensive Rezoning of the whole area. They just go and do a rezoning of that whole area and any building in there that didn't need anything would be non-conforming.

Mrs. Musante: That is what she is hoping for, she was hoping that this redevelopment was going to rezone her property.

Mr. Ingalls: But that still leaves her non-conforming.

Mrs. Musante: Yes, it does. But that is a Board generated rezoning.

Mr. Ingalls: Right.

Mr. Ackermann: Yes, but if she wanted to make renovations...

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Mrs. Musante: She would be before you. Correct.

Mr. Hudson: She has to have neighbors too, they may not have the same hopes.

Mrs. Musante: Exactly.

Mr. Gibbons: Either that, or she has someone with a soft shoulder in the Courthouse because she has come in here and appealed it. This is just a stop on the way to whatever her game plan is.

Mr. Hudson: I feel lucky because I do not know her.

Mr. Gibbons: Her law partner got killed in that aircraft accident and her whole life turned over. She has had a rough year in taking all the cases and reassigning them. She is a strong willed young woman. Is there anything

ADJOURNMENT

Mr. Ackermann: May I move that we adjourn.

Mr. Gibbons: Mr. Ackermann requests adjournment, anybody object?

The meeting adjourned at 8:03 P.M.

Robert C. Gibbons, Chairman
Board of Zoning Appeals