

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
August 25, 2009

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, August 25, 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, Steve Beauch and Marty Hudson and Karl D. Larson

Members Absent: Larry Ingalls

Staff Present: Rachel Hudson, Zoning Administrator
Melody Musante, Senior Zoning Technician
Gail Roberts, County Attorney
Andrew McRoberts, Attorney
Aisha Hamock, Recording Secretary

Mr. Gibbons: We will have a couple of administrative items before we get started. In the past month the Board of Supervisors has allocated funds so this BZA can have legal representation at each meeting and so tonight we have a letter from the County Attorney announcing that he had made a contract with Sands, Anderson, Marks & Miller with offices in Richmond and Fredericksburg. Andrew McRoberts has been designated to be the BZA counsel. Andrew, welcome aboard and we are glad to have you here. Gail, we just want to make sure that Joe passes onto the Board of Supervisors that we are very grateful to have this. Also in the packet you will find a letter from the County Attorney saying that in his opinion and that of the Supreme Court decision last fall that this is all the legal representation that we do need. If we are even sued collectively or individually, we have... Stafford County maintains a public officials liability insurance, which would cover legal representation for lawsuits and defends the BZA and its members. This is the only coverage the BZA members needs to protect themselves in the event that they are sued individually in connection with the official actions, in my opinion. The Chairman of the Board stated he feels that we have been offered the right thing. Ray, do you have any more problems?

Mr. Davis: I have problems but not with this.

Mr. Gibbons: Okay. Are there any changes or additions?

Mrs. Musante: There are no changes.

Mr. Gibbons: Gail, at this time, would you like to address the Board on that action before we vote to continue?

Ms. Roberts: There are two items on your agenda, number three (3) and four (4), both relating to zoning violations that were sited on DGF Land Company LLC and John Fields. The Zoning Administrator has been out yesterday and today and as of this afternoon, they have all been abated, so it is the County's

Stafford County Board of Zoning Appeals
August 25, 2009

position that number three (3) and four (4) is moot and that the BZA has no jurisdiction since there are no more zoning violations.

Mr. Gibbons: Okay and the applicant, Mr. Leming.

Mr. Leming: Good evening Mr. Chairman, members of the BZA, my name is Clark Leming and I am here on behalf of the applicant. There is no question in our mind that all of the violations pertaining to the March 13, 2009 letter have been abated; that is case A09-1. With regard to A09-2, however, we do not agree that these issues have been abated, we agree that actions has been taken solely for the purpose of land owner obtaining a DMV Certification, which he needed but the issue was still before the Board of Zoning Appeals. We would like, however, a postponement of that application until your September meeting and if the Board needs to hear further as to whether or not there is something left for the Board to hear, I think that would be the appropriate forum. The only thing we are asking for on that one is the postponement until the September meeting.

Mr. Gibbons: Well, we will ask Andrew for a little guidance here. It is a good way to get your feet wet Andrew.

Mr. McRoberts: Okay, I was retained today, so I am fairly new to these issues and very new to Stafford County's ordinance. I guess I would like to take care of one, sort of, procedural item and I discussed this with the Chairman before the meeting. There is a Sands, Anderson attorney who is representing this entity on a DMV matter. I have not been involved in that DMV matter and he has not been involved with any representation with the BZA. However, given that issue, I believe I can give you full and fair and competent advice but given that I would ask that the BZA consent to my representation in this matter. The attorney with Sands Anderson has called DGF and Mr. Fields and has consented to this joint representation by Sands Anderson Marks & Miller. If I could get that from the Board at this time. Any questions?

Mr. Gibbons: Any questions at this time?

Dr. Larson: I have a question Mr. Chairman. Andrew, have you spoken with the other attorney about the other case?

Mr. McRoberts: The DMV matter?

Dr. Larson: Yes.

Mr. McRoberts: only to find out whether or not it was granted and he indicated that the BZA matter was still pending and the zoning verification had not come. My understanding is today, that zoning verification has been given and so that does not seem to be an issue any longer.

Motion:

Mr. Gibbons: Okay, so we need a motion?

Mr. Hudson: So moved.

Mr. Ackermann: Second.

Mr. Gibbons: All in favor say aye.

*Stafford County Board of Zoning Appeals
August 25, 2009*

Vote:

The motion passed 6-0.

Mr. Ackermann – yes

Mr. Beauch – yes

Mr. Davis – yes

Mr. Gibbons – yes

Mr. Hudson – yes

Mr. Ingalls – absent

Dr. Larson – yes

Mr. Gibbons: All opposed? With that, Andrew you may continue.

Mr. McRoberts: With that procedural matter out of the way, I appreciate your indulgence. The appeal of the notice of violation, it seems like to me, this is the third item on the agenda A09-1, they seem to be in concurrence with that and it looks like the county and the applicant are both in agreement and I will certainly concur with that. As to A09-2, I think I am simply too new to this matter to give you an opinion on that, I would need to further review the application and probably speak to both Mr. Leming and Ms. Roberts to give you an opinion on that matter. I guess I would concur with Mr. Leming's request for a deferral on that.

Mr. Gibbons: Okay, any questions on that?

Mr. McRoberts: Another option would be to take a break and I could look at it and get back to you later this evening.

Mr. Gibbons: I just assume with the public we not carry it too much further. We will need a motion for deferral until the next meeting.

Motion:

Mr. Beauch: So moved.

Mr. Davis: Second.

Mr. Gibbons: We have a motion and duly seconded. Any other comments?

Mr. Ackermann: So the part that we are deferring to the next meeting is the violations that need to be addressed, amendment of the site plan and an enclosed building would have to be constructed.

Mr. Gibbons: That's right.

Mr. Ackermann: But otherwise, DGF has cleared for the fifty (50) foot buffer, constructed the eight (8) foot board fencing and screening around places and removed the crusher at the present time, right?

Mr. Gibbons: Yes sir.

Mr. Ackermann: Okay.

Stafford County Board of Zoning Appeals
August 25, 2009

Mr. Gibbons: And Rachel gave you a letter that certified.

Mr. Ackermann: Yes. I just wanted to be sure of what we were doing.

Mr. Gibbons: All in favor say aye.

Vote:

The motion to defer passed 6-0.

Mr. Ackermann – yes

Mr. Beauch – yes

Mr. Davis – yes

Mr. Gibbons – yes

Mr. Hudson – yes

Mr. Ingalls – absent

Dr. Larson – yes

Mr. Gibbons: All opposed? We thank you all very much. Is there anybody here for this case, this will be the second part and you can come on up and ask. If you have questions, go ahead now. We are not opening the public hearing. We have postponed this until the month of September and we will hear the issue of enclosing the crusher and the drainage of the fluids but he is in compliance with all of the buffers and screening according to the Zoning Administrator.

Mr. and Mrs. Taylor spoke and discussed the issue of the deferring the public hearing until the September meeting.

Mr. Gibbons: This would be discussed at the September public hearing where the public comment will be heard at that time.

DECLARATIONS OF DISQUALIFICATIONS

None

PUBLIC HEARINGS

1. **SE09-5/2900209 - MARIE CAROLE ALPHONSE** - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards", PD1, Planned Development, to allow holistic colon hydrotherapy as a Home Business on Assessor's Parcels 46M-2B-166. The property is zoned PD1, Planned Development, located at 14 Riggs Road, Leeland Station Subdivision.

Mrs. Musante: Case SE09-5/2900209, Marie Carole Alphonse, requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards", PD1, Planned Development, to allow holistic colon hydrotherapy as a Home Business on Assessor's Parcels 46M-2B-166. The property is zoned PD1, Planned Development, located at 14 Riggs Road, Leeland Station Subdivision. You have the application, application affidavit, footprint of basement, plat of property, approval letter from HOA, photos of the property, tax map and vicinity map. The applicant is requesting a Special Exception for a Home Business to operate a Holistic Colon Hydrotherapy. The square footage of the existing dwelling not including the basement is 2,982 square feet. 654 square feet will be used for the business which

Stafford County Board of Zoning Appeals
August 25, 2009

meets the requirement of twenty-five (25) percent. The applicant has requested days and hours of operation to be Monday through Saturday and anticipates no more than seven (7) clients per day. The advertisement of the business will be through referrals, brochures and internet. Commercial plan reviewer has met with the applicant and reviewed the building code and handicap accessibility requirements. Staff has spoken with Utilities and there are no issues with this business. This is a single family dwelling built in 2004 and a permit to finish the basement was issued in 2006.

Mr. Gibbons: Any questions for staff?

Mr. Davis: On page two of the staff report under development conditions, it indicates it will provide off street parking only?

Mrs. Musante: Correct.

Mr. Davis: This means they can only have a permit if there is adequate off street parking?

Mrs. Musante: That is correct. They cannot have their clients parking in the street.

Mr. Davis: The next question, is this dwelling required to be handicap accessible for this?

Mrs. Musante: According to the Building Code and the Acting Building Official, they do have to make provisions for the handicap. They have to construct a handicap bathroom and they have to put in a chair lift to maneuver the clients from the first floor to the basement.

Mr. Davis: Okay, thank you.

Mr. Beach: Have they done that or are they going to do that?

Mrs. Musante: I am not sure if they have done it or not, I know the last time I spoke with Mrs. Alphonse, they were looking into different types of chair lifts, so we could make that as a condition. I did put on here comply with State, Federal and Local Codes.

Mr. Gibbons: Under general information, it says the finished gross floor space is 1200 square feet and they are using 654 of that, is that what this is saying to me?

Mrs. Musante: The 1200 square feet is not accurate, according to the Commissioners records, they have, not including the basement, 2982 square feet.

Mr. Beach: It looks like the basement is 1200.

Mr. Gibbons: I just wanted to make sure. They have 2900 square feet total?

Mrs. Musante: Not including the basement.

Mr. Gibbons: So including the basement, it is over 4000 square feet?

Mrs. Musante: Correct.

Mr. Gibbons: Any other questions? Okay. Would the applicant come forward please. You have to state your name and your address.

***Stafford County Board of Zoning Appeals
August 25, 2009***

Mrs. Alphonse: My name is Marie Carole Alphonse and my address is 14 Riggs Road, Fredericksburg, VA 22405.

Mr. Gibbons: You are suppose to tell us why you want your business and your suppose to say I need your help, please approve it.

Mrs. Alphonse: Alright, the reason why I am here is because I need your help to make happen. With all my heart, I want to open a colon hydrotherapy business. First of all, I am in the medical field, I am a registered nurse and I am dealing with clients that have chronic constipation problems almost every single day, bowel disease, colon cancer and irritable bowel syndrome. This is a very big problem actually and I think by opening the business I will be able to help my clients. Clean their colons and live a happy healthy life with a healthy colon. Most diseases start in the bowels. That is the reason why I want this.

Mr. Gibbons: Can you address the question that Ray had about how you are going to get the people from one floor to the other?

Mrs. Alphonse: I came and met Melody and Christy and they told me that I need to make my house handicap accessible in order to accommodate handicap clients. I did meet with Pat Grimes Company and there was another company I met with, All American Mobility. He gave me an estimate and I have a copy for you and we are planning to have them come install a chair lift that will help me accommodate them from the first floor to the basement. At the same time, we are going to install a ramp and have wheelchair, we are going to install, ramp into the colonic room to help the client to be able to stand up or to get up. We are planning to install adjustable raised toilet seats which would help patients with hip surgery, paraplegic clients and I think I will be fine to accommodate different types of patients that will need help.

Mr. Gibbons: Any questions?

Mr. Beach: Yes Mr. Chairman, I wonder what days of the week and what hours during the day you would want to operate?

Mrs. Alphonse: I have been thinking about it, I would like to start at 8:00 am and finish at 6:00 pm. I haven't started the business yet and we need to try to accommodate everyone.

Mr. Beach: How many days a week?

Mrs. Alphonse: I want to do that Monday through Saturday. I want to do it from 8:00 am to 6:00 pm but I may have a customer that may want to come at 7:00pm, if that person works all day and 7:00 pm may be the best time for that person. I think I may need to try my best work around my clients schedule. I will have to sometimes be flexible in order to help my clients.

Mr. Gibbons: Does that answer your question?

Mr. Beach: Yes it does, thank you.

Mr. Davis: The photo here shows you have a two car garage and two cars parked in the drive way. I don't see any other off street parking, what do you plan to do?

Mrs. Alphonse: My house is located at a corner lot and I don't think parking can be a problem and I can park my cars inside of my garage and my clients can still use my drive way and my clients can park on the

Stafford County Board of Zoning Appeals
August 25, 2009

other street, which is Ravensworth Court.

Mr. Davis: One of the conditions is that you have off street parking, which means they could not park on the side street or in front of your house. It can only be off the street.

Mrs. Alphonse: Okay, I will try my best to have one customer at a time. I can put my cars in my garage and leave my driveway free for my customers to park there. I do not think parking will be a problem.

Mr. Gibbons: Dr. Larson did you have any questions?

Dr. Larson: No, just to reiterate, on your application it states off street parking spaces to be provide and you put zero. I guess everybody wants to be clear that you understand parking will be off the street, presumably on your driveway.

Mrs. Alphonse: You say parking will be off the street, so not even in front of my house?

Dr. Larson: No.

Mrs. Alphonse: So that means I can only use my driveway?

Dr. Larson: Correct.

Mrs. Alphonse. Okay, I will only use my driveway.

Mr. Gibbons: I understand you are licensed by the State of Virginia Health Department, is that who you are licensed by?

Mrs. Alphonse: I have my RN License with the State of Virginia and I provided a copy to the Board.

Mr. Gibbons: You say your business will operate as an LLC organized in the state of Virginia. It says you are an IHOCT certified therapist and a registered nurse. Who are you registered with, the health department and the State of Virginia?

Mrs. Alphonse: Yes, in Richmond.

Mr. Gibbons: And you have the Certificates to be displayed?

Mrs. Alphonse: Yes, I do have my RN diploma and license and my license for a Hydrocolon Therapist.

Mr. Gibbons: The Board would consider that the accessibility be placed before the business can start.

Mrs. Alphonse: I agree. I waited to starting my business until I came before the Board.

Mr. Gibbons: Okay. The Board usually gives a time limit and have been doing five years so you will get permission to do five years then you would have to come back in to renew.

Mrs. Alphonse: Okay.

Mr. Gibbons: So if I have it right, you are going to start 9:00 am to 7:00 am Monday through Saturday and all parking will be on your property and it will be five years from the date of the OP permit. I would

Stafford County Board of Zoning Appeals
August 25, 2009

appreciate you framing your certificates because it make the customers feel more comfortable. I think you should be very proud of yourself to be a nurse.

Mrs. Alphonse: I do not think that should be a problem. As a professional, I think it is important when people come to the house to get treatment, they are 100 percent sure you are certified and they can see your license to make them feel comfortable.

Mr. Gibbons: Okay, so we need a motion?

Mr. Ackermann: You need to close the public hearing

Mr. Gibbons: I will close the public hearing and return it to the Board.

Motion:

Mr. Beauch: Mr. Chairman, I will move that we approve this Special Exception with the days and hours of operation from Monday to Saturday from 9:00 am to 7:00 pm, the applicant must provide off street parking, must comply with all State, Federal and Local Codes, must not use a sign outside of the house and approval of the Special Exception will expire in five years from date of Occupancy Permit or when this applicant vacates the property, which ever occurs first. I question if anyone wants to add if the business shall be twenty-five percent of the total square footage of the house.

Mr. Gibbons: I think that is fair.

Mr. Beauch: Okay, then I will so add it.

Mr. Davis: Second.

Vote:

The motion to approve the Special Exception with conditions passed 6-0.

Mr. Ackermann – yes

Mr. Beauch – yes

Mr. Davis – yes

Mr. Gibbons – yes

Mr. Hudson – yes

Mr. Ingalls – absent

Dr. Larson – yes

2. **SE09-3/2900190 - WALTER SCOTT NALL** - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses and Standards, A-1, Agricultural," to allow parking and storage of commercial vehicles on a parcel less than three (3) acres on Assessor's Parcels 38-114 and 38-117. The property is zoned A-1, Agricultural and B-2 Urban Commercial, located at 58 Eskimo Hill Road.

Mrs. Musante: Case SE09-3/2900190, Walter Scott Nall requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses and Standards, A-1, Agricultural," to allow parking and storage of commercial vehicles on a parcel less than three (3) acres on Assessor's Parcels 38-114 and 38-117. The property is zoned A-1, Agricultural and B-2 Urban Commercial, located at 58 Eskimo Hill

Stafford County Board of Zoning Appeals
August 25, 2009

Road. You have the application, application affidavit, reclassification and conditional use permit, boundary line survey dated June 9, 2009, copies of violation notices, aerial photos of the property, photos of the property and tax map and vicinity map. Applicant is requesting a special exception to park and store commercial vehicles on a parcel less than three (3) acres on a property split zoned. The property is zoned A-1 and B-2. The A-1 portion is 2.54 acres and the B-2 portion is 1.08 acres. The applicant has requested to use the A-1 portion, currently graveled, for parking and storage of commercial vehicles, small equipment, storage containers, plows, tires, etc (see definition of commercial vehicles attached). The days and hours for access to the parking and storage will be Monday through Friday, 8:00 am to 5:00 pm. The applicant has indicated they have "space renters: which will have 24 hours, 7 days a week and 365 days a year access as needed to pickup and move vehicles or equipment. The B-2 portion has an existing automobile service business, which was granted a Conditional Use Permit in 1988. A portion of tax map 38-114 and 117 was rezoned from A-1 to B-2 in August 1986. A Conditional Use Permit was approved by the Board of Supervisors on October 18, 1998 for an automobile service. At the time of the Conditional Use Permit, we did not have a definition for automobile service or automobile repair. Violation notice sent July 10, 2008 for installing a sign without a permit and the parking of commercial vehicles on parcel tax map 38-114. Violation notice sent March 27, 2009 for installing a sign without a permit. Applicant filed for a sign permit on April 3, 2009, not approved pending violations on the property. Violation notice sent March 27, 2009, second notice sent April 30, 2009 and final notice sent May 27, 2009 for the parking of commercial vehicles. The violation had been stayed pending the Board of Zoning Appeals action of this request. Currently, ABC Trucking, which is a truck repair business, is located on the B-2 zoned portion of Tax map 38-114 and 38-117. Parcel 117 incorporates parcel 114 for tax purposes only by the Commissioners of Revenues office.

Mr. Gibbons: Will the applicant please come forward? You need to state your name and your address please sir.

Mr. Nall: Yes sir. Thank you. Scott Nall, 55 Betts Road, I am here as a Stafford County property owner who lives and has a business in Stafford County and would like to continue for many years to come. I thank you all, Board of Zoning Appeals and employees of Stafford who are here tonight to ensure that I am able to achieve this goal. I am here to ask for a Special Exception to the current A-1 property ruling that states: you must have over three acres to park and store commercial vehicles. The property that I own parcels 114 and 117, which are actually considered to be one piece of property is the property in question. When I purchased the property in 2003, A-1 zoning regulations stated: more than three (3) acres, you are permitted by right to park and store commercial vehicles. That is what I own, over three (3) acres. Three (3) point six (6) to be exact. At that point I began leasing some of the A-1 space for commercial vehicle parking. After receiving notice from the County that I was in violation, I had a meeting with the County to discuss my options and that is when I was informed that because the 1.08 acres of my property is B-2, that 1.08 acres does not count in a total acreage needed to park and store commercial vehicles. This leaves me with 2.254 acres considered A-1. I also own the adjacent property, parcel 115, which is 0.845 acres and with property, it gives me a total of 4.449 acres of adjoining property. Of that total property, 3.329 acres is A-1 and 1.08 acres is B-2. The simplest solution sounded like a Boundary Line Adjustment, however, I cannot make that work because the changes to the County laws regarding Bounty Lines: they must be perpendicular top each other, and my property does not lend itself to a ninety (90) degree angle. So here I am with the only solution to ask the Board of Zoning Appeals for a Special Exception.

Mr. Gibbons: Any questions? So you did go to the Commissioner of Revenue to see if you could do a Boundary Line Adjustment.

Mr. Nall: Yes sir.

Stafford County Board of Zoning Appeals
August 25, 2009

Mr. Gibbons: What about a lot consolidation? They could not do that either?

Mr. Nall: No, we cannot. The reason we could not do a Boundary Line was because the ninety (90) degree angle, our lots there are irregular shape as it is.

Mr. Gibbons: Anything prevent you from going in and getting the rest of the property B-2? I am just asking because it is highly unusual that you cannot consolidate two (2) or three (3) lots together. We have done it before.

Mr. Nall: We were working with...

Mrs. Musante: Mr. Gibbons: I am sorry.

Mr. Nall: Go ahead Melody.

Mrs. Musante: He actually spoke with a planner in our department and because of the shapes of the lots, it would not meet the new lot configuration. I am not sure on what that is but he has met with one of our planners and also Jeff is involved in this as well. Once they consolidate the lot, it would not meet the configuration ratio for a new lot.

Mr. Gibbons: I mean sometime next week can you give us some minutes on that?

Mrs. Musante: Absolutely.

Mr. Gibbons: So you have had violation notices, what about the sign permit?

Mrs. Nall: The sign permit we did put in, however, we were told it would not be addressed until this was addressed. We put in that we would comply with all the rules and regulations. Take down one sign that is out of compliance and the other one is within compliance.

Mr. Gibbons: So you are ready to put the proper one in as soon as the action is taken?

Mrs. Nall: Yes.

Mr. Nall: we have already taken one down, one was too big and it is already gone.

Mr. Gibbons: Questions? Ray?

Mr. Davis: Under development conditions, they indicate that only the gravel area would be used for parking. Photographs I see look like none of the vehicle are parked on gravel now. How are you going to accomplish that?

Mr. Nall: Which photo are you looking at? I will run over this with you.

Mr. Davis: That one is right there on top of the hill, same one your looking at right here.

Mr. Nall: Yes, this is actually stuff that is gone. That was just palettes sitting there, there actually is gravel. This area right here is gravel and we cannot do anything behind this area. If you see two white poles sitting there, that is actually the protected cemetery right there. There is nothing we can do there anyway.

Stafford County Board of Zoning Appeals
August 25, 2009

Mrs. Nall: I think it is just the angle of the photos because you are kind of looking up a hill where that is taken from.

Mr. Nall: You are looking at that red truck up there, all that is probably weeds up there, all that is gravel there. This is actually where that rack and snow plows hanging there.

Mr. Davis: This photograph shows grass under the semi, also the big oil spot in the parking area.

Mr. Nall: Right there, is that the same one you are looking at?

Mr. Davis: Right?

Mr. Nall: What was your questions?

Mr. Davis: That does not look like gravel to me and also where there is gravel, it looks like a large oil spot where something has been spilled there.

Mr. Nall: There is no work being done up here on this hill, so I don't know if that is an oil spot of whatever. There is nothing we do up there, there is employee parking and they are there from 8:00 to 5:00. This is a gravel road that comes off of State Shop Road around to Eskimo Hill Road.

Mr. Beauch: I have a question Mr. Chairman.

Mr. Gibbons: Go ahead sir.

Mr. Nall: Yes sir.

Mr. Beauch: We have been provided an extensive list, nine (9) items of development conditions. Have you seen that list?

Mr. Nall: No sir.

Mrs. Musante: It should be a part of your package, the third page.

Mr. Davis: The staff report.

Mr. Nall: Third page.

Mrs. Musante: Does it say development conditions at the top?

Mr. Nall: It says definitions and construction, that is the third page. I have a staff report, development conditions is the second page.

Mr. Gibbons: Yes sir.

Mr. Nall: Commercial vehicles may not be parked within fifty (50) foot of Eskimo Hill Road and fifty (50) foot of State Shop Road and operated on the A-1 portion only.

Mr. Beauch: Have you read these before?

Mr. Nall: This one I have not. No sir.

***Stafford County Board of Zoning Appeals
August 25, 2009***

Mr. Beach: You should read these carefully so we could discuss them. Let us know if there any there that you have a problem with.

Mr. Nall: Okay, I am probably in compliant now fifty (50) feet, I do not think anything parks within fifty (50) of Eskimo hill road.

Mr. Beach: So umber one (1) is okay with you?

Mr. Nall: Yes sir.

Mr. Beach: How about number two (2).

Mr. Nall: Commercial vehicles may not be parked within twenty (20) feet of the side of the rear property line.

Mr. Beach: Side and rear property line.

Mr. Nall: Yeah, I would say... That property goes way back behind all three of those house.

Mr. Beach: Okay, how about the hazardous materials in number three (3).

Mr. Nall: We do not do that.

Mr. Beach: Number four (4), no solid waste.

Mr. Nall: No sir.

Mr. Beach: Number five (5), no service or repair shall take place on the A-1 portion.

Mr. Nall: You are correct.

Mr. Beach: No area of the A-1 portion shall be utilized in conjunction with ABC Trucking.

Mr. Nall: Correct.

Mr. Beach: And so on and so forth. We are good all the way down?

Mr. Nall: Yes sir.

Mr. Beach: Okay. I have been by there and it looked pretty clean, have you cleaned it up?

Mr. Nall: All the time.

Mr. Beach: Have you cleaned it up recently?

Mr. Nall: Well we are always picking up, mowing, cleaning up, straightening up and tryin to keep it cleaner than everything else around us.

Mr. Beach: Well, that is not hard.

*Stafford County Board of Zoning Appeals
August 25, 2009*

Mr. Nall: I do try to comply with anything.

Mr. Gibbons: Any other questions? So my understanding is that you could live with the development conditions on this page.

Mr. Nall: Yes, sir.

Mr. Gibbons: Okay, staff seems to feel comfortable with working with you and I think that is a compliment.

Mr. Nall: Thank you. It has been a long road.

Mr. Gibbons: So we need a motion please.

Mr. Ackermann: We need to close the public hearing.

Mr. Gibbons: Your right, I have to close the public hearing, I keep forgetting that and I have done it for years and forgot it for years. So the public hearing is closed, back to the board. I need a motion please.

Motion:

Mr. Hudson: Mr. Chairman, I make a motion to adopt the terms and conditions that staff has recommended approval of this request of Special Exception SE 09-03/2900190 and that is with the sign and those that are part of it, as we have spoken with you in conversation.

Mr. Gibbons: Do we have a second?

Mr. Beach: I will second.

Vote:

The motion for approval of the Special Exception passed 6-0.

Mr. Ackermann – yes

Mr. Beach – yes

Mr. Davis – yes

Mr. Gibbons – yes

Mr. Hudson – yes

Mr. Ingalls – absent

Dr. Larson – yes

3. **A09-1/2900117 - DGF LAND COMPANY LLC AND JOHN FIELDS** - Appeal of the Notice of Violation dated March 13, 2009, regarding violation of a condition on a Special Use Permit granted November 22, 1978, for an automobile salvage and recycling operation. Violations of Section 28-16, "Automobile Graveyards and Junkyards", and Section 28-19, "Performance Standards in M-2 Zones" of the 1978 Zoning Ordinance on Assessor's Parcels 22-28B and 22-28E, zoned M-2, Heavy Industrial, located at 164 and 182 Norman Road.

NONE

Stafford County Board of Zoning Appeals
August 25, 2009

4. **A09-2/2900205 - DGF LAND COMPANY LLC AND JOHN FIELDS** - Appeal of the Zoning Administrator's determination letter dated June 18, 2009 regarding the requirement to construct an enclosed building for the crushing process and removal of automobile fluids on Assessor's Parcels 22-28B & 28E, zoned M-2, Heavy Industrial, located at 164 and 182 Norman Road.

NONE

UNFINISHED BUSINESS

Mr. Gibbons: Any unfinished business? I think we are up to date.

Mrs. Musante: I think we are.

Mr. Gibbons: I want to thank the staff, the attorney and Anthony, the County Administrator. You asked about representation and I think they address everything that we have asked. I am very surprised and pleased that we got such a quality firm to represent us because they are a top notch firm and they specialize in local government and we are very fortunate.

Mr. McRoberts: If I could say just a couple things, my representation is necessarily limited to the budget. That does not mean that I am not going to diligently represent you all and there may be hours that are simply uncompensated and I understood that when I took this on. I would ask that you all recognize that my time is limited and try to communicate with me in a collective way, rather than individually because I could end up sucking up the entire budget for the month just talking to seven BZA members in advance of the meeting, etc. If we could limit discussions in advance to collective things and during the meeting. I plan to be here a half an hour in advance of meetings in order to do some preparation time as well if there are any other issues that need to be addressed in advance.

Mr. Larson: Mr. Chairman, might I suggest that we have a gentleman's agreement to coordinate our interactions with Andrew through you.

Mr. Gibbons: Andrew, if we have any budgetary problems then we will go to the Board and ask for help.

Mr. McRoberts: Thank you very much. Let me give you a little background, Mr. Gibbons you know me and some of the others just met me tonight. I have been a local government attorney for over fifteen years. I started in the Arlington County Attorney's Office in the early 90's. I was the Culpeper County Attorney for five (5) years in the mid to late 90's and I have been the Goutchland County Attorney for eight (8) years since then. This summer I joined Sands Anderson Marks & Miller in there local government section and I work on behalf of local governments all over the state. I am the author of omega's brief in the Hale vs. Town of Blacksburg BZA case that was decided just this January or February. That was a vested rights case that arouse out of the Town of Blacksburg regarding a big box Conditional Use Permit. I authored that brief on behalf of local government attorney's, VMLN VACO, I also wrote a omega's brief on behalf of VML and LGA in a noise ordinance case which probably would not be an issue that comes before this board, but you never know what may come before this board.

Mr. Gibbons: We had a horse about three (3) months ago.

Mr. McRoberts: Well if that comes back, I will be ready. I have represented rural communities and I know quite a bit about horse law. Certainly, one of things that I have done most of my career and certainly one of the reason why I have been tapped for this, is land use and zoning so, while I am new to the Stafford County ordinance and procedures around here, if I seem as though I am uncertain in some of

Stafford County Board of Zoning Appeals
August 25, 2009

that, I apologize in advance. I will learn and I am very experienced in zoning law, state law, Supreme Court statutes and those things. Many of things that it appears on your agenda will come before you next month and probably many times after that and I look forward to working with all of you.

Mr. Gibbons: Thank you very much.

Mr. Beauch: Mr. Chairman, we might consider if budget is a problem, some meetings we have are very light, maybe we should consider letting him know he does not need to attend certain meetings.

Mr. Gibbons: That is a good point. We could probably address some of it in email or correspondence.

Mr. Beauch: If there is something that needs to be addressed he may need to be here but we do have some meetings that are pretty easy and I do not think that we need an attorney for.

Mr. McRoberts: I think that is fine, again if the Chair could so indicate when those meetings are coming up and I guess as I get more experienced I will probably be able to spot those as well perhaps. I certainly know the Board has appropriated this money to be your council and if you think it is most effective for me to be here at all the meetings, that is fine. If it is important for me to be at most of the meetings but not all of them, I am looking to you all to tell me.

Mr. Gibbons: Yes, sir.

Mr. Beauch: One more thing, Mr. Chairman, I want to compliment you for being so polite and kind to our public, our taxpayers, we have sometimes had a different approach, it is very nice to see our public being treated kindly. Thank you.

Mr. Gibbons: Well, we are the public.

Mr. Beauch: I understand that.

Mr. Gibbons: To wrap it up, you asked last month to put this legal thing to rest and I think Joe did a good job, he spent over two weeks researching it and putting that letter together and making sure we had something.

Mr. Davis: What is the objective for them to postpone this if all of the violations have been met? What can we expect at the next meeting?

Mr. Gibbons: I believe what we can expect, and Andrew jump in any minute, they are very upset. They do not believe they have to put that crusher in a building and they have two or three and they have a large Fredericksburg firm involved in it that went to DMV about it. DMV, when you look at DMV, it is not the best code ever written when you really look at it. It is kind of nebulous in certain areas. They are upset with the fact that they cannot crush and do fluid draining and crush in the open. The county staff feels that it should be sheltered or have some type of a shelter, that is what we coming back on because they say that Rachel gave a determination notice, just not a violation of a zoning notice and that is what the argument was over.

Mr. McRoberts: What Clark Leming indicated to me before the meeting is that he would be requesting a zoning determination on that specific point and I am, frankly, just learning the file right now and so there seems to be a disagreement over whether that has been done. It looks like there was a notice of zoning violation, which the county believes has been resolved. Mr. Leming said, no it has not been but if he

Stafford County Board of Zoning Appeals
August 25, 2009

askes for a zoning ordinance determination then that whole issue may go away and that would be squarely presented to you for a decision as to whether the crusher constitutes processing necessary to be inside or not.

Mr. Gibbons: Right.

Mr. McAndrews: And I indicated to Mr. Leming, I certainly encouraged collection of all the issues and have them all presented at one time so both the public can address them all and so the Board of Zoning Appeals can address them all at one time as opposed to having a scatter shot approach where you address some issues some meetings and then a month and a half later there is another issue from the same junk yard. Excuse me, I know Stafford does not have junk yards, this is an automobile processing center.

Mr. Gibbons: That's correct. We were the first county to have a towing ordinance too. Now, Zoning Administrators report, nothing Rachel?

ZONING ADMINISTRATOR REPORT

Mr. Hudson: (Inaudible)

Mrs. Musante: The Fences, walls and hedges...

Ms. Hudson: (Inaudible)

Mr. Gibbons: Continue on that please, let us know when it is the right time to leave.

Mrs. Musante: The Fences, walls and hedges ordinance will not go to the Board until the October 20th meeting.

Mr. Beach: I don't understand.

Mr. Gibbons: Remember, the one we addressed on setbacks on the corner lot?

Mr. Beach: Yeah.

Dr. Larson: It is still not an ordinance.

Mrs. Musante: It's still not an ordinance, it is going to the Board, it has been through the Planning Commission and now it to the Board for their public hearing and it is October the 20th.

Mr. Gibbons: Anything else?

Mrs. Musante: No, that's it.

Mr. Gibbons: What does it look like next month please? I think your favorite applicant is coming forward next month, is she not? The one across the street?

Mrs. Musante: Oh, that's right. Yes, she is. Rose will be in front of you all and then the DGF and that is all we have.

Stafford County Board of Zoning Appeals
August 25, 2009

Mr. Gibbons: Okay. If you think you had a good one tonight, you have a good one next month. Adoption of meeting minutes of July 28th, any corrections or abstentions?

ADOPTION OF MINUTES

5. July 28, 2009

Mr. Gibbons: Everybody agree with them? Okay, we need a motion please?

Motion:

Mr. Ackermann: Motion that we approve the minutes of July 28th.

Mr. Gibbons: So moved, do we have a second please?

Mr. Hudson: Second.

Mr. Gibbons: Second. All in favor say aye.

Vote:

The motion to approve the July 28th meeting minutes as presented passed 6-0.

Mr. Ackermann – yes

Mr. Beauch – yes

Mr. Davis – yes

Mr. Gibbons – yes

Mr. Hudson – yes

Mr. Ingalls – absent

Dr. Larson – yes

Mr. Gibbons: No abstentions. I want to make sure we send a note to Mr. Ingalls and tell him this was delayed, in an email in the morning. He thought he wasn't going to be part of something but he is still part of it. Anything else to come before the Board.

Mr. Hudson: No, I just want to say, I appreciate council, I think this is going to be an interesting legal opinion on whether this is a manufactured inside or outside or whether you have to have... I think this is pretty good timing.

Dr. Larson: So, do you read these and then come back to us and give us your opinion or how does that work?

Mr. McAndrews: Well, I am new to being council to a BZA, but I will tell you, you would think that my job would be to review everything that's written to you both ways. Both by the applicant as well as by the County and the County Zoning Administrator, and have some idea of what I think on the legal issues, then what I would do is wait for you all to ask. I don't think I want to answer things unless they really need to be asked and answered because there are some things that you all probably know the answers to and do not need to ask me to look into them. There are others that you may think are very important and certainly, I guess, through the Chairman, if there were some things that were very important, you would want to make sure that I am prepared to address, a little heads up in advance would be wonderful.

Stafford County Board of Zoning Appeals
August 25, 2009

Certainly every attorney appreciates the chance to pull his thoughts together in advance as opposed to being asked on the day but at that same token, I would wait in general to be asked.

Mr. Gibbons: Okay. Andrew, I will say this, I asked the Chairman, I am going to go meet with him and the Administrator. When we found out it was going to be your firm, to me you are an asset to the county as a whole, whether giving advice here, so we are all a team. It is not just us and them. I want to go back and make sure that even if you get close on funding that we have the ability to add because some of these cases now, you have been around a long time Melody and you have to Mr. Beauch. Some of them, not as many as we to have, but they are more complicated then we used to have.

Mr. McRoberts: They certainly are. Some of that has been the changes in the law. There have been amendments in the BZA statutes over the years that have made some fairly complex legal arguments arrive at the BZA that did not use to be complex. It used to be a lot more factual things such as: is that screening really adequate to comply with the Zoning Ordinance for example. Now you have lawyers making fairly legal arguments that are frankly kind of complex and would befuddle most Circuit judges. So my hats off to you to have to face those types of issues on a monthly basis and I am really glad that the Stafford Board of Supervisors have seen fit to provide you council so that when those issues come up, you can get my best thoughts on how to address them.

Mr. Gibbons: We don't want to be penny foolish, I mean, because Joe was excited that you were the selected firm. It is a good thing for both the Board and the BZA to have, no matter what level you look at an argument that you are getting good council.

Mr. McRoberts: Well, all I can do is give you the best council I have and then you can make the best decision you can. Ultimately, if it really a legal matter, it would be decided by a Circuit Court judge in many cases.

Mr. Gibbons: Yes. Anything else?

OTHER BUSINESS

ADJOURNMENT

Mr. Gibbons: We are adjourned.

The meeting adjourned at 8:22 P.M.

Robert C. Gibbons, Chairman
Board of Zoning Appeals