

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
February 23, 2016

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) of Tuesday, February 23, 2016, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Dean Larson in the Board of Supervisors Chambers of the George L. Gordon, Jr., Government Center.

MEMBERS PRESENT: Ernest Ackermann, Steven Apicella, Adela Bertoldi, Dana Brown, Robert Gibbons, Robert Grimes, Danny Kim, and Dean Larson

MEMBERS ABSENT: Heather Stefl

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

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 alternates. Tonight we'll have Mr. Steven Apicella, all the way down to my right. Then we'll have Dr. Ernest Ackermann, Mr. Danny Kim, and Mr. Robert Grimes, Ms. Dana Brown, and Mr. Bob Gibbons and myself will be the voting members. We also have with us tonight Ms. Adela Bertoldi is an alternate member. She will be seated at the dais but non-voting. Oh, and representing the County we have our Zoning Administrator, Mrs. Susan Blackburn; our Zoning Manager, Mrs. Melody Musante; and our Senior Administrator... Admin Associate for Zoning Administration, Stacie Stinnette; and we have a Zoning Technician, Mrs. Evelyn Keith, also representing the County. 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 ask the applicant or their representative to come forward and state their name and address, and present their case to the Board. The presentation shall not exceed 10 minutes unless additional time is granted by the Board. Members of the Board may ask questions of the applicant to clarify or better understand the case. The Chair will then ask for any member of the public who wishes to speak in support of the application to come forward and speak. There shall be a 3-minute time limit for each individual speaker, and a 5-minute time limit for a speaker who represents a group. After hearing from those in favor of the application, the Chair will ask for any member of the public who wishes to speak in opposition to the application to come forward and speak. After all public comments have been received, the applicant 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, four 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 ten 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 material may require a deferral, at the Board's option, on behalf of the applicant to allow the Board time to consider the additional material. Members of the public and/or staff may also submit relevant material during the

Board of Zoning Appeals Minutes
February 23, 2016

hearing. Tonight we have seven members present, and you must have four affirmative votes to approve an 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 does not agree with the decision of this Board shall have 30 days to petition the Stafford County Circuit Court to review our decision. Also, be aware that the Board will not hear any denied application for a Variance or Special Exception that is substantially the same request for least one year from the date of our decision. I now ask that anyone who has a cell phone, pager, or other electronic device to please silence it. It is the custom of this Board to require that any person who wishes to speak before the Board shall be administered an oath. Therefore, I ask that anyone who wishes to speak tonight stand and raise your right hand. Do you hereby swear or affirm that all the testimony before this Board shall be nothing but the truth?

Response from the audience members: I do.

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

Mrs. Musante: There are no changes.

Dr. Larson: Okay, before we hear the first case, we have a couple of items to take care of on the agenda. We have elections for the Board officers for the following year. Do I have a nomination for the position of Chairman?

ELECTION OF OFFICERS

A. Election of Chairman

Mr. Apicella: Mr. Chairman, I'd like to nominate Mr. Grimes.

Ms. Brown: I'll second that.

Dr. Larson: Okay, we have Mr. Grimes nominated and second. Any other nominations? Okay, those nominations are closed. Vice-Chairman?

B. Election of Vice-Chairman

Ms. Brown: Mr. Chairman, I'd like to nominate Steven Apicella please.

Dr. Ackermann: I'll second it.

Dr. Larson: Okay. Mr. Apicella's been nominated and second. Any other nominations for Vice-Chairman? Okay. And Secretary.

C. Election of Secretary

Mr. Grimes: I would like to nominate Ms. Dana Brown for Secretary.

Dr. Larson: Is there a second?

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Apicella: I'll second that Mr. Chairman.

Dr. Larson: Okay, we have nominations for Ms. Brown for Secretary. Any other nominations for Secretary? Okay, those nominations are closed. Okay, let's vote on the Chairman, Mr. Grimes for Chairman. Those in favor say aye.

Mr. Apicella: Aye.

Dr. Ackermann: Aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Ms. Brown: Aye.

Mr. Gibbons: Aye.

Dr. Larson: Aye. Any opposed? Okay Mr. Grimes, you are the Chairman. Okay, Mr. Apicella for Vice-Chairman. Those in favor say aye.

Mr. Apicella: Aye.

Dr. Ackermann: Aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Ms. Brown: Aye.

Mr. Gibbons: Aye.

Dr. Larson: Aye. Any opposed? Okay. And Ms. Brown for Secretary. Those in favor say aye.

Mr. Apicella: Aye.

Dr. Ackermann: Aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Ms. Brown: Aye.

Mr. Gibbons: Aye.

Dr. Larson: Aye. Any opposed?

Ms. Brown: I guess I have to abstain too, I don't know.

***Board of Zoning Appeals Minutes
February 23, 2016***

Dr. Larson: Okay Ms. Brown, you're Secretary. Okay, does any Board member wish to make any declaration or statement concerning any cases to be heard before the Board tonight?

DECLARATIONS OF DISQUALIFICATION

Ms. Brown: I do.

Dr. Larson: Go ahead.

Ms. Brown: I just wanted to say that I did visit all three sites. I went to 28 Bertram Drive, I believe it was back on January 22, right before the snow. I also visited 9 Carissa Court and 1039 Ficklen and the adjacent lot to it on Sunday, the 21st. And I did not speak to anyone.

Dr. Larson: Any other declarations?

Mrs. Musante: Mr. Larson? I'm sorry, but I think at this point since we've voted on the new officers, that we should probably switch seats.

Dr. Larson: Okay.

Mr. Grimes: I was expecting that at the next meeting.

Ms. Brown: No, I think this is your big night.

Mr. Grimes: Okay! Can we just move the gavel down one spot? Alright, so is there any other declarations to be made by any other members?

Dr. Larson: I have one. I visited the residence for Special Exception SE16-01/15150976, and I also visited the residence for the Variance request 16-01/16150181. I didn't talk to anybody at either place.

Mr. Grimes: Any other declarations?

Dr. Ackermann: Do I have to say anything if I looked them up on Google Maps?

Mr. Grimes: I don't think so.

Dr. Ackermann: Thank you.

Mr. Grimes: Okay, I'd like to ask the secretary to read the first case.

PUBLIC HEARINGS

1. SE16-01/15150976 - Nathan Brown - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standards," R-1, Suburban Residential, to allow a firearm and firearm accessory sales and repair as a home business on Tax Map Parcel No. 19D2-7-184. The property is zoned R-1, Suburban Residential, located at 28 Bertram Boulevard, Vista Woods Subdivision.

Mrs. Musante: Case SE16-01/15150976, applicant Nathan Brown requests a Special Exception per Stafford County Code Section 28-35, Table 3.1 "District Uses & Standards," for the R-1, Suburban Residential, to allow Firearm and Firearm Accessory Sales and Repair as a Home Business on Tax Map Parcel No. 19D2-7-184. The property is zoned R-1, Suburban Residential, located at 28 Bertram Boulevard in the

***Board of Zoning Appeals Minutes
February 23, 2016***

Vista Woods Subdivision. You have the application, the application affidavit, plat of the property, and a layout of the area used for the business. The applicant is requesting a Special Exception to operate a home business that will consist of firearm and accessory sales and repair. He intends to sell firearms and accessories over the internet and offer limited firearm repair services. Accessories and ammunition will be ordered on an order-by-order basis to prevent bulk or large quantities of inventory from being stored onsite. The applicant states the repair and service portion of the business will be limited to fittings, cleanings, cosmetic changes, and part replacements. There will be no firing or testing of these weapons onsite. The applicant states the custom configuration of firearms for sale will occasionally result in a firearm being stored on premise in a secure lockable fireproof gun safe. The applicant has stated that the customer visits will be by appointment only during the days and hours of Monday through Friday from 5:00 PM to 8:00 PM; Saturday and Sunday 11:00 AM to 8:00 PM. The applicant states he can provide three off-street parking spaces to accommodate his customers, but the code only requires one. As shown in the photos provided, the driveway is large enough to accommodate the required spaces for a single-family dwelling as well as up to three spaces for customers. He anticipates less than one client per day. The standards for a Home Business allow for a maximum of 25% of the gross floor area to be utilized for the business. The applicant has indicated 150 square feet will be used for the business which meets this requirement as the gross floor area of the dwelling 1,829 square feet. The Bureau of Alcohol, Tobacco, Firearms and Explosives gave a presentation to local zoning officials explaining their permit process. According to their regulations, the applicant must have a premise from which he conducts business or from which he intends to conduct business. The business may be located in a private residence, but must be open to the public for a person-to-person transfer. Due to this requirement, the applicant must apply for a Special Exception for a Rural Home Business through the Board of Zoning Appeals to sell or transfer weapons from his or her home. The single-family dwelling was built in 1987. And just for clarification, that is a Home Business, not a Rural Home Business.

Mr. Grimes: So are there any questions for staff? With no questions for staff, I'd like to open the public hearing now. Will the applicant or his or her representative please come forward to present their case?

Mr. Brown: Hello, I'm Nathan Brown and I applied for the Special Exception in order to apply for my FFL. In order to apply for the FFL, I needed to get a Special Exception done because it would involve the... having traffic into the home and allowing me to transfer firearms and sell firearms, then run the background checks that are involved with that. I intend to do the majority of my business over the internet. But in order to become a reseller for some manufacturers for parts and accessories for certain items, you need to have your FFL. And that's why I'm trying to get to this Special Exception processed.

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

Mr. Kim: I do have a couple, Mr. Chairman.

Mr. Grimes: Yes, Mr. Kim.

Mr. Kim: Hi. The question I have is what background do you have in firearms?

Mr. Brown: So, just from being around them. My father was a Sheriff so we spent a lot of time going to the shooting range and going out skeet shooting and things like that. It's mostly just been a hobby thus far and that's why I wanted to see about furthering it into an actual business.

Mr. Kim: Okay, thank you.

Mr. Brown: Yes sir.

***Board of Zoning Appeals Minutes
February 23, 2016***

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

Mr. Grimes: Yes Ms. Brown.

Ms. Brown: You stated in your application that you would be selling accessories. What kind of accessories?

Mr. Brown: So, certain accessories can be things like lights or sights or scopes, grips, stocks, anything that... really when I'm accessories, they're things that really aren't controlled by the FFL, but you need to have an FFL in order to be a wholesaler for the companies. So, it's things that you can buy at like a Dick's Sporting Goods or sports equipment shop to add to the firearms, to customize them.

Ms. Brown: Will you be selling ammunition as well?

Mr. Brown: Um, I don't intend to sell any like bulk ammunition or deal anything like that. The FFL that I'm requesting is not the one where you can actually create your own... make your own ammunition, but I didn't have any intent on selling any... like purchasing bulk ammunition in any way and selling it.

Ms. Brown: I mean, it says accessories and ammunition will be ordered on an order by order basis, so you might.

Mr. Brown: Yes, you can order ammunition with the FFL but... well, anyone can order ammunition, but that's not really part of like the business model.

Ms. Brown: Okay, thank you.

Mr. Apicella: Mr. Chairman?

Mr. Grimes: Yes.

Mr. Apicella: So, when you sell or transfer the weapon and/or accessories, how will you get that product to a customer? Are you going to do it at your house or are you going to do it any some other venue?

Mr. Brown: So, if I were to sell, if I'm selling a firearm, and I'm selling it online, I would have to ship it to an FFL... another FFL near the person because, you know, probably odds are if they're buying it online, they're probably not local because you can sell a lot of them through like gun broker websites and things like that all across the country. So, if I was selling a firearm through the internet, the odds of someone coming to my home to buy it are not very likely. As far as the transfers of firearms, let's say someone wanted to purchase a firearm and get it shipped to Stafford, Virginia, they can see that I have an FFL and they can get it shipped to my home. Because you can't ship a firearm to someone's residence without them having an FFL. So then I would take possession of the firearm, set up... they would have to set up an appointment before shipping the firearm to me so that they know I'm accepting the work. And then they would set up an appointment, come to my home, and complete a background check where they would fill out the necessary paperwork required, I would run the background check through the Virginia State Police website, and then complete the paperwork to transfer the firearm.

Mr. Apicella: When I read the background on what's being requested, it also said that you'll be doing firearm repair. Do you have experience in that?

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Brown: Mostly firearm customization. A lot of it's pretty basic; just disassembly, reassembly, replacing any broken parts or internal components. So, it's pretty minor experience; just for my own hobby, but I'm trying to expand on that.

Mr. Apicella: Last question. We normally have a condition that we include for these firearms transfers. I don't know if you've seen the background report, but it's under number 3 where it talks about customers by appointment only. But we've normally added a caveat that no more than one customer at any given time, which, in this particular case, is consistent with the number of parking spaces that you have. So I'm just asking if you have any concerns about adding that language if we choose to move forward with this.

Mr. Brown: No sir, not at all. Honestly, I'm going to try to keep traffic at a minimum. I don't foresee any more than probably one person a week at most. So I'm going to try to do appointments only and it's only going to be one person at a time.

Mr. Apicella: Thank you.

Mr. Brown: Yes sir.

Dr. Larson: Question Mr. Chairman?

Mr. Grimes: Yes sir.

Dr. Larson: In the briefing we have, it mentions custom configuration of firearms. If you intend to do that, could you describe what you mean by that?

Mr. Brown: Oh, yes sir. So, as I mentioned with purchasing the accessories, a lot of these accessories need to be installed on the weapon... or on the firearm... and some people don't have the tools or the experience necessary to do so. So, it could be something as simple as replacing the stock of a gun or the handle-grips of a gun or adding an under-mounted light which may require a little bit of drilling or modification. It could also include doing... adding graphics to the exterior just for aesthetic purposes, such as like a camouflage or tiger stripe type pattern. That's pretty much the bulk of the customizations that would be going on.

Dr. Larson: And would you be having any employees on site?

Mr. Brown: Yes, actually my business partner behind me; we were planning on trying to do this together and, well he doesn't live onsite, but...

Dr. Larson: But he would be working onsite?

Mr. Brown: Yeah. So, if he wanted to come down and work on a firearm he could do so.

Dr. Larson: Thank you.

Mr. Brown: Yes sir.

Mr. Kim: Mr. Chairman, I have a couple more questions.

Mr. Grimes: Yes sir.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Kim: Okay, have you told your neighbors about your business venture?

Mr. Brown: Um, yes sir.

Mr. Kim: And what was their reaction?

Mr. Brown: So, they were initially, uh, just questioning what kind of traffic or anything that might change. You know, they just didn't want to have a huge flow of traffic coming through and I've pretty much assured them that, you know, I'm stipulating it's by appointment only. I'm not going to do any transfers that are sent to me without making an appointment beforehand. So, let's say I receive something in the mail to do a transfer that I'm not aware of, an appointment's not been made; I'm going to send it back to where it was shipped from. Yeah, I actually had a talk with five or six of my neighbors and that was the main concern that they brought up.

Mr. Kim: Okay, the other question I have is, I'm not too familiar... I mean, I have guns, but I'm not too familiar with modifying any of them. From what I read here, it states that you're going to do minor customizing and changing. Is there ever going to be a time where it would be more than minor, like major? And if it is major, are there going to be hazardous materials that have to be shipped to your house? This is the part I don't know is why I'm asking.

Mr. Brown: Okay.

Mr. Kim: So, I want to know when it's going leave from being minor to major.

Mr. Brown: Yeah, well I don't really foresee getting into a major customization point where any hazardous materials would ever need to be shipped. Like I'd mentioned before, I think the majority of the customizations are really just bolt-on accessories that, you know, anyone could buy and purchase and probably install on their own. But a lot of people don't have the knowledge or the background in order to do it, or... but I can't think of a scenario where a customization would be more than swapping out an internal component like a separate barrel which is just disassembly and putting the barrel back in. Most of the customizations I think would involve standard household power tools; nothing above and beyond that. No equipment or materials necessary.

Ms. Brown: Mr. Chairman, I have a couple more questions.

Mr. Grimes: Yes, Ms. Brown.

Ms. Brown: I have three questions; I hope you'll bear with me. First of all, how do you think that the new Executive Order by the President is going to affect you? I read through the, I guess it's a docket number, it was like 250 pages and I'm by no means a legal expert. But it sounded like that there's going to be requirement of at least two, possibly three visits during one sale, where the person's going to have to come to the house, initially apply, show his ID, and then I guess you're going to have to run a check and have three days to do that. And he's going to have to get a certified letter or some kind of something from the CLEO, which is the Chief Law Enforcement Officer in charge, and then they've got to come back; so, a minimum of two visits, possibly three. Were you prepared to deal with that kind of traffic, or...?

Mr. Brown: So, I haven't done much research on the new order as of yet. From what you just described, that's still a possibility even now because the Department of... because the Virginia State Police website in which you run a background check with can take several hours or even several days if there are special

***Board of Zoning Appeals Minutes
February 23, 2016***

exceptions. So, it's not always just a quick one home visit in the process. So, from what you explained, it doesn't sound like it would...

Ms. Brown: I think from... when this goes into effect, and from what I'm reading it was signed by the Attorney General on January 4th and I think it goes into effect 180 days from that. So we're a month or two out, but it's definitely going to require more visits in a 3-day waiting period. I just wondered if you were prepared for that. And the other thing I wanted to know is where do you get your inventory that you would be selling? Where do you buy that from?

Mr. Brown: So the inventory can be purchased from wholesalers. So, let's say at Remington, if I became a wholesaler for... or a reseller for Remington firearms, I could get the item shipped directly from Remington to my home.

Ms. Brown: Okay.

Mr. Brown: So, it'd be mostly online. The only other scenario I can think of, I mean, anywhere else anyone else can buy guns or gun shows or anything like that.

Ms. Brown: So, for people in Virginia, would you be charging sales tax?

Mr. Brown: Um, yes, I believe so.

Ms. Brown: Thank you.

Mr. Brown: Yeah, it's depending, once again, if it's sold online I believe they have to live in Virginia to get the sales tax applied.

Ms. Brown: Okay. Thank you, that was all I had.

Mr. Grimes: Any other questions for the applicant? Hearing none, would any member of the public who wishes to speak in support of the application please come forward.

Mr. Allen: Hello, my name is Thomas Allen. I'm actually Nathan Brown's business partner. I actually had a response to your question; the first one, about the change in background checks. I believe what you're referencing is a change in what's classified as short-barreled rifles and short-barreled shotguns. That's a different classification of firearms than what Nathan and I would be dealing with. I believe they're classified as Class 3 Firearms, I believe. So, I just felt like there should be a little bit of clarification like the 180 day action that President Obama signed actually... it's specifically for a separate category of firearms than what we would be dealing with.

Ms. Brown: Okay, I know in the beginning of it, it does say machine guns, destructive devices, and certain other firearms. Background checks for responsible persons of a trust or legal entity, or with respect to making or transferring a firearm.

Mr. Allen: Yeah, that's for Class 3 firearms I believe.

Ms. Brown: Okay. I don't know, it does not say for Class 3 only. And, like I said, it's 250 pages, but it does not say that in the summary.

Mr. Allen: Okay. That's all.

***Board of Zoning Appeals Minutes
February 23, 2016***

Ms. Brown: Thank you.

Mr. Grimes: Thank you. Anyone else want to speak in support of the applicant?

Ms. Popiolek: Good evening Board. My name is Marie Popiolek. I am a retired Chief Warrant Officer from the United States Marine Corps, having served 21 years. I took an oath to support and defend the Constitution of the United States, and I believe that the Second Amendment is a very important part of that, as well as freedom of speech, freedom of religion. So, I would just like to say that being a member of the Stafford community and having someone local where I know that if I am purchasing a firearm from another location that I would have a local area for which to have that firearm transferred, and would definitely be taking advantages of their service, you know, that would definitely improve the economy of the Stafford area. So, thank you for your time and I would request that you would approve this. Thank you.

Mr. Grimes: Thank you. Any other member of the public wanting to speak in support of the applicant? Are there any members of the public that would like to speak in opposition of the applicant? Seeing none, does the applicant wish to respond or add anything else?

Mr. Brown: No sir.

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

Mr. Apicella: Mr. Chairman, again, not sure if this is going to pass or not, but I would request a change to the development condition number 3, adding to the end, no more than one customer at any given time.

Mr. Grimes: I would agree with that.

Dr. Larson: Mr. Chairman, I would suggest the deletion of development condition 9 since the applicant has no intention of selling ammunition.

Mr. Grimes: I thought the applicant stated that he would be selling ammunition?

Ms. Brown: I did too.

Mr. Grimes: Bought via the internet but it would be delivered to his house for a customer to pick up. That is correct Mr. Brown?

Mr. Brown: So, I wouldn't be handling ammunition for any other people. So like if you bought ammunition, it would just get shipped to your home. You don't need an FFL in order to do that.

Mr. Grimes: Okay.

Ms. Brown: So you're not handling any ammunition in your (inaudible)?

Mr. Brown: Just my, yeah, just ammunition that I would purchase would come to me. But that doesn't require an FFL, so I wouldn't... if that makes sense.

Ms. Brown: It's not part of the business though?

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Brown: No.

Dr. Larson: So, again, I would suggest deleting item 9.

Mr. Apicella: Mr. Chairman, my only concern is the absence of a condition would, in my view, allow someone to have an unlimited amount of ammunition. So, it helps to provide some boundaries; whereas, taking it out takes away those boundaries.

Dr. Larson: I think that any citizen can purchase ammunition in whatever amounts they wish. I don't know if there are any restrictions on that. What we're talking about is the resale. And the applicant has said he doesn't intend to sell it, so.

Mr. Apicella: Right. But this is no different than if, as I understand the way this works, what we have in front of us only deals with the business part of this person's effort. So, whatever they do privately is not covered by these conditions. So, if they wanted to have a hundred thousand rounds of ammunition, they could do that irrespective of what's in here. Again, my concern is, without some boundaries, I mean I don't care if it's 5,000 or 10,000 or 20,000, again, I'm just suggesting that taking out a condition opens the door to some unlimited amount of ammunition associated with the business. Again, potentially, you know, what somebody says today, what they want to do today, may be different than what they want to do five years from now.

Mr. Grimes: I agree with Mr. Apicella. We've had a case here before where there was a gentleman that was doing another transfer, but he also got into the side business of selling bulk ammunition because he could get it cheaper from his wholesalers and resell it to his clients. So, I think that's actually where this condition first came from. And to limit his business that he wouldn't be able to sell ammunition at a future date, I'd like to avoid that myself.

Ms. Brown: I have a comment. This online sales is still an issue for me. I am not comfortable reinterpreting the definitions that were approved by the Board of Supervisors or redefining them. When you resell an item, that's retail. When you buy something and sell it again, and there's sales tax collected, that's... that is a retail sale. And I know that we sought a legal opinion before I was on the Board and I've read it many times, and how I read that is that it could kind of go either way. And when they... and the lawyer said, well, it's probably okay to do it, it was based on a case that this Board heard the previous month where we had done it before we sought legal counsel. And, as we all learned in school, there is no precedence in this. So, I'm really uncomfortable that we're out of our swim lane with the Board of Supervisors on this and doing our own ad hoc definition, and saying that online sales is not retail. Online is. Amazon is an online retailer. We pay sales tax and that's what their business is. I... what I'd like to do is, I know that the Planning Commission had been going over all the definitions again little by little for the Board of Supervisors, and perhaps we need to seek some clarity from the Board of Supervisors, but I am very uncomfortable with it right now.

Dr. Larson: Yeah, I briefed this. Before you were on the Board, I spoke with the Chairman of the Board of Supervisors about this issue. And that is one of the reasons we got \$10,000 a year to fund a research attorney was to... the first issue to look at was that issue, which, as you pointed out, he looked at and agreed with our position.

Ms. Brown: Based on the fact that you had already done it the month before, before (inaudible).

Dr. Larson: I don't think he took that into account one way or the other.

***Board of Zoning Appeals Minutes
February 23, 2016***

Ms. Brown: That was mentioned in the opinion that I read. And I did speak with the Board of Supervisors, including the former Chairman and a couple... the Vice Chairman. Um, I'm uncomfortable with it. I think that we are... these are retail sales, online as a retail sale. When I buy anything online, they do business in the State of Virginia, I pay a retail tax, a retail sales tax.

Dr. Larson: So, if you sell something on Amazon, that's a retail sale. It's illegal.

Ms. Brown: I don't sell anything on Amazon; I'm not Amazon. I can't sell anything.

Dr. Larson: I think other people do.

Ms. Brown: If I buy something from Amazon and they do business, they have a physical presence in the State of Virginia, I pay sales tax.

Dr. Larson: I thought you said if you bought something over the internet, that was a retail sale?

Ms. Brown: I pay a retail sales tax, if they're doing business in the State of Virginia, which he is. And he will be collecting tax.

Dr. Larson: Well, Mr. Chairman, it's up to you whether you want to open this up again.

Mr. Grimes: I'd rather not re-litigate this. We've made decisions in the past based on the opinion that we've gotten from our attorney that online sales is not retail sales as it applies to these requests for Special Exception. And I wouldn't want to go out and change that now until we get a more definitive ruling from our Board of Supervisors or some other body that can actually rule on that.

Ms. Brown: And I'd like to make sure that the Planning Commission gets this for the Board of Supervisors. Maybe they can move it up on their list. I think, Mr. Apicella, they had brought it up last April when you were on the Board and then it got... I'm not sure what happened with it there.

Mr. Apicella: I was just chatting with my neighbor here about it, and I think there's still some gray. But I think it ultimately, this circumstance, it's about volume as much as anything, from what we talked about. And so since we're limiting the volume and the actual transfer of money is happening online, then technically it's not a retail sale. I agree that there is still some gray; it's not a perfect solution. We couldn't get to a perfect solution, so...

Ms. Brown: Well, when we look up the definition of retail, it's buying and selling... buying and reselling.

Mr. Apicella: Right. Again, we discussed it and couldn't come up with a great solution at the Planning Commission level either.

Ms. Brown: Okay, well, I'm uncomfortable with it. I (inaudible) see it go back to the Planning Commission and I'm not going to be supporting this because...

Dr. Larson: I, for one, would welcome the Planning Commission or the Board of Supervisors to step in and define this.

Mr. Apicella: We did. There is a slightly tweaked version, I think, in the Ordinance. I don't have it in front of me, but getting beyond that, I think we were using the Webster's definition, or something like the

***Board of Zoning Appeals Minutes
February 23, 2016***

Webster's definition, for retail sales. And it was the two things we talked about are volume and how money gets transferred.

Mr. Grimes: And volume being the traffic to the business.

Mr. Apicella: Right, right.

Mr. Grimes: I mean, that was one of the big discussions that we had at this Board last year or the year before.

Mr. Apicella: I think the point is, we... retail sales would be somebody having essentially a store at their house where there's a high volume of traffic, people coming in and out of somebody's home, buying a product and exchanging money at that point of sale, at the home. So, that was...

Ms. Brown: So, the definition of retail sale refers to volume of traffic?

Mr. Apicella: So, what's been passed to me... this is in the ordinance now? Okay. It says retail sale to sell in small quantities directly to customers for their own use. And again, the point here is it's an indirect sale because it's happening online. Now I think there might be some fuzziness here to the extent that other things are happening like... well, it's really a product, so you're selling a service. So that wouldn't really be covered by retail sales as far as I'm concerned.

Ms. Brown: Well, except the accessories; that's not a service.

Mr. Apicella: Again, that's why I ask the question, when somebody purchases an accessory, how are you getting that accessory to the individual? So, presumably, it's still sort of the same thing; they're making... they're buying that accessory online. Still not clear how they get it, but I'm assuming that you're going to send it out with the weapon when you send it to the person or you transfer the weapon back to the person.

Ms. Brown: No, I think he's going to be collecting sales tax he said. Correct?

Mr. Apicella: Again, wouldn't that happen online?

Mr. Grimes: Any online sales (inaudible).

Ms. Brown: I don't know... when he picks up the weapon at the house, that's when he made payment.

Mr. Kim: Can I add something? So, I remember when we did discuss this, I kind of brought up the point about, you know, me selling something on eBay or Craigslist -- because technically I sold stuff on Craigslist. I talked to one of the Board of Supervisors about that and he was... I know, I'm sorry. That was one of the... I'm going to stop talking. I think that was a gray area because of places not like Amazon, because they actually, you know, sell from other businesses, but I think from this Board of Supervisors' perspective, it was more of a eBay sale, because, like, I didn't pay any taxes when I sold...

Ms. Brown: That doesn't mean you weren't supposed to, but (inaudible).

Mr. Kim: Or maybe I was supposed to, but I think that was a gray area. And that's...

***Board of Zoning Appeals Minutes
February 23, 2016***

Ms. Brown: I would like to get clarity from the Board of Supervisors, however you want to do it. If you want to put the Planning Commission...

Mr. Apicella: I would respectfully say we got clarity because it went through the Planning Commission and then went to the Board of Supervisors. It's the Board of Supervisors who ultimately decided on all the changes that we included; it wasn't just the one change on retail sales. It was a broad look at the definitions to make them, the Subdivision Ordinance and the Zoning Ordinance, compatible because there was misalignment. And as part of that process, retail sales was one of the issues that we discussed.

Ms. Brown: The ones I talked to weren't aware of that.

Mr. Apicella: Again, it was ultimately approved by the Board. This whole discussion happened, certainly at the Planning Commission level; I presume it happened at the Board of Supervisors level. And again, what I recall is the same thing that Dr. Larson remembers is we floated this concern to the Board of Supervisors long before this issue of trying to hone in on the right definition, and they didn't seem to have a problem. And since then, we've probably approved ten-plus firearm transfer Special Exceptions.

Ms. Brown. So, we floated this verbally; that's what you're saying? With a Board that's no longer maybe in sitting right now, because we do have different members. So there was nothing in writing? We need to get something in writing that says online sales is not considered retail. Because our code clearly says no retail sales. Nowhere in there does it say except online doesn't mean retail. So...

Mr. Apicella: Again, I would say that that whole discussion was captured in the meeting minutes from the Planning Commission to the Board of Supervisors, and they certainly had an opportunity to hone in on that part, if there was any concern about it. And they chose not to. I hear what you're saying. I don't disagree...

Ms. Brown: When was this? When was this?

Mr. Apicella: This was what, a year and a half ago? I can't tell you exactly.

Mr. Grimes: Well, I think there's going to be a disagreement on this definition. It's been a disagreement every time it's come up in this Board, so I don't think it's going to change. I know, Mr. Larson, you'd like to make a couple of comments real quick and then we'll close this out.

Dr. Larson: I'd just like to clarify for the applicant because I'm not sure if you understand the nuances that are floating back and forth here about the Board. It is not legal to have a retail sale in a residential area in Stafford County. It's against the... it's against the Stafford County ordinances. This Board interpreted... that rule was made before the internet was around. So this Board interpreted it to mean that an internet sale takes place somewhere else. It's on the internet. So, if you take money from somebody on the internet and then give them a product at your house, that's not... it's not interpreted as a retail sale. Now, what you're planning to do are services. That's fine. Fine from day one, that's fine. We're talking about somebody coming to your house, you having an item there, giving it to them, they give you money in some form -- a credit card, cash, whatever -- so they pay you right there, that's a retail sale and it's not allowed. Thank you Mr. Chairman.

Dr. Ackermann: May I make a comment? So they want to buy accessories. If I come in and I want to buy an accessory from Mr. Brown, I'm not permitted to do that. I need to purchase that online from Mr. Brown or from someone else?

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Grimes: That has been our position in the past.

Dr. Ackermann: So, you understand that.

Mr. Brown: Yes sir.

Dr. Ackermann: That people cannot come in and buy accessories or buy ammunition.

Mr. Brown: Understood, yeah. And it's not going to be advertised where you can come to 28 Bertram Boulevard and pick up gun accessories onsite.

Dr. Ackermann: But it can happen. I mean, I can come in and I'd say, you know, I would like that, that looks really nice, that'd be really good. You cannot sell that to me.

Mr. Brown: Yeah, yeah, understood. It'll all be carried out online.

Dr. Ackermann: Okay.

Mr. Apicella: And I would just add that that notion is memorialized under condition number 5 where it says the business shall not engage in retail sale of merchandise on the premises, meaning merchandise must be paid for online.

Dr. Larson: I just wanted to make sure the applicant understood (inaudible).

Mr. Apicella: Oh, I understand; I'm just responding to Dr. Ackermann.

Mr. Gibbons: I've got one question.

Mr. Grimes: Yes sir.

Mr. Gibbons: What I'm concerned about, you're in a neighborhood now and you're going to customize a firearm. Now how are you going to certify that the customization you did to it is safe?

Mr. Brown: So, you can take that to a gun range and ensure that it still functions. There won't be any...

Mr. Gibbons: So you're not going to do it on the site?

Mr. Brown: No sir. There will not be any firing or...

Mr. Gibbons: Can we put that in writing?

Mr. Brown: ... loading of weapons onsite at all.

Mr. Gibbons: Can you put that in a...

Mr. Brown: I believe it already is.

Mr. Apicella: There is a condition to that affect.

Mr. Grimes: Number 10; it's actually on the second page of conditions.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Gibbons: Yeah, but I'd like... I understand, I read it. But I want it more clarified that they would go to a range to be tested. It wouldn't be discharged on that site but it could be discharged on another site.

Mr. Grimes: But once it leaves its residence, do we have any control of how the end user or customer or just Mr. Brown himself chooses to test the weapon? I mean, if I owned 10 acres in southern Stafford and I wanted to take it out and shoot it off my back porch, that's perfectly legal. I don't know that I'd be comfortable testing it myself after a modification by someone else, but Mr. Brown could take it to a range or take it to a shooting spot that it's legal to do that and test it himself.

Dr. Larson: Mr. Chairman, I have a comment on condition number 4. It says all weapons associated with the business will be locked in separate containers that are secure and located within the room of the home that is secured with a deadbolt. The applicant himself has used the phrase lockable fireproof gun safe which I think I'd like to see that phrase used rather than separate container. So lockable fireproof gun safe; I like that.

Mr. Brown: Yeah, and I actually had a question about that one as well because assuming if you had multiple firearms and you wanted to put them in their own separate cases, putting them all into a safe then would probably be unrealistic. So, one, how I intended to store them is via a trigger lock where you need a key in order to access the trigger of the gun and then already being in the room with the dead-bolted lock and being in the fireproof lockable gun safe. So I wasn't sure about the use of special containers or separate containers, sorry.

Ms. Brown: I did have one other comment to make for us. I had recently contacted the Federal Government about ADA compliance and they sent me back a little email, I gave to Susan, I guess that all home businesses need to conform with the American Disabilities Act. And I think this gets discussed with all our applicants when they come to the County initially to apply so you're aware that you're going to have to meet all those requirements. Okay, thanks.

Mr. Grimes: Mr. Gibbons, did you have anything else to add from the previous comment?

Mr. Gibbons: No, I just don't like that, but being the team player, you know.

Mr. Grimes: I understand. So is there any other discussion on the suggested development conditions or any other items?

Dr. Larson: I do have a question for the applicant, Mr. Chairman. Are you... do you have a Homeowner's Association?

Mr. Brown: No sir.

Dr. Larson: Okay, thank you.

Mr. Brown: Oh, and I actually had another question about the suggested development conditions. It was in relation to number 11, just saying that they wouldn't be stored any longer than 5 days. There were several possible scenarios that I could think of where that may be an issue. You know, just one obviously being if we're doing a repair and we have to special order a new part, waiting for that part to get to us, and then having the time to actually repair the item in a safe manner. And then go and do any sort of testing may require it to be there more than five days. And as well as some of the applications of like a custom graphic or paint or chemical to the weapon, some of those curing processes have more than a five day window. So, I'm not sure.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Grimes: Melody, this development condition is I think the first time I've seen this. Is this new? Is there a motivation behind it?

Mrs. Musante: We've actually used this on I believe the last firearms applicant we had come in, we used that condition. So I just took it from that one. But you're more than welcome to, of course as you know, change that if you want to add to it.

Mr. Grimes: No, I just did not recall that being on the last one that we did. Is there a... Mr. Brown, is there a timeframe that you would think would be reasonable for... is it ten days?

Mr. Brown: So, I know in the application of, you know, as I mentioned for some of the graphics and customizable skins for certain firearms, just the curing process alone can be two weeks. So, I would say anywhere upwards from that would be acceptable for the type of business I would like to run.

Mr. Apicella: Mr. Chairman, how about 30 days?

Mr. Grimes: I'm okay with 30 days; I was hoping for some input on that from the rest of the folks up here, if anybody had any thoughts on that. Is 30 days acceptable to you Mr. Brown?

Mr. Brown: That would be more than fine, thanks.

Mr. Kim: Yeah, 30 days or just take it out, because as a business, I don't think anyone wants to keep merchandise in because then they're not making money. So, I'm good with 30 days if you are or take it out completely.

Mr. Brown: Either one would be fine by me.

Mr. Kim: I'm good with either one.

Ms. Brown: You said you would need two weeks for the curing process?

Mr. Brown: Yes ma'am.

Ms. Brown: What is that?

Mr. Brown: So, like if you were to paint, use a special epoxy paint; just the amount of time it takes to do the various layers and the various coats and to allow it to properly cure and harden before it's used, or handled really. So, you know, you just wouldn't want it to end of with smudges streaks.

Ms. Brown: Well, and forgive me, I forgot how many people you said you expected a week but, so if you were holding things for 30 days, how many weapons would you expect to have on time... on site at any one time?

Mr. Brown: Um, I would say... do you mean just for the repair service or do you mean for...

Ms. Brown: For everything.

Mr. Brown: ... every weapon in my home?

Ms. Brown: Well, not your personal weapons. Any related to the business.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Brown: Okay. So any weapon related to the business I would say it would be less, probably less than 15, 10 even.

Ms. Brown: That's the most you would have on hand at any given time?

Mr. Brown: That's the... yeah, that's the most at any one given time that I could foresee. I don't plan to have just a safe full of weapons sitting around.

Mr. Grimes: Thank you.

Mr. Brown: Yes sir.

Mr. Grimes: Is there any other discussion on development condition number 4? I know that Dr. Larson mentioned a fireproof gun safe and then the applicant mentioned that his plan is to use weapons locks and individual locked cases for those weapons.

Dr. Larson: I think you better clarify that.

Mr. Brown: So, I guess my concern was that you meant individual like boxes for each weapon. I would use individual trigger locks for each weapon, and then they would, in turn, be in the lockable gun safe as well.

Mr. Grimes: Okay. So ultimately they'll be stored in the gun safe.

Mr. Brown: Yes sir. Anytime they're not being worked on obviously.

Mr. Grimes: So, you would have no objection to us noting that weapons associated with this business will be locked in a fireproof gun safe.

Mr. Brown: Not at all. That's correct.

Mr. Grimes: Thank you.

Mr. Brown: Thank you sir.

Mr. Gibbons: Mr. Chairman, what's the capacity of the gun safe?

Mr. Brown: It is... so it's a 16 gun safe, but it's for 16 that can include long guns. So, I mean, if I were to put shelving where the long guns, I mean I could probably fit more handguns. But I think it's a 16 gun safe but it stands where you can fit shotguns and long rifles.

Mr. Grimes: Any other discussion on the case or the suggested development conditions?

Mr. Apicella: Mr. Chairman, just so we're on the same page, as we've done in the past, it would probably be helpful just to read out all the conditions.

Mr. Grimes: That's where I was going next.

Mr. Apicella: Okay, thank you.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Grimes: Melody, could you read back all of the suggested development conditions?

Mrs. Musante: Number 1: Days and hours of operation: Monday through Friday 5:00 PM to 8:00 PM, Saturday and Sunday 11:00 AM to 8:00 PM. Number 2: Provide two off-street parking spaces for the home and one off-street parking space for clients. No on-street parking shall be permitted for clients. Number 3: Customers by appointment only with no more than one customer at any given time. Number 4: All weapons associated with the business will be locked in a lockable fireproof gun safe that is secure and located within a room of the home that is secured with a deadbolt lock. Number 5: The business shall not engage in the retail sales of merchandise on the premises, meaning merchandise must be paid for online. Number 6: Firearms shall be purchased only by special order. Number 7: Applicant shall maintain a professionally monitored security system. Number 8: No sign shall be erected on the property indicating a business is being conducted on the premises. Number 9: Ammunition shall be stored in cans with no more than a total of 5,000 rounds. Number 10: Discharging of firearms on the site shall be prohibited. Number 11: Guns and accessories shall be stored for no longer than 30 days. Number 12: The applicant shall comply with all applicable State, Federal, and local codes and regulations for the operation of this home business. Number 13: Approval of this Special Exception for Firearm and accessory sales and repair will expire when this applicant vacates the property and is non-transferable. And number 14: This approval may be revoked for noncompliance of the conditions imposed by the Board of Zoning Appeals.

Mr. Grimes: Thank you. Do I have any motions?

Ms. Brown: I'll make one. I'm going to motion to deny as I believe this to be a retail sale in violation of our code.

Mr. Gibbons: I'll second it.

Mr. Grimes: Do I have any alternate motions?

Dr. Ackermann: I think that motion is on the floor Mr. Chairman. And we could have a substitute motion perhaps, if you'd like, but I mean that motion is on the floor, needs to be debated and then voted on.

Mr. Grimes: I apologize to everybody since this is my first time doing Chair in a while.

Ms. Brown: You're doing fine.

Mr. Grimes: So can I get a vote on the motion on the floor?

Ms. Brown: Yes.

Mr. Grimes: So, I have a motion made by Ms. Brown and seconded by Mr. Gibbons to deny the request for a Special Exception as stated in case number SE16-01/15150976. All those in favor of the motion signify by saying aye.

Dr. Ackermann: Aye.

Ms. Brown: Aye.

Mr. Gibbons: Aye.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Grimes: Those opposed signify by saying nay.

Mr. Apicella: Nay.

Mr. Kim: Nay.

Dr. Larson: Nay.

Mr. Grimes: Nay. Melody, can you give me a count on that?

Mrs. Musante: That was 4 to 3... 3 to 4; sorry, I said it backwards -- 3 to 4.

Mr. Grimes: So, let the record reflect that the motion has been denied by a vote of 3 to 4. Do I have any other motions on case SE16-01/15150976?

Dr. Larson: Mr. Chairman, I move that we grant Special Exception, as you just stated, with the conditions that were just read.

Mr. Kim: I second that.

Mr. Grimes: I have a motion made by Mr. Larson and seconded by Mr. Kim to approve the request for Special Exception as stated in the case. All those in favor of the motion signify by saying aye.

Mr. Apicella: Aye.

Mr. Kim: Aye.

Dr. Larson: Aye.

Mr. Grimes: Aye. Those opposed signify by saying nay.

Dr. Ackermann: Nay.

Ms. Brown: Nay.

Mr. Gibbons: Nay.

Mr. Grimes: Let the record reflect that that motion is approved by a vote of 4 to 3.

Dr. Ackermann: Mr. Chair?

Mr. Grimes: Yes sir.

Dr. Ackermann: Because it's your first time, I think that before we vote on a motion, if we just have a little bit of discussion or the person who makes the motion, if they provide some rationale for it would make our votes maybe carry more weight. You know, if I wanted to appeal the motion that the Board just took, there's no record at all as to why the Board took that motion. I could make up whatever I wanted to about your thoughts.

Board of Zoning Appeals Minutes
February 23, 2016

Mr. Grimes: You're correct. I passed right over that part and I apologize. Melody, can I have you read the second case?

2. SE16-02/15151047 - Sara Drake - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standards," PD-1, Planned Development 1, to allow an electrology practice (permanent hair removal) as a home business on Tax Map Parcel No. 20S-18-590. The property is zoned PD-1, Planned Development 1, located at 9 Carissa Court, Park Ridge Subdivision.

Mrs. Musante: Case SE16-02/15151047, applicant Sara Drake, requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standards," PD-1, Planned Development 1, to allow an electrology practice, which is permanent hair removal, as a home business on Tax Map Parcel No. 20S-18-590. The property is zoned PD-1, Planned Development 1, located at 9 Carissa Court, in the Park Ridge Subdivision. You have the application, application affidavit, plat of the property, diagram of the area for the business, and a letter from the HOA. The applicant is requesting a Special Exception to operate an electrology practice, which is permanent hair removal, as a Home Business. Her equipment consists of an epilator, treatment table, magnification lamp, ultrasonic cleaner, and a dry heat sterilizer. The treatment room is 10 by 12 and the consultation area is 10 by 11. There is a bathroom for clients attached to the consultation area. The applicant states all areas including the entrance to the residence will be ADA compliant. Requested days and hours of operation are Monday through Friday from 10:00 AM to 9:00 PM with no weekend hours. The applicant indicates on the application she will provide two off-street parking spaces, only one required, and serve two to eight clients per day with only one client at a time. According to the plat submitted, the driveway is twenty feet wide and twenty feet long which will not accommodate the required spaces for the home business. The applicant will be required to install one parking space 18½ feet long by 8 feet wide to meet the parking requirement for the single-family dwelling and the home business. The ordinance requires two 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% of the gross floor area of the dwelling shall be utilized for the business. According to the applicant, 220 square feet will be used for the business which complies with this requirement as the gross floor area of the dwelling is 2,652 square feet. The single-family dwelling was constructed in 1999.

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

Mr. Gibbons: Mr. Chairman, I have one.

Mr. Grimes: Yes sir, Mr. Gibbons.

Mr. Gibbons: Do you have a diagram of the proposed lane, the 18-foot long addition, how that would affect the yard?

Mrs. Musante: I'm sorry, Mr. Gibbons, I couldn't hear you.

Mr. Gibbons: I'm sorry. Do you have a diagram of when you add the 18½-foot additional parking area?

Ms. Brown: I think he wants to know where you're going to put it in the yard.

Mrs. Musante: When I spoke with the applicant, that was an option for them but that would be a question you'll have to ask them. They can tell you exactly where the parking space will go.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Gibbons: Thank you.

Mr. Grimes: Any other questions for staff? Seeing none, will the applicant or his or her representative please come forward to present their case.

Ms. Drake: Good evening Board members. My name is Sara Drake. I recently graduated the School for the Skin Care Center in Alexandria with a 600 hour certificate. Virginia is what is considered an unlicensed state for electrology, and most states only require 300 hours. But I decided to go for the 600 hour program because it was more comprehensive. I have some medical conditions that do preclude me from working a normal 9 to 5. But with a home electrology business, I would be able to set my own hours and contribute to the Stafford economy in a positive manner. Electrology is the only FDA approved method of permanent hair removal. The CDC has set guidelines on the proper practices of electrology, and I have received my graduation certificate saying that I can follow these. I do not expect to have back-to-back clients from the hours of 10 a.m. to 9 p.m.; with my medical conditions I would not be able to see that many clients, but I would like to be flexible and be able to cater to those who work a 9 to 5 and be able to accommodate them with evening appointments. While my neighbor, Dave Nasic, could not be here this evening, he did provide a letter as Vice President of my HOA saying that there is no requirements from them and that he is aware and is fine with it.

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

Dr. Larson: Mr. Chairman, I have a question.

Mr. Grimes: Yes sir.

Dr. Larson: In your narrative for the Special Exception, you mentioned a sharps container for the probes. Could you explain what that is please?

Ms. Drake: Yes. In order to do electrology, I have little probes, some would call them needles, but they're not the same as hypodermic needles used in hospitals. They are stainless steel needles that are the size of hairs, so they would come in .001 to .005 millimeters. I use that in order to insert into the hair follicle. I am not actually piercing your skin because the hair follicle is a natural opening. However, because it is a sharp object, that is how I need to dispose of it. I have a single use only and they always go in the sharps container.

Dr. Larson: What happens to the sharps container after that?

Ms. Drake: You can send them off to certain places, and I've actually spoken to the County dump and they even said you could just put things in jugs. But I'm going to dispose of them via a medical, probably sending them off to the proper location.

Dr. Larson: So you... there's a medical facility that will take these for you? And you have that lined up?

Ms. Drake: It came with the sharps container when you purchase it. It says you may return this container.

Dr. Larson: Okay, thank you.

Mr. Grimes: Mr. Gibbons?

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Gibbons: My concern is, are you aware of the requirement to add another lane on your property?

Ms. Drake: Yes. Mrs. Musante talked to me about that. By a slight mishap, I'm not considered a homeowner even though I'm on the mortgage. The mortgage company did not put me on the deed, so my spouse is here as the homeowner and she would be better to answer that question.

Ms. Popiolek: Good evening again Board, thank you. My name is Marie Popiolek. We had discussed the requirement for an additional lane. Due to the weather considerations, and we do currently have an area of sinkage in our asphalt, so we were prepared to do some repairs to the asphalt. But because we do require this extra lane, we thought well great, we can right this off our taxes. So we are well aware of it. But what I would ask is that you give us 180 days. We have to go through the approval process with our Homeowner's Association. We also have, next to our house, a fire hydrant so I have to talk to the Fire Board to see how far, whether I can go one foot to the right or two feet to the right in order to have the appropriate area for all the parking spaces that required. And this, unfortunately, will take time. I don't know that anybody's laying asphalt in the community right now, but we will go through all the consultations to make sure that it is done properly in accordance with any of the codes that are required for the County, in accordance with any of the restrictions and covenants by the Homeowner's Association, and making sure that we do not affect the current infrastructure that is there which would also include the new Verizon cable, the fire hydrant that is there, and then any underground telephone things. So, I would ask, as you consider this, you know, please consider giving us 180 days to accomplish that effort. Thank you.

Mr. Grimes: We'd note that all the suggested development conditions have to be met before the Special Exception actually can take effect. So, I think... am I correct in that?

Mrs. Musante: I'm sorry?

Mr. Grimes: That all the development conditions that are listed, including the parking space, have to be completed before the Special Exception is signed off by the County.

Mrs. Musante: Before the application is, correct.

Mr. Grimes: Correct. So I just wanted you to be aware of that. So, you can take as much time as you'd like to meet and comply with all the requirements, and then you'll come back to Melody's office to have the application finalized and approved.

Ms. Drake: Yes. Our driveway, right now we don't necessarily have to add a whole entire space; we're missing about 5 feet in width. We have the full length.

Mr. Gibbons: Mr. Chairman, I was going to ask a legal question. Is that waivable? I mean, by the time you get done digging up and putting 18½ feet of asphalt, that's a tremendous amount of money. I'm just asking is it waivable?

Mr. Grimes: I don't believe that it is; it's based on the Zoning Ordinance and the requirements in the Zoning Ordinance for a home business.

Mr. Apicella: Does it have to be asphalt?

Ms. Drake: Our HOA only allows asphalt driveways. But we need to add 5 feet in width, not a whole other... we have the length, we just don't have the full width of 3 spaces. So it would just be a matter of

***Board of Zoning Appeals Minutes
February 23, 2016***

fixing the dip and adding 5 feet. And in which direction we're not sure because of the things my wife spoke of.

Ms. Brown: Why would you need to add only 5 feet? I'm confused.

Ms. Drake: Because we have two full spaces, plus 3 feet. And each space is supposed to be 8½ feet wide, and so we have the width of 2½ spaces.

Dr. Larson: So, is the County in concurrence with that assessment? Thank you.

Ms. Brown: So you think you might need to get the fire hydrant moved, is that what you said?

Ms. Drake: Not having that moved, just where we are allowed to be in accordance like if we needed to put the driveway more in front of our house versus to the side.

Ms. Popiolek: If I may address that please?

Ms. Brown: Okay.

Ms. Popiolek: Most fire hydrants require 3 feet circumference around the fire hydrant itself. So, as we look at, you know, the shrubbery that we have on our right-hand side, if we were able to include a space that allows that 3 feet around the fire hydrant and just pushes slightly past where the current trees are, you know, we could remove those and have some off to that right-hand side. That may save us some room on the other side of not having to build out so far. So, we really want to make sure that, you know, I know with this last snow that we had, unfortunately being at the end of the cul-de-sac, where does all the snow get pushed? Right up there. So we spent a good 3 hours making sure that that fire hydrant was clear 3 feet all the way around so in case there were any emergencies that it was taken care of. So, we just want to make sure that, you know, that we're not encroaching upon the requirements by the fire department that would, you know, put anybody in jeopardy.

Ms. Brown: Okay, thank you.

Mr. Gibbons: What if you had a smart car? It's not that wide, you know.

Ms. Drake: Our driveway is 20 by 20 essentially, and that's why it's not adding a whole extra space; it's just adding what we would need to meet those requirements. And that's not a problem.

Ms. Brown: Mr. Gibbons, I might find myself in need of her services and my car's a little bigger than that.

Mr. Grimes: Any other questions for the applicant?

Dr. Larson: I have a couple of others, Mr. Chairman.

Mr. Grimes: Yes sir.

Dr. Larson: Bear with me. How many clients per day do you anticipate?

Ms. Drake: I requested up to eight. Now, how I'm going to be seeing clients is first they must have a consultation. That would be about 15 minutes. Consultations are going to be free. And if anything... if

***Board of Zoning Appeals Minutes
February 23, 2016***

all of their paperwork is in order, meaning they don't have any health contraindications, then I can do a 15-minute appointment with them. I'm only going to be charging the time I'm working on them, so 15 minutes is 15 minutes that I'm working on them. And I will be having appointments that are either 15 minutes, 30 minutes, 45 minutes, or 60 minutes. And I'm not going to be scheduling myself six 1-hour appointments in a day. But it is possible that if I had eight 15-minute appointments in a day, that would be that many clients but they would be well enough spaced apart that no one would be running into each other.

Dr. Larson: And do you intend to have a sign outside your house for your business?

Ms. Drake: My HOA does not allow for a sign, and what I've decided is to have a doormat specially made with my logo so that it will just be right in front of the door and, when clients arrive, they would realize they're in the right place.

Dr. Larson: Okay. Do you intend to have any employees?

Ms. Drake: No.

Dr. Larson: And you were present for the whole discussion on retail sales; do you have any question on that?

Ms. Drake: No, I do not plan on having any retail sales. And, as far as I am aware of, I am not a taxable service.

Dr. Larson: Thank you.

Mr. Grimes: Any other questions for the applicant? Thank you very much.

Ms. Drake: Thank you.

Mr. Gibbons: Mr. Chairman, I've got a couple questions for staff. So, you're saying we can't waive this and we can't give them a 6-month ability to put that in so they can start their business and then within 6 months they have this thing? We can't do that either?

Mrs. Musante: You cannot waive the requirement for the parking lot. They would have to go for a variance of that requirement, which as you know is a different procedure than this one. We can... or you all can put the condition on there that they have up to 6 months to install this parking lot, or this parking space. What our process is, after this public hearing, they will come in and apply for their Special Exception permit through our office.

Mr. Gibbons: Right.

Mrs. Musante: They will not get their Certificate of Occupancy to operate until all of the conditions have been met. We can give them a conditional approval which we can do that actually at the staff level that they have a conditional occupancy permit and we can give them... we have the right to give them so many days to get that parking space put in.

Ms. Brown: So, if it turns out that they cannot get it in based on the fire hydrant circumference and everything, and they've already started the business, then what?

***Board of Zoning Appeals Minutes
February 23, 2016***

Mrs. Musante: We would have to go on to the enforcement end of it and issue them a violation notice for not being in compliance with their conditions.

Ms. Brown: Mr. Grimes... Mr. Chairman, did we talk about having them come back when they were (inaudible) or, I can't remember what you said.

Mr. Grimes: No, my point was that they can go through this, whether it's approved or denied, but it was approved, they still have to then meet these conditions, go back to Melody's office to get an approved application. Then Melody's office can decide whether or not these have all been met or give them a timeframe to meet the requirements, and then if they're not, then it can be revoked or enforced.

Mrs. Musante: And you can do that as well. You can put that as a condition of their approval that they have 6 months to get this parking space in and then I will, when I do the Special Exception approval through our office, that's one of their conditions as well as all of the conditions that you approve here.

Mr. Apicella: Can we just clarify, because I think we're maybe not on the same page here. I think what you're saying thought is it's not that they can go ahead and start their business... you're not going to give them a conditional ability to start the business. What you're talking about is the ability... you might set some parameters by which if they don't get something done, then this Special Exception expires, which is something you can do or something we can do.

Mrs. Musante: No, they would actually get an approval. They would get a temporary approval to start the business. And then if they do not comply with all of the conditions that you all have set forth, then we will handle it on the enforcement end of it and write them a violation for not being in compliance with their conditions.

Mr. Apicella: But what criteria do you use? I mean, we've had this requirement for home businesses as long as I've been here that you have to have at least one parking space. Have you done that for any of those? Have you given them a conditional approval to start?

Mrs. Musante: No, because they've all met it. This is the first one that's actually had to install it.

Mr. Apicella: I don't think so. I think there were some other ones that had to install a parking space. So, I thought the whole purpose of the parking space is to ensure that people aren't parking, you know, in the subdivision areas where other people would park.

Mrs. Musante: That's correct.

Mr. Grimes: And we have approved Special Exceptions where the extra space was not installed. But we did not put a time condition on it, which meant they had to have it in before the Zoning office would actually approve and give a Certificate of Occupancy.

Mr. Kim: I don't see any point in putting any kind of time restriction unless they had the special use of, you know, continue with your business until everything is met. I'm sorry, what did you call it Melody? A special... what's a condition that you would give to them so they can start business tomorrow before...?

Mrs. Musante: It's a conditional approval.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Kim: A conditional approval. I don't see the point of putting a time limit on anything unless there's a conditional approval.

Ms. Brown: I did visit the site and I have to say it was very, very tight back there. Very tight. She's on the end of a cul-de-sac, the houses are probably not... I think our code has changed on how much space has to be between houses now from when her home was built. There is no parking there. There's no... and the streets are very narrow; there's no parking that you could park on the street. You'd have to be in the driveway to be there. Yeah, it's unusually tight. I would hate to have a business open where she's going to, you know, possibly have clients parking in neighbors driveways.

Ms. Drake: That would not be the case.

Mr. Grimes: I would offer that maybe the Board reserve some of this discussion until after we hear from the public. If we would like to please put those on hold for a moment. So, I don't think we have any more questions for you right now.

Dr. Larson: Just one.

Mr. Grimes: Oh, okay.

Dr. Larson: Did you intend to start as soon as you can, or when did you intend to start business?

Ms. Drake: I have been incorporated since last year, but I did not realize how long school would take. So...

Dr. Larson: You'd like to get going.

Ms. Drake: Well, I still am putting the things in place for my office. We still need to renovate the bathroom, but honestly, as soon as I have flooring in my office I could technically operate, with your approval.

Dr. Larson: Okay, thank you.

Ms. Drake: And one last thing on the driveway -- it's not, you know, the issue of the fire hydrant is could we go in that direction or not; if not, then we could go in the other direction. So I think we do have the space that's available. It's just which would be the best place to put the other five feet. That's all.

Mr. Grimes: Thank you Ms. Drake.

Ms. Drake: Thank you.

Mr. Grimes: Are there any members of the public who wish to speak in support of the applicant, please set forward.

Ms. Popiolek: Board, thank you for once again allowing me to come and speak. I did want to mention that my other vehicle is a Harley Davidson. And my organization abilities from the Marine Corps do allow us to put vehicles inside the garage. So, our two Harley Davidsons and car do reside there on a regular basis. So, if authorized in interim, we would definitely ensure that there was adequate parking available to anyone to park there for the business. The overflow parking that is available to all residents is down the street on Water's Landing and it is a parking area that provides approximately 13 spaces, I

***Board of Zoning Appeals Minutes
February 23, 2016***

believe. I did not get out and count, but that's what I assume from the number of cars that I have seen there in the past. So, you know, if at any time, you know, I'm doing some work on the Harley Davidson or anything else like that, and we have to make sure that the area is clean, we can always put one of our vehicles down in that parking area that is available to all the residents of our subdivision. Thank you so much.

Mr. Grimes: Thank you.

Mr. Dusoe: Good evening Board, my name is Matthew Dusoe. If you're looking at their house, I live in the one to the left and it is a very tight cul-de-sac so it's kind of confusing with the numbers. The easy answer would be to give up our driveway. And if I would, I definitely would for these two wonderful individuals. You could not meet a better group of people. Our family has opened up our lives to them. They would give you the shirt off their back. And to deny this in any way, shape, or form would definitely be a step backward that would not be beneficial for them. They deserve this. They've worked hard to get to where they are, both of them, especially Sara for the amount of time that she has put in to get the proper education in order to do this. And I believe that it would be in the best interest of our community. I know, on behalf of Mr. Nasic who couldn't be here tonight, the HOA Vice President, and a few of our other very close friends that are also neighbors, they all fully support Sara in everything that she does and wholeheartedly in this endeavor as well. So, please, please approve this for them. Thank you.

Mr. Grimes: Thank you. Does the Board have any questions? Okay, thank you sir.

Mr. Dusoe: Thank you.

Mr. Grimes: Is there any other member of the public that would like to speak in favor of this application? See none, is there any member of the public who wishes to speak in opposition to the applicant? Seeing none, does the applicant wish to add or respond to any of the items brought up?

Ms. Drake: No sir.

Mr. Grimes: Thank you. I will now close the public hearing for this application and bring the matter to the Board for a motion and discussion.

Mr. Kim: Mr. Chairman, is there any chance we can take a five minute break, bathroom break?

Mr. Grimes: Yes. Let's take a five minute break; we'll reconvene at 8:31.

Mr. Kim: Thank you.

Break: 8:26 p.m. to 8:33 p.m.

Mr. Grimes: Alright, I'm going to open the meeting back up. And so I thought we'd open it up for discussion of the case and the development conditions.

Ms. Brown: I've got one.

Mr. Grimes: It sounded like we had quite a few there.

***Board of Zoning Appeals Minutes
February 23, 2016***

Ms. Brown: I think this is a great business. A lot of us could probably use your services. I know, it's just the truth. I would like to add a development condition. I don't mind approving this in advance, but I would rather her not start business until she receives her Certificate of Occupancy, because then we'll know that the driveway has been put in and it's been put into spec because it might be that she just can't get her driveway. And I would hate to have to go back like in some of our other cases and try to revoke.

Mr. Grimes: I believe that she can't get the Certificate of Occupancy until all the requirements are met, unless we offer something else.

Dr. Larson: I think the County can offer a temporary...

Mrs. Musante: Correct.

Dr. Larson: ... ability to proceed while they install the requisite driveway or we can alternatively give them time in our conditions to install the driveway.

Mrs. Musante: Correct.

Mr. Kim: If we put a limitation on time that they have to have all the development conditions met before getting the OP, I would like to give them the opportunity to start business as soon as possible, and then we can add a time. But if we don't add the time, then I don't see any use of adding...

Mr. Grimes: But the way we've been discussing is that if we put the time in there, then we're setting that as a development condition. Whereas, if we don't put any time in the development conditions, Melody's office has the right or the ability to grant the time -- they may not -- so I think there's two ways to approach this. Do we want to set a development condition where we start putting timeframes in here, or would we let the County make that decision if it's appropriate to do that.

Mr. Apicella: I prefer the latter. I mean, we only know what we know based on the package in front of us and even to the extent that we visited, I think the staff has so much more ability to understand the situation on the ground. For us to try to... because I think it would be a new way forward for us if we started putting time limitations on these. We put time limitations on the back-end in terms of how long the Special Exception will last, but not in terms of whether or not there's an expiration on the Special Exception if they don't move forward. To me, the expiration... people have, in my view, a desire to get things moving as quickly as they want and need to. That's the limitation. The staff has some discretion that gives them leeway to the extent they've done it, great. But I don't think we should go down that path because (inaudible)...

Ms. Brown: I remember doing that though.

Mr. Apicella: ... each circumstance is unique; I think we should let the staff continue to have the discretion that they've had in the past and exercise it as they deem appropriate.

Ms. Brown: I think the reason we had, and we have in the past, put time limits on this is because we didn't want a bunch of half-finished projects, like the driveway being dug up but not, you know, laid with the surface so the neighbors are looking at that 2, 3, 4, 5 years.

Mr. Apicella: I believe we debated potentially doing that. If we did it, we only did it once, but it's been very rare. I remember having a lengthy conversation about whether or not we were going to cap the amount of time people should have in order to be able to proceed forward. I don't think that there was a

***Board of Zoning Appeals Minutes
February 23, 2016***

lot of sentiment to do that when we discussed it many months ago. I'm still the same mind that the restriction to move forward is already imbedded in the conditions and to the extent that staff wants to give some flex... again, if staff wants to give some flexibility and put a cap on it, I think they're in a better place to do that than we are sitting where we are today knowing the little bit that we know based on our packages.

Mr. Kim: I agree a hundred percent.

Mr. Gibbons: But I can't believe that you had a lengthy conversation on this Steven.

Dr. Ackermann: Melody, if the County gives conditional approval, is that... is there no time limit on that?

Mrs. Musante: We do give time limits on them. We try to work with the applicants and I'll give you... we actually normally issue conditional approvals on commercial projects more so than residential. Our normal timeframe on commercial is 90 days. They can request an extension. I know they're asking for 180 days and if they can't get asphalt delivered right now, that may be a problem. So, we can put 180 as a condition and then what'll happen is our computer is set up to send us a reminder that it's due to check. If that condition has not been met, then we go into the enforcement end of it and that's when we issue the notice of violation.

Dr. Ackermann: But it's normal procedure for you have a time limit on this.

Mrs. Musante: Yes it is.

Dr. Ackermann: Thank you.

Dr. Larson: I think it's a good idea to leave the flexibility with the County. I think the conditions change and I can't... nobody can foresee what might happen that might require some sort of extension where, and I trust the County's judgment in doing that. So, since they already have the ability and flexibility to issue temporary... a temporary go ahead and they monitor the time and they're talking in terms of 90 days per approval, I think we should leave the flexibility with the County.

Ms. Brown: So, point of clarification just for myself. Does this mean they're going to be operating the business without the occupancy permit?

Mrs. Musante: They're going to be issued a temporary occupancy permit.

Ms. Brown: Okay. So, if this doesn't work out, does this Board have to revoke the Special Exception or does the County?

Mrs. Musante: The process would be the County would issue a notice of violation.

Ms. Brown: Right.

Mrs. Musante: If they do not comply with that notice of violation, they would be back in front of you to revoke the Special Exception permit.

Ms. Brown: Okay.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Apicella: Can I just clarify what you just said? It's not that they will, they may, right?

Mrs. Musante: Correct.

Mr. Apicella: So that's still to be determined.

Mrs. Musante: Correct.

Mr. Gibbons: Or shall.

Ms. Brown: They can basically.

Dr. Larson: So Mr. Chairman, I have some comments on the development conditions if Ms. Brown is finished.

Ms. Brown: I am, thank you.

Dr. Larson: Okay. The number 3, clients by appointment only and only one client at a time. You mentioned that up to eight clients per day? Since, I mean, I know you have some sort of medical condition or underlying that's limiting your... the ability to do this, but I... you talked about a 15 minute interview, 15 minutes to do the procedure. In principal, if you were well, you could have a lot of clients per day.

Ms. Drake: Absolutely.

Dr. Larson: So I would like to set some sort of limit on the number of clients per day and I was thinking in terms of eight which is the number that you brought up before. Is that too little or is eight acceptable to you?

Ms. Drake: I think eight is acceptable. I mean, if they figure out how to help fibromyalgia patients, then maybe I could, you know, if we wanted to be optimistic, say 10. But I would... I set that as two to eight maximum for myself and I would not be working 10:00 a.m. to 9:00 p.m. There's no way, but I wanted the flexibility for people. Also, you know, I want to give the client what they paid for and so my 15 minutes of working on them might take 20, 30 minutes. So my appointments will always be spaced out, and I may or may not be able to fit that many people in in a day. It just depends.

Dr. Larson: Thank you. So, Mr. Chairman, I would add to the one, the number 3, clients by appointment only and only one client at a time on the premises, up to eight clients per day. Then I'd also like to see...

Mr. Apicella: Would you accept a friendly amendment? She said up to 10. Do you have a problem with...?

Dr. Larson: Ten would be fine if the Board likes 10. I just wanted to have some reasonable limitation in case that ever came up. I'd also like to see the retail sales restriction put on here even though she doesn't intend any. The business shall not engage in retail sales of merchandise on the premises, meaning merchandise must be paid for online. And...

Mr. Grimes: Can it simply say no retail sales?

Dr. Larson: I'd like to leave the statement as we normally have it.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Grimes: I was trying to appease Ms. Brown with that one.

Ms. Brown: Actually, I think we do normally say no retail sales. Is that what we did last time? Yeah, with the beauty salon? Yes, I think we just said no retail sales.

Dr. Larson: You got my wording, right Melody?

Mrs. Musante: I did not.

Dr. Larson: The same wording we used on the... on the gun Special Exception.

Mrs. Musante: The business shall not engage in the retail sales of merchandise on the premises, meaning merchandise must be paid for online?

Dr. Larson: Right, that's the wording, yeah. And while I have the floor, I just wanted to note for the record that we did get a letter from the HOA and they are aware of the business and the Vice President of the HOA of the Crescents of Park Ridge says "Please consider us aware and having no issue with her Electrology practice." Thank you Mr. Chairman.

Mr. Grimes: Thank you. Any other comments on the suggested development conditions?

Ms. Brown: I can support all if we word it like we did the beauty shop, or the hair cutting place that we had back in Widewater at our last meeting. I can get on board with all of it if we do that.

Mr. Grimes: The applicant has stated that they're not planning any retail sales at all and to just drop the last part of the sentence so that the development condition would read, the business shall not engage in retail sales of merchandise, period. I think it would garner more support from some of the Board members.

Ms. Drake: If I might just clarify, I am only a service and I will not have any creams to sell people, or after-care products or anything. I will only be performing the service on them and then checking up with them, but what I am selling is my service, nothing tangible.

Mr. Grimes: Thank you. We appreciate that.

Ms. Brown: Would she agree to she would not be offering any type of retail sale?

Ms. Drake: Sure.

Ms. Brown: Applicant agrees not to offer any type of retail sales, or not to conduct any retail sales? How about that? She said she's only going to be offering a service.

Dr. Larson: That's fine, that's fine.

Ms. Brown: Okay, so applicant agrees not to conduct...

Mr. Apicella: I don't think we need to say agrees. I think what the Chairman said would probably work fine.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Grimes: (Inaudible - microphone not on) business shall not engage in the retail sales of merchandise on premises. That'll provide us consistency across the (inaudible).

Ms. Brown: Is that what we put for the beauty shop? Okay.

Mr. Kim: Can I ask a question to the applicant real quick Mr. Chairman?

Mr. Grimes: Sure.

Mr. Kim: Okay, so you had stated that there was a designated parking area for guests in your development?

Ms. Drake: Yes.

Mr. Kim: How far is that from your actual house?

Ms. Drake: We are the fifth cul-de-sac at the end, and it's a string of cul-de-sacs. I would... it would be a 5 to 10 minute walk honestly.

Mr. Kim: Oh, okay.

Ms. Drake: There are those spaces available but I would... you know, if the County didn't have that I needed extra space, you know, we have no problem not having an empty driveway with where we put our vehicles that do not block any housing.

Mr. Kim: Yeah, I was just going to see if there was any... if it was close enough, if the County would accept that... They would? No they would not. Okay then, I was just trying to help out.

Ms. Drake: I appreciate it.

Mr. Grimes: I'm sure the HOA says those are for residents only.

Ms. Drake: Yeah, it's for residents and their guests only. I appreciate it.

Mr. Grimes: Any other discussion?

Dr. Larson: I guess the one about complying with applicable state, federal, and local codes and regulations didn't make it into this one either, so we need to add that.

Mr. Apicella: It's under number 5 but it doesn't say federal. So, we might want to add that.

Dr. Larson: Oh, okay, I see. It's smaller... shorter wording.

Mr. Apicella: So, can we say applicable? Must comply with all state... that's a lot of laws to...

Dr. Larson: Yeah, all applicable federal, state, and local codes and regulations is the wording we used in the past one.

Mr. Grimes: Yeah, I think the federal came in from the fact the applicants were in here for FFLs. Any other discussion?

***Board of Zoning Appeals Minutes
February 23, 2016***

Ms. Brown: Just one.

Mr. Grimes: Yes, Ms. Brown.

Ms. Brown: So how were we... we're going to approve this and let her operate and you're going to check on it; if she doesn't complete it on your timeline we'll have to revoke it. So she's going to be operating on a temporary occupancy permit and you'll monitor that for us?

Mrs. Musante: Correct.

Ms. Brown: For how long? You said 90 days (inaudible).

Mrs. Musante: We can start... we normally start with 90 days is what our process has been in the office.

Mr. Apicella: I don't think... we're not saying that. We're leaving it to the staff, at their discretion, should they choose to, to provide that ability. We're being silent in the conditions which I think is appropriate. Again, I think we talked about it, but we give the staff the flexibility based on their knowledge to decide whether or not to provide that.

Ms. Brown: So, this has got a good chance of going beyond 90 days or... I don't understand. I don't, I don't want this to go on for five years with her operating on a temporary occupancy permit with an extension after extension.

Mrs. Musante: It will not.

Ms. Brown: Okay. Okay.

Ms. Drake: If I might, because that is, you know, with HOAs that's an outward change to the appearance of our house, we are going to have to go through them. So, 90 days might be too short, you know, but we would be absolutely in communication with Melody. It is a priority in my case. We wouldn't let that happen and our HOA wouldn't let that happen. It would be nice to be able to make some money while I'm making all these changes, but if I have to wait, then I have to wait and I will make that a priority to get that taken care of as soon as possible -- weather permitting.

Ms. Brown: Thank you.

Ms. Drake: Thank you.

Mr. Grimes: Any other discussions? Do I have any motions?

Mr. Apicella: Mr. Chairman, as before, again, I think it would be helpful if the staff read out the conditions so we are all on the same page about what they are.

Mr. Grimes: Mr. Apicella, you are absolutely right. Mrs. Musante, would you mind reading back the development conditions?

Mrs. Musante: Days and hours of operation: Monday through Friday 10:00 AM to 9:00 PM with no weekend hours. Number 2: Provide two off-street parking spaces for the home and one off-street parking space for clients. No on-street parking shall be permitted for clients. Number 3: Clients by appointment only with only one client at a time on the premises, up to ten clients per day. Number 4: One sign shall

***Board of Zoning Appeals Minutes
February 23, 2016***

be permitted and shall not exceed four square feet. Number 5: The business shall not engage in the retail sales of merchandise on the premises. Number 6: The applicant shall comply with all applicable State, Federal, and Local codes. Number 7: Approval of this Special Exception for Electrology services only will expire when this applicant vacates the property and is non-transferable. And number 8: This approval may be revoked by the Board of Zoning Appeals for noncompliance of the conditions of this approval.

Mr. Grimes: Thank you. Do I have any motions on the case number SE16-02/15151047?

Dr. Ackermann: Mr. Chair, I'd like to move that we approve this application on the condition number that you gave and I'm not going to read it again. I think that our action on this would be consistent with our past actions in similar situations. I think that the applicant and the listed property owner appear to be sincere in meeting the development conditions that we've stated. Therefore, I move the motion.

Mr. Kim: I second that.

Mr. Grimes: Do we have any discussion of the motion?

Dr. Larson: Mr. Chairman, I'm going to support the motion because I think that these development conditions are fair and reasonable and in compliance with the law. And that the applicant will satisfy them given flexibility that the County currently has.

Mr. Grimes: Any other discussion of the motion? Hearing none, I have a motion from Dr. Ackermann and seconded by Mr. Kim to approve the request for Special Exception as stated in the case, with the stated development conditions. All those in favor of the motion signify by saying aye.

Mr. Apicella: Aye.

Dr. Ackermann: Aye.

Mr. Kim: Aye.

Dr. Larson: Aye.

Ms. Brown: Aye.

Mr. Gibbons: Aye.

Mr. Grimes: Aye. All those opposed signify by saying nay. Any other commentary on the motion? Let the record reflect that the motion is approved by a 7 to 0 vote.

Ms. Popiolek: Board members, thank you so very much.

Mr. Grimes: Melody, can I get you to read the next case please?

3. V16-01/16151081 - Lynne D. Newman - Requests a Variance of Stafford County Code, Section 28-35(d)(4) "Minimum Lot Width," R-1, Suburban Residential, to reduce the minimum lot width requirement from eighty (80) feet to seventy-five (75) feet on Tax Map Parcel No. 54A-1C-9A. The property is zoned R-1, Suburban Residential, located on Ficklen Road, Highland Homes Subdivision.

Board of Zoning Appeals Minutes
February 23, 2016

Mrs. Musante: V16-01/16151081; applicant Lynne D. Newman requests a Variance of Stafford County Code, Section 28-35(d)(4) for the "Minimum Lot Width," on the R-1, Suburban Residential, to reduce the minimum lot width requirement from 80 feet to 75 feet on Tax Map Parcel No. 54A-1C-9A. The property is zoned R-1, Suburban Residential, located on Ficklen Road, in the Highland Homes Subdivision. You have the application, the application affidavit, copy of the plat prepared by Gary Cooke dated August 27, 1987, deed dated August 18, 1988, copy of a plan signed by the Planning Director dated October 10... I'm sorry, October 11, 1995, release of a deed restriction dated August 31, 2015, and a consolidation plat dated January 6, 2016. This variance request is for the lot width requirement for Tax Map Parcel No. 54A-1C-9A to comply with the Zoning Ordinance in order to construct a single-family dwelling on this lot. The applicant is requesting a variance of five feet of lot width. The lot width for this parcel is 75 feet. The required lot width for this lot is 80 feet. The Highland Homes Subdivision was platted prior to the Subdivision Ordinance which was adopted in 1962 and the Zoning Ordinance which was adopted in 1964. At the time of the Zoning Ordinance adoption, the lot width requirement at the setback line was 100 feet. That requirement was changed in 1978 to 80 feet. In August 1987, a plat was prepared by Gary S. Cooke and recorded with a deed which conveyed parcel 9A from Julian Holsinger to Kenneth and Lynne Newman. The plat did not have County approval and included several notes, one stating "This parcel of land shall not be used to create an additional building lot, but is to become an addition to Lot 1, Block F, Highland Homes Subdivision as to enlarge said Lot 1 only." At the time the plat was recorded, the regulations in the Zoning Ordinance for lot size and width in an R-1 zoning district was 12,000 square feet of area and 80 feet of lot width. This lot did not comply with the regulations and was only to be used as a buffer. In September 1995, a boundary line adjustment plat was prepared by Edward Holsinger for the remaining portions of lots 8, 9, 10, and 11, Section C of Highland Homes. This plat reconfigured the remainder of the property owned by others to create 3 lots. The reconfigured lots complied with the current regulations and the plat was approved by the Agent for the Stafford County Board of Supervisors on October 11, 1995. This plat approved the property line between the Newman property and the new Lot 9A and 11A as part of the boundary line adjustment, not as approval of the Newman property. The owner, wishing to construct a new home, investigated the possibility of locating on the subject lot. Their attorney was contacted regarding statement number 7 on the 1987 plat. On August 31, 2015, a release of restriction was recorded regarding this statement. It states in the release, "David Holsinger is the son and sole heir of Julian Holsinger, the owner and developer of Highland Homes Subdivision, and recognizes this restriction against this parcel being an additional building lot is no longer necessary and hereby releases this lot from all such restrictions." All adjacent owners affected on the original boundary line adjustment have agreed to and signed this release of restriction. Upon the recordation of the deed restriction, the owners contacted the County to inquire if there were any other issues that would prevent construction on the property. Upon review by the zoning staff, the non-compliance with the lot width regulation was validated. Staff discussed the possible options to obtain a building permit for this lot. These included vacated the internal property lines, purchasing additional land from the adjacent property owners, and requesting a variance for lot width. Staff discussed the criteria for each of these and their processes. According to the property owners, the option for obtaining additional land is not possible and they have decided to pursue the variance process. The owners contracted with Webb and Associates to prepare a consolidation plat has been prepared for parcel 9A which removes the internal property lines. If the Board of Zoning Appeals grants this variance, this consolidation plat will be submitted to the Planning and Zoning Office for approval and recorded in the Circuit Court Clerk's Office. This variance request is for lot width only and must comply with all other regulations. The applicant states there are no other alternatives to increase the lot width as it will create nonconformities on the adjacent lots. The variance will not have a negative impact on the adjacent properties but will enhance the value. If the variance is not granted, this will prevent the owner from utilizing the property. We have received a phone call from Mr. Jones, which owns lot 31, and he is in favor of the variance. So I just wanted to make that noted for the record.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Grimes: Melody, where is lot 31 in reference to this property?

Mrs. Musante: If you look at the tax map, it's actually behind it a little bit to the left.

Mr. Grimes: I see it.

Mrs. Musante: So you see the stuff in red? It's the one...

Mr. Grimes: Yes; 54A-4F2-31.

Mrs. Musante: Correct.

Mr. Grimes: Got it; thank you. Are there any questions for staff?

Dr. Ackermann: I have a couple.

Mr. Grimes: Yes, Mr. Ackermann.

Dr. Ackermann: You say the plat did not have County approval. What does that mean?

Mrs. Musante: Any time you do a boundary line or a subdivision plat, it has to come through the Planning office for approval to make sure that it meets the zoning and subdivision requirements. When this plat was originally done back in 1987, it did not go through that process.

Dr. Ackermann: It didn't go through it?

Mrs. Musante: It did not.

Dr. Ackermann: It just... I mean, it didn't have to?

Mrs. Musante: It was supposed to, it did not.

Dr. Ackermann: It was supposed to but it never did, so the County never looked at it and said this is not...

Mrs. Musante: Not at that time.

Dr. Ackermann: Okay. And the other thing to mention, in an R-1 Zoning District, the lot size and width has to have 1,200 square feet of area and 80 feet for width? It says here for lot size width in R-1 Zoning District was 12,000... it's 12,000 square feet, sorry... of area. Do you know what the square footage is of this proposed lot that they want a variance on?

Mrs. Musante: Just a second.

Mr. Grimes: On the consolidated plat that they presented, it's 18,734.

Mrs. Musante: Yes.

Dr. Ackermann: Okay, thank you. That's all.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Grimes: Any other questions for staff?

Dr. Larson: I have one. The release of restriction which appears to have been signed by several adjacent property owners, what legal standing does that have?

Mrs. Blackburn: It was a deed restriction and now the deed restriction has been released, and that is the extent of its standing is my understanding. It doesn't...

Dr. Larson: A deed restriction but it doesn't have... it doesn't affect the lot standing on the plat or in the County's eyes.

Mrs. Blackburn: Exactly; that's my understanding. You can have title restrictions on your property, you can have easements on your property, sometimes long ago you could have a building line restriction placed on your property through a Subdivision Ordinance, and that was... it could be in conflict with what was required by the Zoning Ordinance. But it was a deed restriction. And, if there was a conflict, say the Zoning Ordinance was more liberal in whatever they required, that it would always behoove the property owner to have that deed restriction lifted so it could go with the less restrictive regulations. But that is my understanding of when we discussed this with the attorneys.

Dr. Larson: Okay. And, have we... when you look at the zoning map, you see these four red lots, red outlined lots stacked up on one another. To the left there's a 54A-3F-1; have we heard from the owner of that lot or plat... platted lot?

(From the audience): That's the applicant.

Dr. Larson: Oh, that's the applicant. Okay. I saw that later on. Alright, I'll save that question. I didn't realize... I thought it was one of the other plots on the other side.

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

Mr. Grimes: Yes Ms. Brown.

Ms. Brown: In the staff report, on page 3 of 6, second paragraph that says, it states the release of David Holsinger is the son and sole heir of Julian Holsinger and the owner and developer of Highland Homes Subdivision, and it goes on. When I'm looking at the copy of the plat book, Book 28, Page 98, up in the left-hand corner it says, Owner's Consent, and it's got an Edward Holsinger on there listed as owner who happens to also be the surveyor. So, is he an owner or not? It says he's the owner but then our staff report says David is the only heir and owner. I was just confused about that. It's hard to see because it is really tight. The plat book, Page 28... I'm sorry, Book 28, Page 98, in the upper left-hand corner, it says Owner's Consent, when they're signing off on this and there's two names -- David Holsinger and Edward Holsinger. And I think it's the same Edward Holsinger that's the surveyor, that signs the survey stamp. Because it says he's an owner so I didn't know if he could release that. I was just confused on that. I think it was signed 10/6/95. I guess I'm wondering, can David release...

Mrs. Musante: That may be a question you may have to ask their attorney, which is Mr. Gay.

Ms. Brown: Okay, okay. I just didn't know if it was a clerical error in the staff report.

Mr. Grimes: Mr. Apicella?

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Apicella: Mr. Chairman, I think Mr. Gibbons will be surprised to know that I have some questions. I asked staff to pass out an excerpt from the State Code... two excerpts; one is 15.2-2309, specifically the variance section, as well as the definition of a variance. And so, for the record, I would ask staff, can you read the definition of a variance?

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

Mr. Apicella: So, one of the parts of that definition, it says, the need for a variance would not be shared generally by other properties. Is that what you read as part of that definition? Can you also read under Part 2, iii, it starts, the condition or situation; can you read that part?

Mrs. Musante: The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

Mr. Apicella: Thank you. I have some additional questions, Mr. Chairman. Is there anything topographically unique or peculiar about this particular property?

Mrs. Blackburn: Sir, not that I know of.

Mr. Apicella: And from what I can see from the photo, the property is pretty flat?

Mrs. Blackburn: That's what it appears to be.

Mr. Apicella: Since the subdivision was created before the Subdivision and Zoning Ordinance, can you help us understand why the lot wasn't grandfathered?

Mrs. Blackburn: The lot was not created with the subdivision plat.

Mr. Apicella: So, therefore, it wasn't... there's no way it could be grandfathered because it wasn't a real lot, as far as the County is concerned.

Mrs. Blackburn: At the time the subdivision plat was put to record, yes.

Mr. Apicella: Do you know how or when the applicant came to own the parcel, which is 54A-1C-9A?

Mrs. Blackburn: Other than by purchasing it, no.

Mr. Apicella: And so, from what I thought I saw from transfer deed, if I'm using the right term, it was 1998? Yes, I'm sorry, 1988. So the Subdivision and Zoning Ordinance were well in effect at that point in time.

Mrs. Blackburn: Yes sir.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Apicella: So, at that point in time, they would or could have known that the lot didn't meet the width requirements?

Mrs. Blackburn: The information was available; they could have asked.

Mr. Apicella: Okay. The application indicates the property owner lives adjacent to the parcel. Do you know where?

Mrs. Musante: To my knowledge, they live on 54A-3F, lot 1.

Mr. Apicella: Can you help me understand where that is on this... I'm looking at page 5 of 6.

Mrs. Musante: Right adjacent to the red, to the left of the outline in red, it's to the left.

Mr. Apicella: And do we know, do they own that parcel?

Mrs. Musante: They do.

Mr. Apicella: Okay. From that same page, are there any other parcels in that subdivision that don't meet the size or width requirements?

Mrs. Musante: It appears to be, yes.

Mr. Apicella: I see several along that street, right? The applicant says that the owner relied on Stafford County approval. Do we know what approval they're referring to?

Mrs. Blackburn: Can you repeat that please?

Mr. Apicella: I'm just going to go back to the previous question because I think it's more inline. So, based on this chart, again, this situation is not a unique circumstance, certainly not in this subdivision in terms of a lot that doesn't necessarily meet the size and/or width requirements.

Mrs. Musante: Correct.

Mr. Apicella: Would you say that occurs elsewhere in Stafford County?

Mrs. Musante: Yes.

Mr. Apicella: Dozens, hundreds, lots that may not necessarily meet the size or width requirements where somebody is not allowed to build on it at this point in time?

Mrs. Musante: They would be lots that were actually created prior to the subdivision and zoning requirements. They would be allowed to build on them as long as they met today's code requirements.

Mr. Apicella: Let me go a different way. So somebody has a lot, a 2.7-acre A-1 lot, and the requirement is to have a 3-acre lot. Would they be able to build on that lot?

Mrs. Musante: Yes.

Mr. Apicella: They would be able to?

***Board of Zoning Appeals Minutes
February 23, 2016***

Mrs. Blackburn: If the lot was created prior to the enactment of the Zoning Ordinance.

Mr. Apicella: But post the enactment of the Ordinance?

Mrs. Blackburn: No.

Mr. Apicella: No. Again, does that situation occur elsewhere in Stafford County where post the enactment of the Subdivision and Zoning Ordinance, somebody may have a lot that, having been platted, does not meet the size or width requirements in order to be able to build a home? Yes? No? It's pretty direct.

Mrs. Blackburn: Yeah.

Mr. Apicella: Somebody owns a 2.7-acre lot, it's been platted; for whatever reason it doesn't meet the size requirements. Post the enactment of the Zoning and Subdivision Ordinance, would they be allowed to build on that lot?

Mrs. Blackburn: Not in normal circumstances, no.

Mr. Apicella: Okay. What generally happens when someone has a lot that's too small?

Mrs. Blackburn: If the lot was recorded prior to any zoning regulations, it is a... we check to see if it's actually a recorded piece of property. And depending if it's Health Department approval for septic fields or wells, it goes through a series of checks and balances to see if it can actually be a viable piece of property. Then, if it can hold a house on it, it still needs to meet the setback requirements.

Mr. Apicella: I think we're talking about two separate things.

Mrs. Blackburn: Okay.

Mr. Apicella: We have what somebody wants to either have as a lot or is a lot, that does not meet the requirements today, right, post the Subdivision Ordinance. What would they need to do in order to be able to build on that lot? Or what would their options be?

Mrs. Blackburn: If it is post Zoning Ordinance enactment and it still does not comply, their options are as stated in the staff report. They can possibly obtain additional land, if that will work for them and the adjacent property owners so all the property is still in compliance. They can request a variance as they have tonight. And they can potentially, potentially rezone it to a zoning district that would allow for that particular lot size.

Mr. Apicella: So they could pursue a rezoning?

Mrs. Blackburn: They can pursue a rezoning but that still has quite a bit of research done to it and to see if it actually is compatible with the Comp Plan and various other planning tools.

Mr. Apicella: Parcel 54A-1C-11 and parcel 54A-1E-9, from what I can see, appear to exceed the current requirements; again, assuming that those two are also R-1 lots, both in terms of the width of those lots and the overall size of those lots. Would those be options for the applicant to try to get a boundary line adjustment?

***Board of Zoning Appeals Minutes
February 23, 2016***

Mrs. Blackburn: According to the information from the applicant, that was not a possibility in this particular case.

Mr. Apicella: Did they say why?

Mrs. Blackburn: I... you will have to ask them; I do not know.

Mr. Apicella: Okay, so I'm just going to ask one more question.

Mr. Gibbons: Just one, right?

Mr. Apicella: Just one more question Mr. Gibbons. Under the stated hardship per applicant, the last sentence says, if the variance is not granted this will prevent the owner from utilizing the property. So, kind of going back to this course of conversation, how is this different for anyone across the County who owns a lot that doesn't meet the size or width requirement?

Mrs. Blackburn: I do not know how it would be any different.

Mr. Apicella: Alright, thank you.

Dr. Larson: I have a question for staff.

Mr. Grimes: Yes.

Dr. Larson: The second paragraph under Zoning History, it says in '87 the plat was prepared and recorded with a deed but the plat did not have County approval. Could you tell me what that means? What does it mean to have a plat that is not approved by the County?

Mrs. Musante: When you do either a boundary line, a subdivision plat, whatever the nature, all plats are to come through the Planning office and be signed off by the agent, whether it be Jeff Harvey, which is the Planning Director, or Anthony Romanello, which is our County Administrator. It has to be approved through our office before it's technically a legal lot and be recorded in the Clerk's Office. Now, according to the Clerk of the Circuit Court, regardless of whether it has been approved by our office or not, they are required by State to record everything that comes through their office. So, what that means is, it did not come through for a formal approval through our office before it was recorded in the Circuit Court.

Dr. Larson: Okay. So, anybody can draw up a plat, put it with a deed, it has to be recorded with a deed. My question is, what legal standing does that plat have with the County?

Mrs. Musante: None.

Dr. Larson: Okay, thank you.

Mr. Gibbons: No, that's not true (inaudible - microphone not on).

Ms. Brown: I have a question for staff. Does this mean that I could draw up a plat and co-op some of my neighbor's yard, just go down and have it filed with the Clerk's office?

Mrs. Musante: Let me clarify my none answer to him. What that means is, it's not a buildable lot.

***Board of Zoning Appeals Minutes
February 23, 2016***

Dr. Larson: Thank you for the clarification.

Mr. Apicella: I'm sorry, Mr. Gibbons, one more question. I don't understand, in looking again at page 5 of 6, why there are four boxes for this one lot. What is that telling us? I see three squares and a small rectangle.

Mr. Grimes: I would think, and I won't speak for Mrs. Musante, but it appears that those were four separate lots and that there is a document in here that consolidated those into one.

Mrs. Musante: Correct.

Mr. Grimes: Now, why or how I...

Mrs. Blackburn: Board members, if I may direct you to, it was the plat showing 9A, lot 10A, and 11A, and if you will look, it says Plat Book 28, Page 98, if you look at the original lot lines, they were long vertical lots with a little portion of what would be lot 8A I think over here which was next to the road. And when the line was drawn across these lots, they did not originally get rid of the original lot lines. And that's why they look like little baby squares, because they were the end of the lots facing Leeland Road.

Mr. Apicella: Thank you.

Mr. Grimes: Do we have any other questions for staff? Hearing none, we'll open up the public hearing on this case. Will the applicant, or his or her representative, please come forward and present their case?

Mr. Gay: Good evening. My name is Gordon Gay. I'm an attorney; I'm here representing Mrs. Lynne Newman, the young lady in blue, and her son, Jason Newman. We're here, this started about a year ago, Mrs. Newman lost her husband after a long battle. And what she intends to do is sell the house that she's living in now and build on this lot next door. Her son, Jason, works for Simply Home; it's a developer and builder who built the brand new 4-story townhouses in the middle of Fredericksburg, between Williams Street and Amelia on Winchester. She wants to have a home that's more suited to her needs as a retiring lady and it's a Cape Cod that's already designed and will be put up at a good price because Jason is a member of the building team. What I think the questions that were asked were very cogent. If you look at the zoning map with me just a second here, just to give you a little history, if you look at the bottom you see 2, 4, as it comes up, these... that should be 3, but the lots all were turned east and west, going up Leeland Road in the initial subdivision. What the developer did is he came back and put a sewer line between lots 9 and 10 and actually built Ficklen Road. So, lot 6 and 7 were turned and 8 is disappeared; 9 and 10 and 11 were modified. And you see the four lots which make up this property, the bottom one is the residue from lot 8. So, the applicant did not have any way, shape, or form to manipulate this property. It was done by the developer who changed the angle of the whole subdivision to add this street and sewer lines. Now, the question was, this lot ended up to be 75 feet. When Mr. and Mrs. Newman bought this property back in 1988, they relied on Gary Cooke as the surveyor to prepare a plat which would be consistent with the... all the rules and regulations of Stafford County. Now, as you see, Mrs. Newman lives on 54A-3F-1, right next door to it. That lot is 75 feet wide. And a great deal of the subdivision lots in here were platted as 75-foot wide lots. So, this is not going to be a detriment where you own a hundred foot wide lot and all of the sudden there's a lot sticking over here which happens to be 75 feet, and it destroys the character of the neighborhood. They're exactly the same. Now, the... if you look at the Zoning Ordinance that has been presented to you, it's talking about hardships that the only way to be alleviated is by this process, and that's why we're here. Now, we had two problems in order to get this lot to be buildable. Number one was the restriction put on it by the original developer when this

***Board of Zoning Appeals Minutes
February 23, 2016***

was sold. They said it'd be added to lot 1. We went to each of the people who are adjoining property owners and every single one of them signed off, says that that restriction no longer is applicable to the peace and enjoyment of their adjoining lots. And they signed off. And so did Mr. Holsinger. Now, you'll notice the difference between the original plat was signed by I think it was Julian Holsinger. The second plat, which has really nothing to do with the title to this property, was signed by his two sons, but that has nothing to do with... the only person and heir who had to sign this release did sign it. And so what we're asking the Board to do is to recognize that this is a hardship that's not regularly dispersed in the County, and had really nothing to do with and not the making of the owner themselves. It was done in good faith and it will not be a substantial detriment to the adjacent property because she owns the lot next door (inaudible) and the condition is not so general or recurring in nature as to make a reasonable practicable the formation of a general regulation. This is a unique situation because when this was done, it was done in error. If the County had looked at this and had gone through the County, the County would have said wait a minute, it should be 80 feet instead of 75; it wouldn't have been recorded and sold as the 75-foot lot. It would have been sold as an 80-foot lot; they would have had to go back and redone it, replatted it, before it was transferred to the Newmans. But right then, as you see, that was the time that the Ordinance was just coming into effect. The Subdivision Ordinance was new and the Zoning Ordinance was brand new at the time these were done. So, she's owned this lot since 1988, and we're asking the Court... you act as a Court... to grant her this variance so she can construct a brand new home for herself in her retirement. I think we looked at some of the questions earlier; did you have any other questions about the configuration of the lots that I can answer?

Mr. Apicella: I have to ask the Chairman to open...

Mr. Grimes: Mr. Gay, are you done with your presentation now?

Mr. Gay: I thought there would be some more questions back and forth.

Mr. Grimes: We'll have questions as soon as you finish your presentation.

Mr. Gay: Yes sir, I am.

Mr. Grimes: So, I'll open it up to questions to the applicant's representative. Mr. Apicella, would you like to start?

Mr. Apicella: It looks like others might have some questions; I'm going to let them start. Dean, did you have a question?

Dr. Larson: I do, but I don't have to ask it now.

Mr. Apicella: So, just so again we're both on the same page in terms of the history here, this subdivision was platted prior to 1962, right?

Mr. Gay: Yes.

Mr. Apicella: And, as I'm reading the zoning history, the Zoning Ordinance was adopted in 1964, right, and subsequently thereafter the Subdivision Ordinance. So, the property owner bought the property in 1988, many years after the Subdivision and Zoning Ordinance came into effect, right?

Mr. Gay: That's correct, that's correct.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Apicella: And at the time those ordinances were in effect, the R-1 Zoning District... well, at that point in time, in 1988 the regulations for the R-1 Zoning District were 12,000 square feet for size, a minimum of 12,000 square feet, and a minimum of 80 feet for the width, right?

Mr. Gay: And this exceeds the amount of the square footage, as you know.

Mr. Apicella: I'm sorry?

Mr. Gay: And this lot is 18,000 square feet (inaudible).

Mr. Apicella: I understand, but it's not either or, it's both, right. So, is it not incumbent upon a purchaser of a piece of property who is intending on building on that property to understand what the regulations are at that point in time to see whether it's worth buying that piece of property?

Mr. Gay: It is incumbent upon the purchase of a property to use a due diligence. And when you have a plat signed by a reputable surveyor for this particular lot, I think you have the right to be able to rely upon that expertise of that individual. Now, at that time, what most people would be doing is to have a title search done. That would not disclose this differentiation unless the title examiner was very quick about double-checking and going behind the documents in the courthouse.

Mr. Apicella: I'm sorry, I'm not quite following you. Are you saying at the time they purchased this property they wouldn't have known that the width of the property was 75 feet?

Mr. Gay: They would have known it was 75 feet; however, I'm saying the question, if I ask anybody on the panel to cite me all the setbacks and the widths of all the documents of all the various lots, I'm sure none of you could do it. Because it's a specialized process by which you have to look at the ordinance on each zoning classification. The general population has no idea whether it needs to be 75 or needs to be 80 feet. They accepted that because their lot was 75 feet at the time. So they bought the lot next door which is exactly the same width. So why question... why should I ask if that lot should be bigger than the lot I already own when it's right next door?

Mr. Apicella: The rules, like anywhere else, are constantly changing. Do you agree or disagree? They're not cast in stone; they change over time, right? So what was a permissible lot... and first of all these lots I think were created a long time ago, was it back in 1962? So, a long period of time passed between the time this subdivision was created and the time they purchased this lot. When I purchased my lot, the first thing I did... well, when I was considering purchasing my lot, the first thing I wanted to make sure of is that I was going to be able to build a house within the requirements established by the County. Again, that's what people normally do. I don't know who sold them the lot but, again, normally somebody purchasing a lot would try to figure out whether it's buildable or not. On top of that, there are notations that say the lot is not a building lot, right in the deed. So again, aside from looking at the requirement of the County, there was also a stipulation in the deed that said this is not a building lot.

Mr. Gay: It was sold to them by the developer, Mr. Holsinger, not just some individual. They had the right to rely on his expertise as a developer of the property to sell them something that was consistent with the rules and regulations of the County. I think you have to look at the differentiation between a restrictive covenant, on the one hand, which is the restriction that says you can't use it, you're supposed to have this as a part of lot 1, versus the abeyance to the rules and regulations and the ordinance of the County. They're completely different. If I have a subdivision and own the whole subdivision and say that every lot in there must have a blue house, that has nothing to do with the size and area of the lot. And

***Board of Zoning Appeals Minutes
February 23, 2016***

you can change that. You can change restrictive covenants. And that's what we did. We had all the people around them say this use is permitted by us here.

Mr. Apicella: I guess what I'm trying to say is if I saw that note on a deed, I would start to question whether or not this... whether there were some issues with this lot. Aside from just the deed itself and maybe looking (inaudible). That's me, maybe other people would... I'm looking at it again, page 5 of 6 -- I don't know if you have a copy of the staff report --

Mr. Gay: Yeah, I do.

Mr. Apicella: I see several lots that are pretty narrow, and I doubt there are homes on those lots.

Mr. Gay: Are you looking at the tax map?

Mr. Apicella: Yes.

Mr. Gay: They're all at least 75 feet in width and they, like you said, next door is 75.

Mr. Apicella: Respectfully sir, I'm looking at the lot that's next to 54A-3F-3; that looks like a pretty narrow piece of property to me. There's one, hop over the next lot it looks like there's another parcel that looks like it's pretty narrow.

Mr. Gay: That's a lot which has been subdivided as... has been combined with the lots next door to them. So that's one lot which has been cut in half and 54SF-4 is part of that other lot.

Mr. Apicella: Again, I see lots just if I compare them to the lot that's in question here, 54A-3D2-23, that lot looks like it's not 75 feet in width. All I'm trying to say is, what I see is a situation here where there are many, potentially several lots in the same subdivision that are not buildable. This lot, at 75 feet, is 93% of what the requirement is. If we were to grant a variance here, at what point do we stop granting a variance for somebody that has a lot that's 50% of what (inaudible).

Mr. Gay: But these... the lots in the subdivision, other than this one, are grandfathered because they were subdivided way long time ago.

Mr. Apicella: Sir, I'm looking at the picture -- I'm not trying to be hostile -- but I see, I'm looking at another lot here, 54A-3D2-23, it does not have a house on it. It's a lot, it's got a number, it doesn't have a house on it. And presumably it doesn't have a house on it because it's not big enough. Is that... I'm looking at staff... does that make sense?

Mr. Gay: I'm sorry, which one? I'm sorry, I'm not following you. Are you looking at the aerial map?

Mr. Apicella: I'm looking at the next page, page 6 of 6, 54A-3D2-23. I don't see a house on that lot. The reason why this is important, Sir, and the reason why I'm trying to make this distinction, is I'm going back to the definition of a variance. And in my mind it says that this situation is shared by others. And I think it's shared by others at least across the County...

Mr. Gay: It's not.

Mr. Apicella: ... but it looks like it's shared by other lots in this same subdivision.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Gay: But look at the aerial plat that's furnished with this. If you look at the one that you're... 54A-3D2-23, you'll see that the property line goes through the house next door. Those lots have been combined to make one lot, and that's the way a lot of these have been handled. If you have a lot too small, a lot of times you can combine two lots to make a larger one.

Mr. Apicella: And you could do that in this case, right. The owner... the applicant is the owner of both parcels, right, the next door and this lot.

Mr. Gay: But the object is to have a separate house built on this property so she can retire, not to have... not to build a bigger house.

Mr. Apicella: Sir, I'm sympathetic to what her desires are. I have to... in reviewing these variance cases, we have to look to the law, to the statute. And when I read the statute, it says that the situations in generally held elsewhere in the community... I see that it may be in this community, but I certainly see that it is definitely something that occurs across Stafford County. And as somebody that has to adjudicate this, at what point do I say, I draw the line; 93%, if we were to allow this variance today, 93% of what's required is okay. Well, is 90% okay? Is 85% okay? Is 80% okay? Where do I finally say that we stop and we actually enforce the requirements? I don't know why they decided that the lots ought to be 80 feet wide. In this particular case, I believe 80 feet is the... I mean, 80 feet is the requirement as it would be applied today, right.

Mr. Gay: The answer to that question is, how does it affect the people in the neighborhood or the people next door? If this lot is 75 feet and the lot next door, which she owns, is 75 feet, it does not adversely affect (inaudible).

Mr. Apicella: I don't agree that it just says next door. I believe it's how would this affect the County. If the County were not to enforce its requirements, would it change the overall ordinance? Would it undermine the ordinance?

Mr. Gay: No. Because (inaudible).

Mr. Apicella: You're saying it's okay to have 75-foot lots all across Stafford County in the R-1 district.

Mr. Gay: Nobody has come up here and said that. This is a special instance which had its start way back when the very first... this subdivision was recorded. That's where it started. That's where the width of these came about.

Mr. Apicella: When they bought this lot in 1988, the requirement was 80 feet, not 75 feet.

Mr. Gay: No question. But it's the same as their own house, 75 feet at the same time...

Mr. Apicella: To me, that doesn't apply here. We're talking about this specific lot.

Dr. Ackermann: If this were an approved plat, if this were approved back in 1960 or so as a lot, then we would not be having this discussion, correct?

Mrs. Musante: Correct.

Dr. Ackermann: Thank you.

***Board of Zoning Appeals Minutes
February 23, 2016***

Dr. Larson: Mr. Gay?

Mr. Gay: And Bill Shelley did approve the same plat which had the 75-foot on it way after this, which was approved by the County. Yes sir, another question.

Dr. Larson: Yes. So, your client bought the lot in 1988.

Mr. Gay: Correct.

Dr. Larson: And based on the plat that was recorded with the deed, it was their understanding that what... that what could be done?

Mr. Gay: It was originally purchased to be a buffer for this lot from the other lots in the subdivision. But the restriction on not being buildable was done by the developer for the fact that the other lot... they chopped up all these lots. Because, if you'll look at the way that they had it, lots 9 and 10, that's where the sewer line went and they came back and put Ficklen Road in the middle of it.

Dr. Larson: Yeah, I think I followed that. But what I'm getting at is the plat that was not approved by the County. According to the notes here, it says this parcel of land... it says, "this parcel of land shall not be used to create an additional... an addition building lot; it is to become an addition to lot 1, block F, Highland Homes, so as to enlarge lot 1 only."

Mr. Gay: But that was a restrictive covenant, not a part of the ordinance.

Dr. Larson: I understand, but I'm saying your clients would have been aware of that. If they made their decision to purchase based on the deed and the associated plat, then they would have read the plat, correct?

Mr. Gay: Correct.

Dr. Larson: So they would have been aware of that restriction.

Mr. Gay: As far as Mr. Holsinger would be. And we've eliminated that problem, because that's a restrictive covenant; that is not part of the ordinance. We're asking that the 75-foot restriction be waived and varied for this one lot. I do not think you're going to have scads of people coming here under the same circumstances.

Dr. Larson: Okay, I have another question. So, your client owns the adjacent lot.

Mr. Gay: Correct.

Dr. Larson: And there's a house on the adjacent lot.

Mr. Gay: Correct.

Dr. Larson: And your client now desires to sell that lot and house and move to this other lot and build another house.

Mr. Gay: Correct.

***Board of Zoning Appeals Minutes
February 23, 2016***

Dr. Larson: So, what I'm hearing is, and especially since your client owns the lot adjacent to the property in question, the property could be used in other ways. If the variance is not granted here, that does not constitute any sort of taking because the client could still use the land very reasonably because it's right adjacent to their land. Correct?

Mr. Gay: It could be used for a garden, it could be used for a playground, but it could not be used for a house to live on the rest of her life. That's why we're here.

Dr. Larson: I understand. Thank you.

Mr. Kim: I have a question. So, in your opinion, what do you... I'm sorry, Mr. Chairman, can I ask a question?

Mr. Grimes: Yes.

Mr. Kim: In your opinion, Mr. Gay, 54A-3F-3...

Mr. Gay: Which unit?

Mr. Kim: Okay, if you're looking at the tax map, if you're looking at 54A-3F-3 and 54A-3F-4, what do you think the purpose was to separate the plot between them? You said that they purchased half of that lot to make their lot bigger.

Mr. Gay: Yeah, they had a lot in there which they have, in the meantime, have gone back and done a boundary line adjustment and divided the lot so 54A-3F-4 got part of that lot and 54A-3F-3 got the other part. So the lots are bigger. That's not... and you look down to number 5; that's the same thing. They took some of these lots and widened them.

Mr. Kim: I understand that. So, my question to you is, the purpose maybe to meet Stafford County requirements to build a bigger lot and to build a bigger home? I mean, I wouldn't see the purpose on purchasing more land unless it was what is your opinion why they would make their land a little bigger?

Mr. Gay: I'm sorry, the people down the street you're talking about?

Mr. Kim: No, no, literally. I'm still on 54A-3F-3.

Mr. Gay: Why did they do that?

Mr. Kim: Yeah.

Mr. Gay: To have a bigger footprint because a 75-foot house... if you look at that subdivision, most of them are 1-story ramblers which are wider.

Mr. Kim: Yeah, I do see that.

Mr. Gay: And that's more inducive to have just a wider lot with more land.

Mr. Kim: When I look at the aerial map, it actually looks to me that they wanted to build a bigger house, because it kind of... I guess that would be so they could meet the setback standards.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Gay: Right.

Mr. Kim: My only issue with this is other people in the neighborhood had to purchase more land to meet the requirements that are required by Stafford County to build a bigger lot... or to build a bigger home, I'm sorry. So...

Mr. Gay: And if you look at the same... you're looking at the aerial map?

Mr. Kim: I'm looking at the aerial map, yeah; I'm actually looking at the homes.

Mr. Gay: If you look at the lot in question, 54A... all the way, those four lots, four parcels together which are going to be consolidated, look at where the right boundary line is and how close it is to the adjoining house. It almost touches. You can't go... we can't go over there and buy 5 feet.

Mr. Kim: No, I know that.

Mr. Gay: That's part of the hardship. We'd consider that if we could go...

Mr. Kim: But it's not really hardship if that's... I mean, you're arguing that a hardship would be you want to do... I'm sorry, instead of getting into an argument which I don't want to get into, I don't see that as a hardship because, to me, the way the records show is that it was a non-buildable plot. I mean, it was land that was purchased as a playground, a garden, or a buffer, whatever you want to use it for. I'm just kind of going off what I see at the aerial map that other lots purchased more land so they could build. I don't see how granting a variance would be fair to the other property owners that had to purchase half of another lot to make a bigger home.

Mr. Gay: But that was available; this is not available to them.

Mr. Kim: Well, my guess is if it wasn't available, they wouldn't have a bigger house. I mean, they just wouldn't do it.

Mr. Gay: That option is not available to Mrs. Newman.

Mr. Kim: I know. Listen to me. If the lot that they had where they purchased half of another lot, 54A-3F-3, if they didn't have the option of purchasing half of the other lot that was next to them, they would not have built a bigger house is what I'm saying.

Mr. Apicella: They wouldn't have built any house.

Mr. Kim: That's kind of my point. They wouldn't have built any house because they wouldn't have met the setback standards that Stafford County has. So, I don't want to come off harsh or...

Mr. Gay: But that's where we disagree. They could have built a narrower house on that lot as it existed. They chose not to...

Mr. Kim: There was definitely different options they had, but the option they went for... the option they went for is they bought a lot and, hey look, the lot next to them was available, so they purchased half of it and the other lot, 54A-3F-4, purchased the other half. So they both built bigger homes. My question to you, how is it fair that if we granted this variance to the other 54A-3F-3 or 54A-3F-4, how is it fair that they had to purchase more land to obtain what they wanted accomplished?

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Gay: Because we're not building a bigger house.

Mr. Kim: You're building a whole house.

Mr. Gay: A whole house that meets all the setbacks.

Mr. Kim: But the standard of still meeting the County rules is still in effect here. I mean, bigger house, new house. No?

Mr. Gay: If Mrs. Newman has been living on a lot since 1988 that's 75 feet in width and has been doing fine with that, then... and does not desire to have a bigger house, just the same size...

Mr. Kim: But when was the house built?

Mr. Gay: The house was built back in the same time period, 1988.

Mr. Kim: It was '60s.

Mr. Gay: In the '60s, excuse me, the '60s.

Mr. Kim: Yeah, that was grandfathered.

Mr. Gay: Yeah.

Mr. Kim: This is not 1960s, it's 2016. So what I'm telling you is that was, and I understand and I feel for the Newmans, but I have a hard time understanding the hardship here. Other properties, literally next to them, had to conform to Stafford County's rules and regs. I understand that they lived in a 75-foot plot but the house was built in the '60s, not the '80s. So, my question to you is, actually scratch the question; I made my point. Thank you. I'm done.

Mr. Gay: Okay.

Mr. Grimes: Ms. Brown has a question for the applicant's representative.

Ms. Brown: Hi. Has the owner been utilizing the lot per the original agreement when she purchased it in '88 for the last 28 years?

Mr. Gay: Been occupying it, but that...

(From the audience): No, and if I could just say...

Mr. Grimes: If you're going to speak, would you please step up and swear in?

Mrs. Newman: My name is Lynne Newman.

Mr. Grimes: Thank you.

Mrs. Newman: I wanted to say that I've lived in the house at 1039 Ficklen Road for 39 years now. We do have the extra land, which was very nice to have extra land with our home. My husband passed away in January of 2015. My house is old, I have problems with my house like old houses. And I am by

***Board of Zoning Appeals Minutes
February 23, 2016***

myself now. I would like to build a house that is not necessarily large or anything, but is just... it's fitted to my needs, and... I cannot afford to tear my house down and build a new one. I know you all know what the price of lots are in Stafford County. I cannot afford to go out here and buy a nice lot and then where would I... I wouldn't have enough money to build my home. I have this extra lot which is a nice flat lot right beside where I live now. No one that lives anywhere in the neighborhood has any objection to me building an attractive Cape Cod house on my lot.

Ms. Brown: I guess my question would be, when you purchased the lot in '88, I guess for \$10... is that what the...?

Mrs. Newman: Ten thousand dollars.

Ms. Brown: Ten thousand dollars, okay. It said the conditions at the time that were written, that it was only to be an addition to lot 1 which is where you currently live now, and it was not to be an additional building lot. And you were okay with that. And you've been utilizing the lot for the last 28 years in that way.

Mrs. Newman: At the time, Mr. Holsinger didn't want us to put... it was a wooded lot and he did not want... he wanted it to stay a wooded lot. He did not want a building on it. That was the stipulation, but that has since passed. He passed away many years ago and his son and everybody around there has released that; nobody has a problem with that stipulation.

Ms. Brown: But when you purchased that, you didn't know that, you know, he was going to die and they would release it.

Mrs. Newman: When we purchased it, I didn't look forward 39 years ahead and know I was going to be widowed and in an old house that I have problems with.

Ms. Brown: So, but for the last 28 years you have been utilizing it as the original intent when you bought it is to enlarge your lot and maybe give you some extra space.

Mrs. Newman: Yeah, there's a picnic table on it.

Ms. Brown: But you state in your application that if the variance is not granted, it will prevent you from utilizing the property. But you've been utilizing it as its original purpose for 28 years.

Mrs. Newman: It depends on how you interpret that. I mow the grass on it, that's how I utilize it. It has a picnic table on it. I don't... I can't utilize as a building lot.

Ms. Brown: Correct.

Mrs. Newman: I'm going to have my son speak to you.

Ms. Brown: Okay. Thank you.

Mr. Grimes: Before we change up here, are there any more questions for Mr. Gay? Yes, Mr. Gibbons.

Mr. Gibbons: Gordon, I think what we'd like to ask is, I don't think the young lady would know at that time that she bought that that the lot was not grandfathered; everything else was grandfathered in the area, and that the builder was the one that originally fouled up on this when he went through it. So, in a case of

***Board of Zoning Appeals Minutes
February 23, 2016***

law, you know, she has come before us tonight to ask for 5 feet. And that's her right to do that. In a variance, you've just got to have a little compassion with it for some... I don't know what you call it... practicality and that the lot is sitting there now and is probably... the taxes we get off of it is probably negligible. If we get a good home, a Cape Cod on it, the County is the benefit of this real estate now being put back on the tax rolls and what should have been done in the beginning. So my point is, I don't think that the family understood when they bought it, you know, what was attached to it, because I know when I came in here, I live in a subdivision, there was so many errors in it that it was pathetic. And when I went to get a lot alignment, it cost me \$900 just to take a look at a boundary. So, my concern is I don't think that when she bought it or her family bought it knew all the restrictions that were on it. Maybe she should have hired a lawyer, like you Gordon, 20 years ago to do that. So that's my concern.

Mr. Gay: I think you and I were busy in Vista Woods at the time.

Mr. Gibbons: Thank you Mr. Chairman.

Mr. Grimes: Any other questions for the representative of the client?

Ms. Brown: One, if I may.

Mr. Grimes: Yes.

Ms. Brown: In 1988, when you... when the property was acquired, were they in agreement with the conditions that were on there that they could not build on there?

Mr. Gay: Correct.

Ms. Brown: Okay.

Mr. Gay: From Mr. Holsinger.

Mrs. Newmand: Not from the size standpoint or anything, only from the standpoint that Mr. Holsinger had said, I do not want you to build anything on it; which was alright at the time.

Ms. Brown: But when you bought the property, you knew you couldn't build on it.

Mr. Gay: He wanted to keep the trees on it.

Ms. Brown: Right.

Mrs. Newman: Yeah.

Ms. Brown: So you know you couldn't build on it when you bought it, when you agreed to buy it. You knew that you couldn't build on it.

Mrs. Newman: (Inaudible) that's a long time ago.

Ms. Brown: Thank you.

Mrs. Newman: Circumstances are different.

***Board of Zoning Appeals Minutes
February 23, 2016***

Ms. Brown: Okay.

Mr. Grimes: Did we establish when lot 1 was actually purchased by your client?

Mr. Gay: In 1988.

Mr. Grimes: No, lot 1. The one she lives on now.

Mr. Gay: I don't...

Mrs. Newman: In the '60s; maybe '65, I'm not absolutely certain.

Mr. Grimes: And the lot that's been combined, we'll call it lot 9A for lack of a better description, who owned it before you bought it?

Mrs. Newman: (Inaudible - not at microphone).

Mr. Grimes: No, the lot adjacent.

Mrs. Newman: Julian Holsinger. And, excuse me, I'm wrong -- the house we live in now we purchased 39 years ago. So it wasn't 1965, it was 39 years ago; '77.

Mr. Gay: Lot 9A was a combination of those four lots, don't forget.

Mr. Grimes: Understand. And the owner was the developer.

Mr. Gay: Holsinger, the developer.

Mr. Grimes: So, bought the four lots in their entirety... or did... no, no. Mr. Holsinger...

Mr. Gay: Mr. Holsinger resubdivided everything and left this residue.

Mr. Grimes: Understand. And I have a document from, what's it, the plat from 1987. When did they combine the residue of those four lots together into one?

Mr. Gay: It has not officially been done, that's why Melody says that after this is over, hopefully if we get approval, we're having the surveyor to do a plat and deed of consolidation to make them into one. Right now it has not been... was not done properly then and we're trying to do it properly now.

Mr. Grimes: Okay, that gets to my question because I was trying to understand why we have a consolidated plat plan dated January 2016. So this is the proposed plat that you're going to file...

Mr. Gay: We have to consolidate it into one lot.

Mr. Grimes: ... when and if you're able to get a variance to build on this lot.

Mr. Gay: Correct.

Mr. Grimes: Okay. Any other questions for the applicant's representative?

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Gay: We're trying to clean up a mess.

Mr. Gibbons: I want to make one point on this, that the lot that is in question was treed at the time. And the developer wanted to keep that there for aesthetic reasons. And then it was taken back. So, I guess I'm not making my point. A lot of this problem came out of the developer, not the person who bought it. And now, you know, 39 years later it's not treed anymore; it's all mostly open flat grass. So I don't know... I just find it hard to believe that here's a citizen that's been here 39, 40 years and comes in and asks for 5 feet. I just... I don't know. Thank you.

Mr. Gay: Did you have any more questions for me sir?

Mr. Grimes: No, we do not. You're here to support the application, I assume so, please feel free to speak.

Mr. Newman: Yes, my name's Jason Newman and I'm Lynn's son. And a lot of the stuff that's going back and forth, Mr. Gay's a family friend; I grew up with his son who I also work for now at Simply Home. A lot of this flying back and forth is honestly over my head, which is why we have Mr. Gay here, and I work in the construction industry. But to touch on what Mr. Gibbons said, I think it's important to know the story behind it. Not just when this was or this was, but maybe the intention behind the gentleman that owned the land initially. When mom and dad bought the lot, it was recorded on that plat that you may not build on this. And that was Mr. Holsinger's request. He had a big garden back there, he had some gorgeous huge oak trees on this land and he didn't want to see it developed. Since then, he did pass and his sons did not feel that same way. And took that whole corner, which ended up being my mom got the tail parts of that and his sons did subdivide that. So there are homes on that now. They did it correctly. They went through the County. My mom, in good faith, when she bought that, the attorney that did it I guess did not do it correctly. I don't know if that's my mom's fault or not; it doesn't really seem like that was her job to know that. But she was the one losing out on it. So thank you, Mr. Gibbons, for at least asking or putting a more compassionate look at it. She's lived in the same house for 39 years. She's worked here in the County for 39 years. And you're right -- she is asking for 5 feet. My company, the company that I work for, has generously offered to let my mom stay in the house while we build this. They're going to almost let me build it at cost. You know what lots go for, as she said. She can't afford to buy another lot in Stafford and build this house. We're not trying to build something extravagant, something pretty much like she has now. She doesn't have a whole lot of options. If that doesn't prove hardship, I don't really understand the meaning of hardship then. I understand that had it been done in 1960 prior to the plat, it would have been fine. Had it been done later and the County... it wouldn't have slipped through the cracks, it would have been fine. But for some reason it happened that this year, on 1988, and it's... I just feel like she's getting sandwiched. I also don't understand why all of her neighbors... they've said it's okay. Please, they're ecstatic to have her stay in the neighborhood and would love to see her have a new house. They have no problem with it. So, I guess my question is, why not... why not allow that to happen based on code or rules? We've designed a house that fits in the setbacks of a 75-foot lot which matches the width of hers. I'm not going to... Mr. Gordon Gay said a lot but I don't know, I'm a little flustered at this point. I'm just kind of trying to figure out why the reasoning I guess. I just want to build my mom a house. She deserves it.

Mr. Grimes: Thank you. And again, there's... this is all discussion; there's been no decision made yet. So, just so you know, there's a lot of debate that will continue on after a discussion.

Mr. Newman: Alright.

Mr. Grimes: Does anybody have any questions for the speaker? Thank you Mr. Newman.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Newman: Thanks.

Mr. Grimes: Are there any other members of the public who wish to speak in support of the application? Seeing none, any member of the public who wishes to speak in opposition of the application? Seeing none, does the applicant or the applicant's representative wish to respond with any additional information?

Mr. Gay: While the Board has discussions, I'll be glad to answer any questions. I could be more useful if you have any questions while you're discussing it.

Mr. Grimes: We appreciate that; thank you very much. I'll close the public hearing for this application and bring the matter back to the Board for discussion.

Mr. Kim: Mr. Chairman, can I ask the staff one question?

Mr. Grimes: Yes.

Mr. Kim: I didn't see the staff... your staff notes on this; maybe I missed it -- your staff recommendation on this case?

Mrs. Musante: We don't do recommendations on a variance.

Mr. Apicella: I tried that Danny and I wasn't successful.

Mr. Grimes: Mr. Gay, I do have one question.

Mr. Gay: Certainly.

Mr. Grimes: I'm sorry; I got down to the bottom of my page and found it. What does Mrs. Newman intend to do with lot 1?

Mr. Gay: She's going to sell the home to the builder and the builder is going to let her stay there while he builds the new house on that... on the consolidated lot.

Mr. Grimes: So, I can't ask you to speak for the builder and what his disposition of the property and the home on lot 1 is going to be.

Mr. Gay: Unknown right now. I mean, he could rehab it, tear it down, whatever, I assume it would be just rehabbed but I can't speak for that right now.

Mr. Newman: (Inaudible) as a resale. They would sell the home. They need to sell the home. That's how she's...

Mr. Grimes: Financing the new one.

Mr. Newman: Correct.

Mrs. Newman: I'm 67 years old; I'm an RN, I'm still working as a nurse so I can build a home. I don't have enough to build it in its entirety. I wouldn't know when to put mine up for sale. I don't know if it would take it a month to sell or a year to sell, so I have enough to build maybe half the house and then the

***Board of Zoning Appeals Minutes
February 23, 2016***

other half from the sale of my house will build the house. And I'm very fortunate that my son works for a company that's going to allow me to do that.

Mr. Grimes: Thank you. Ms. Brown, you had some comments or discussion points?

Ms. Brown: I had a question for staff that might have been answered. If Mrs. Newman's goal is to get a smaller house more suited to her needs, she could conceivably build that house on lot 1. Or would it be non-conforming because it's being (inaudible)?

Mrs. Musante: I believe lot 1 was actually platted when the subdivision was platted back in the 1940's. So in order to build on lot 1, she would have to demolish the existing house.

Ms. Brown: But she could rebuilt it and wouldn't be in violation of the Zoning Ordinance?

Mrs. Musante: Correct.

Ms. Brown: Okay. And she could conceivably take the boundary, the west boundary line out on the little four parcels and put her new house smack in the middle of the properties, correct?

Mrs. Musante: Yes she could.

Ms. Brown: Okay. Thank you. I'm sorry, one more question. Do neighbors have authority to waive Zoning Ordinance?

Mrs. Musante: No they do not.

Ms. Brown: Thank you.

Mr. Grimes: Melody, when we have these variances, it's posted in the neighborhood. Was there any feedback from the neighbors, the adjacent lots?

Mrs. Musante: The only one we received was from the Mr. Jones that Susan received a phone call from that he was in favor.

Mr. Grimes: The lot 31?

Mrs. Musante: Mm-hmm, correct.

Mr. Grimes: Okay.

Mr. Apicella: I'm sorry, I have a question for staff because it came up during the course of conversation, and I just want to clarify. When a lot has a number associated with it, like 54A-3D2-23, that is a recognized lot in and of itself. Is that correct?

Mrs. Musante: Yes.

Mr. Apicella: So, potentially somebody else, whoever owns that lot, even if they own the lot next to it, can also do the same... make the same request.

Mrs. Musante: Yes.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Apicella: Thank you.

Mr. Grimes: Do we have any other discussion on this? Do I have any motions?

Mr. Gay: Could I say just one more thing Mr. Grimes? I know I'm probably out of order but I'm constantly on the brink in court with the Judges, so I have to ask you too. I haven't gotten locked up yet.

Mr. Grimes: I'm much easier.

Mr. Gay: I just wanted to... Ms. Brown asked that question, but just remember what Mrs. Newman said. The house there is an asset. She has to use the value of that asset, the house, to build the other house. She can't knock it down and have no asset. Then she'll have two vacant lots and no money. She has enough to build half the house.

Mr. Grimes: Thank you. Alright, do I have any motions?

Dr. Ackermann: Mr. Chair?

Mr. Grimes: Yes.

Dr. Ackermann: Yes, I'd like to move that the Board of Zoning Appeals approve this variance, V16-01/16151081. My reason for that... well, first let's see if there's a second.

Mr. Grimes: Do I have a second of the motion by Dr. Ackermann?

Mr. Kim: I second that.

Dr. Ackermann: My reasoning is, I think this is... because this is happening now, this adjacent lot doesn't meet the zoning requirements but the property that she's on also is pretty much exactly the same size. And I think she's been in this situation in good faith... and she's in this situation now in good faith. Of course, when she bought the property, she never could foresee what the future would be. And I think it's a reasonable request. I don't see it running away throughout the County.

Mr. Kim: If I may, Mr. Chairman.

Mr. Grimes: Yes.

Mr. Kim: I second the motion. I do see hardship. I don't agree with Mr. Gay's... anyway, I'm not going to go there, sorry. I do see hardship. I see why she's doing what she's doing and I'm very sympathetic. So I will second the motion for the approval of this variance.

Mr. Grimes: Any other commentary on this?

Mr. Apicella: Mr. Chairman? So these cases are harder than others, and this is certainly one of them. This pulls at my heartstrings. I understand the frustration and predicament that you're in. I believe, as a member of this panel, just like you said, as a Judge I have to look at the law, and what does the law say. And when I read the definition of a variance, it says essentially that this is a rare set of circumstances in Stafford County. There aren't many other folks who are similarly situated. And if this were approved, we aren't potentially up Pandora's box and essentially undoing the Zoning Ordinance.

*Board of Zoning Appeals Minutes
February 23, 2016*

Mr. Gay: Correct.

Mr. Apicella: But, that's exactly what we're doing here, in my view. This isn't even a platted lot yet. It's pieces of lots that are going to be co-mingled together to create a 75-foot width lot. It doesn't meet the current requirements. And just like anybody else, who buys a car for example, it's incumbent upon that person to make sure that that car works, is going to keep working, and it meets requirements to be on the road. In this case, the slot, these pieces of lots, parcels, don't meet the requirements. And, just like anybody who buys a lot, I think it's incumbent upon them to understand what the rules are. My biggest concern is I look at the information that we were provided, I see several other parcels in this very subdivision where folks could do the same thing. And that's why I asked the question. They have a lot right next to theirs. They were able to build a lot... they were able to build a house on that lot because it met the minimum requirements at the time. But they own another lot that's right next to them and, you know what? What makes them any different than this particular set of circumstances? Why would they sit still and not also ask for the same relief? In this very same subdivision, on this very same street. Not to mention the, and I think, hundreds of people in Stafford County who may own a lot that is too small to build on, for whatever reason that it was platted, under today's circumstances and they want to build on that parcel and it doesn't meet the requirements. It may be 5 feet, it may be, you know, 10,000 square feet. What makes them different than this particular person? I don't think there is a difference. I think if we approve this variance, unfortunately we will have people standing in line, including developers, who don't have R-1 lots that are big enough who want the same kind of relief that's being granted in this case because it's not a unique set of circumstances. It's not a hardship in my opinion. We talked about a hardship; a hardship is associated with the topography of the lot. There's nothing askew about this lot in terms of the topography, it doesn't have steep slopes, there aren't bad soils. We're potentially redefining what a hardship is. It's not a hardship on the person, it's a hardship associated with the parcel itself. That's been case law and we've discussed it many times. I understand this is a bad set of circumstances for the owner. I feel bad for them. It's unfortunate that whoever sold them the lot didn't provide the right kind of representations that it wasn't going to meet the County's requirements in 1988, much less now. And I think we're going down the wrong path and it's a slippery slope to approve this one. We can be sympathetic, we can feel bad, and I do. Am I personally going to lose sleep if this passes? No. But as a Planning Commissioner and as a person who's on this panel to make sure that we follow the law, I will have heartburn because I know there will be lots of other people standing in line and we'll be adjudicating cases very much like this in the future because, again, it's not a unique set of circumstances. Thank you.

Mr. Grimes: Ms. Brown.

Ms. Brown: I don't think I could support the motion because I think owner has been utilizing the property for the past 28 years and I think what she wants to do is change the way she utilizes the property. And just for a point of clarification, the property, according to the records, was purchased for \$10. It's assessed at \$10,000 right now, but says that for and in consideration of the sum of \$10, and it's written out, cash in hand.

Mr. Gay: Can I explain that ma'am?

Ms. Brown: Okay.

Mr. Gay: That's not correct. It's ten thousand.

Ms. Brown: She has been utilizing the property all these years and she wants to change her use. So I don't know that... I don't believe that she could say that she would not be able to use the property going forward. She's been utilizing it for 28 years. And I do feel bad; I recognize that she needs the money to

Board of Zoning Appeals Minutes
February 23, 2016

be able to build a house and she wants to sell the other one to make money to do that, but at the expense of violating our zoning code, I don't agree with that.

Dr. Larson: Mr. Chairman?

Mr. Grimes: My heart says go one way and my head says go another way. And I have been struggling with this for quite a bit here. I appreciate the clarification on the reason why the deed said that the property would not be built. That does tell me that the applicant would not necessarily then have realized she couldn't build a house for other reasons. On the other hand, the zoning requirement as of 1978 was 80 feet, and she bought the lot in 1988. So the law had been in place for 10 years for that 80-foot width. The hardship that is described, as I understand it in the law, is something similar to what Mr. Apicella said; something having to do with the topography of the... the nature of the land itself. And if it's not if the applicant can use the land in the way they want to, it's can the applicant get some reasonable use of the land. If not, then it's a taking. But I think the applicant could get a reasonable use of the land because she's adjacent and she could use the land as an adjacent piece of land. The rules that we have to... or the things we have to look at for passing a variance are very strict. The law is very strict in this. We have some leeway but not a lot. So, I also believe that there are probably enough lots that are of this width or thereabouts that would constitute something that would require instead of a variance for one lot, a zoning change for the County. And again, we can't do that with a variance and the law says we can't. So I'm going to listen to the other discussion. Thank you.

Dr. Ackermann: Mr. Chair? What I think is unique about this situation and worthy of a variance is the fact that if that lot had been platted when the lot that she lives on was platted, we would not be here at all. We would not have this discussion at all. It's not... she's not... this is a, I mean, this is I guess as accidental situation, you know. It's certainly not one of her making; it's not one of almost anyone's making except that it wasn't platted originally as a lot. So that's why I support the variance, and I feel very comfortable doing that too. Not that I'm opening up any floodgates and not that I'm not upholding the law. I think this is certainly valid.

Mr. Grimes: I don't think I can, while I'm sympathetic to the case, and I understand the situation, you know, these lots were created out of remainders of other lots. The applicant bought these lots, used these lots, enjoyed them for these number of years since they were purchased, specifically knowing at the time because it said so that they wouldn't be built on and that it was meant to be a buffer. And that buffer's not just for lot 1; it's for all the lots around it and for everyone else in the neighborhood. And to change that with this variance I just think is the wrong way to go. And I agree with Mr. Apicella that there are any number of lots in this neighborhood that that same thing could happen. We would have folks in here coming to ask that question, can I do this, can I get a variance for this, because it's no difference than any other set of lots in the neighborhood. There are ways around this. They may not be the most attractive to the applicant, but there are ways that this could be accomplished, that she could get another home and use these lots. So I don't see that there's a hardship presented in this case.

Mr. Kim: If you don't mind, Mr. Chairman, I'd like to make one more statement.

Mr. Grimes: Yes, absolutely.

Mr. Kim: Okay. I absolutely agree. I don't want to open any floodgates. I don't want people coming in asking for different variances, maybe even similar. If this was new development, you know, even in the '90s, I would absolutely say that I don't see the hardship. I feel exactly like Dr. Ackermann over here where if the owner of the property or the owner of the development did his due diligence and just went to Stafford County when the property was, 1964, then we wouldn't have this discussion. And that's what...

Board of Zoning Appeals Minutes
February 23, 2016

that's the hardship that I see. If this was done... if this was a new development today, there's no way I could approve the variance. But seeing that this is an older property and since the property owner, was it Mr. Highland? Oh, Mr. Holsinger, I'm sorry... Mr. Holsinger didn't do his part to make this a sustainable plot for a house, I do see hardship and I don't have an issue with it. Thank you.

Mr. Grimes: Any other discussion? Commentary? So I have a motion made by Dr. Ackermann, seconded by Mr. Kim, to approve the request for variance in case number V16-01/16151081. All those in favor of the motion signify by saying aye.

Dr. Ackermann: Aye.

Mr. Kim: Aye.

Mr. Gibbons: Aye.

Mr. Grimes: All those opposed signify by saying nay.

Mr. Apicella: Nay.

Dr. Larson: Nay.

Ms. Brown: Nay.

Mr. Grimes: Nay. I'm sorry, I didn't catch the count. Melody?

Mrs. Musante: Three to four.

Mr. Grimes: Any discussion on the vote where we stand? Do I have any additional motions on this case?

Mr. Apicella: Mr. Chairman, although it pains me, and it really does and I will lose sleep over this tonight, I promise you, if we don't take some motion, take some action, then it's the same as passing. It's not?

Dr. Larson: (Inaudible - microphone not on).

Mr. Apicella: Still, I would make a motion to deny V16-01/16151081.

Ms. Brown: I'll second that.

Mr. Grimes: Any further discussion?

Mr. Apicella: Just to reiterate what I said earlier I have concerns about, and I don't believe this complies with the requirements of a variance. I mean, I wish it did, but I don't believe it does. I don't think the applicant has made a case for a variance in this case and, again, I think if we were to approve it, it would create a slippery slope in this very subdivision and elsewhere throughout the County, which is contrary to the requirements.

Mr. Grimes: Any other comments?

***Board of Zoning Appeals Minutes
February 23, 2016***

Dr. Ackermann: I just want to say I can't support the motion and I respectfully disagree with Mr. Apicella's comments.

Mr. Grimes: Any other comments? I have a vote made by Mr. Apicella and seconded by Ms. Brown to deny the request for variance in case number V16-01/16151081. All those in favor of the motion signify by saying aye.

Mr. Apicella: Aye.

Dr. Larson: Aye.

Ms. Brown: Aye.

Mr. Grimes: Aye. All those opposed signify by saying nay.

Dr. Ackermann: Nay.

Mr. Kim: Nay.

Mr. Gibbons: Nay.

Mr. Grimes: Let the record reflect that the motion is denied by a... I'm sorry, motion approved by a 4 to 3 vote. Melody, I think the next agenda item is Unfinished Business.

UNFINISHED BUSINESS

Ms. Musante: We have no Unfinished Business.

ZONING ADMINISTRATOR'S REPORT

Mr. Grimes: Then we have the Zoning Administrator's Report.

Mrs. Blackburn: I have nothing at this time.

ADOPTION OF MINUTES

November 24, 2015

Mr. Grimes: Thank you. Then we have the adoption of the meeting minutes from November 24, 2015. I have one or two small changes. Line 2402, "that is why I said it will comply." I think the word "will" was missed. It appears that we have a lot of dot-dot-dot's which must mean we are not speaking into our microphones. I'll remind everybody. And on 2237, "I like the way you have approached this" I'm sure is the word that I finished that with, speaking of retail sales. That's the only changes that I have.

Dr. Larson: I have one change on line 553, it says that I said "Sire, if you could state your name." Obviously I meant sir. I don't think I said Sire, but I could have.

Mr. Grimes: Any other changes to the minutes? Okay, onto Other Business, discussion of the...

Mr. Apicella: Mr. Chairman, do we need to take a vote on it?

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Grimes: I thought we didn't vote on it until we actually had the changes made; I apologize. Can I have a vote or hear a vote to approve the meeting minutes from November 24, 2015?

Ms. Brown: I motion to approve that with the changes that we just made.

Dr. Larson: Second.

Mr. Grimes: All in favor of approving the November 24 meeting minutes with the changes say aye.

Dr. Ackermann: Aye.

Dr. Larson: Aye.

Mr. Kim: Aye.

Ms. Brown: Aye.

Mr. Grimes: Aye. All opposed?

Mr. Apicella: Mr. Chairman, I'm abstaining since I wasn't here.

Mr. Grimes: Thank you.

Mr. Gibbons: Mr. Chairman, I have to abstain too.

Mr. Grimes: Thank you. Okay, now onto Other Business. Discussion of the 2016 Board of Zoning Appeals Meeting Schedule.

OTHER BUSINESS

Discussion of 2016 Board of Zoning Appeals Meeting Schedule

Mrs. Musante: Yes.

Mr. Kim: Real quick, Mr. Chairman, could I just speak out of order for a second? Before we do the adjourn, I know it's late, but I did want to say and put it on record that, and thank Dr. Dean Larson here for the many years as Chairman, many hours of making different calls to attorneys and staff and all the extra work that I didn't do and maybe didn't. I just want to say thank you very much.

Other members: Thank you.

Mr. Grimes: Greatly appreciated.

Mr. Kim: Okay, that's it; thank you.

Mrs. Musante: Okay. The 2016 calendar, we have a conflict with the April 26th meeting and the November 22nd meeting. We've been kicked out of the Board Chambers. So, do we want to change the date or how do you want to handle this?

Mr. Apicella: If I may also add that I believe the November 22nd meeting is pretty close to Thanksgiving, regardless, and obviously the December 27th meeting is pretty close to Christmas. We may want to take those up as kind of taking a different approach on both of those.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Grimes: Given our past few years' record, we take off December almost always.

Mrs. Musante: We do.

Mr. Grimes: So I'd like to avoid taking off November just simply because we seem to have a pretty steady caseload albeit small. So I'd like to see if we can move the date in November to earlier in the month, or is there a -- I don't have my calendar in front of me -- is there a...?

Mrs. Musante: You could do it the following week.

Mr. Grimes: Which would be the 29th. So, November 29th, if that would work for everybody's schedule.

Mrs. Musante: And then for the April 26th meeting?

Mr. Grimes: And again...

Dr. Larson: Is there a different venue we can meet at?

Mrs. Musante: They, the Board, when they meet, they also reserve our ABC Conference Room. So we cannot utilize that room as well, just in case they have an overflow.

Mr. Apicella: We have met, it's not a great place, downstairs.

Mrs. Musante: We have. We can check the, we call it the Activities Room, we can check that room to see if it's available for the April 26th meeting. If it is not, do we want to go to May 3rd?

Mr. Grimes: Again, pushing it back a week would be... I'd prefer us to relocate somewhere.

Mrs. Musante: Okay.

Mr. Grimes: Just so that it doesn't throw off all the schedules of all the advertising, everything that everybody's used to doing.

Mrs. Musante: So, do you want to try to relocate on both dates before we move any dates?

Mr. Grimes: No, that 22nd is the week of Thanksgiving.

Mrs. Musante: Okay, so keep that one as a moved.

Mr. Grimes: Yeah.

Mrs. Musante: And then on April... and I do believe that the Board Chambers, I think we checked that and the Board Chambers is open for the 29th for November.

Mr. Grimes: Okay.

Mrs. Musante: And then for April 26th, we will check alternate location.

Mr. Grimes: That will be ideal, unless I have any thoughts otherwise?

Ms. Brown: There's no dates available for the Chambers in April on those Tuesdays?

***Board of Zoning Appeals Minutes
February 23, 2016***

Mrs. Musante: We did check May the 3rd I believe and May the 3rd was open. Is that correct Stacie?

Ms. Brown: Yeah, I'd like to keep it in April, too. We can have one a month versus two in a month; that might be confusing for everybody.

Mrs. Musante: Okay. So we'll check that and...

Mr. Grimes: I don't have any objection to that.

Dr. Larson: The one minor issue with moving April forward is the By-Laws 7-7, in case we have somebody that wants to defer, that's due by the close of business on the Monday, 22 days prior to the scheduled BZA meeting on the fourth Tuesday of the month. I mean, we call out the fourth Tuesday of the month. I don't think we have an issue with November 29th going the other way, because if we go the Monday 22 days prior to that, we're still in the month and we still have that. See what I'm saying?

Mrs. Musante: Yes.

Dr. Larson: So, moving that up might be a little problematic, but maybe not too bad.

Mr. Grimes: That's why I was opting for the week later because then I knew that we could stick with our schedules as published. The 2015 Annual Report.

2015 Annual Report

Dr. Larson: I have no comments.

Mr. Gibbons: Mr. Chairman, I thought it was a well-written document.

Mr. Grimes: Is this a document that we have to also approve?

Mrs. Musante: It is.

Mr. Grimes: Thank you. Any comments, changes, to the 2015 BZA Annual Report?

Ms. Brown: Yeah. On page 5 of 5, didn't we talk about getting an update on where our cases stand legally, you know, like the ones that have been challenged? We were going to do it a couple times a year I thought.

Mrs. Musante: I remember the discussion, I don't remember it being a part of the Annual Report for this one.

Mr. Apicella: It was going to be part of the Annual Report, but we did talk about having it as a, you know, periodic agenda item.

Dr. Larson: That's my recollection, yeah. But it would be good to have as a periodic update, but I don't remember it being a part of the Annual Report.

Mr. Grimes: Do I hear a motion and second to approve the Annual Report for 2015?

Dr. Larson: I move we approve the Annual Report.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mr. Grimes: Do we have a second?

Mr. Kim: I second that.

Mr. Grimes: Everybody in favor of approving say aye.

Mr. Apicella: Aye.

Dr. Ackermann: Aye.

Mr. Kim: Aye.

Dr. Larson: Aye.

Ms. Brown: Aye.

Mr. Gibbons: Aye.

Mr. Grimes: Aye. Anybody opposed? The Board of Zoning Appeals Annual Report 2015 is approved. Do I hear a motion for adjournment?

Mr. Apicella: Mr. Chairman, before we do that, I kind of ask a question about the Stafford County's ordinances covering variances and special exceptions. Do we need to make or recommend any changes to the County associated with the changes that the State made? For example, the criteria for a variance slightly tweaked in the Code, but it hasn't been accurately reflected in our current Ordinance. So, it might be something we want to take a look out; at least have staff take a look at it. Sorry, it's not me to decide. I'm just throwing it out there. I would hate to be challenged because our Ordinance is in concert with the State Code. I understand it has precedent but still somebody could question why we didn't change it.

Mr. Grimes: I appreciate that, thank you.

Mrs. Musante: Mr. Chairman, also on the March agenda you will see an agenda item to discuss the By-Laws. We need to add something in there about inclement weather. So you might want to be thinking about that. And we also have a variance case for next month.

Mr. Grimes: Okay, I'll take that. Does the staff have a standard inclement weather policy for other, for example, the Board of Supervisors meetings or the Planning Commission?

Mrs. Musante: Steven, do you know what the Planning Commission does?

Mr. Apicella: It's at the discretion of the Chairman.

Mrs. Musante: And that's what we've been doing.

Mr. Grimes: Well, I mean, my concern with that, and just not to drag us out here any longer but, when you tie it to the County, if the County's open and everybody leaves early because it's starting to snow, and then we're all trying to get here, the County's not closed. The County makes the announcement at 5 a.m. or whatever it might be. So, I think we need to seek some... or we can generally say, (a) if the County's closed, we don't meet. But, we need something to cover us in the event that there's early closings. Like early closings of schools doesn't necessarily trigger early closing of the government.

***Board of Zoning Appeals Minutes
February 23, 2016***

Mrs. Blackburn: Well, exactly, and if it's a case where, as we've seen with the storms that came kind of through this past winter, sometimes it doesn't get going until 4:30 in the afternoon. And by 7 o'clock, you know, they're calling for definite accumulations. So those are the kinds of things I think you all need to discuss.

Mr. Grimes: What kind of impact does it have on scheduled public meetings? Does the announcement process... I mean, we can get more details.

Mrs. Musante: It's not a big deal for us as far as the announcement process. We just give it to our spokesperson for the County and she does a public announcement.

Mr. Grimes: Okay.

Mr. Kim: Can I ask one question? I thought they made... maybe I misheard it... I thought the County did specifically make statements to all, you know, Stafford County Government is closed, including late night events? I mean, I thought I've done that before.

Ms. Brown: They do, they do. They say all the events in the evening are cancelled... all evening events.

Mr. Kim: But then necessarily wouldn't make that announcement if it was cancelled... okay, gotcha. Thank you.

Mr. Grimes: Any other items for discussion before we call? Okay, a motion to adjourn?

ADJOURNMENT

Mr. Kim: Motion to adjourn.

Ms. Brown: Second.

Mr. Grimes: Everybody in favor? Alright. Thank you everyone.

With no further business to discuss, the meeting was adjourned at 10:42 p.m.