

**STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES**  
**November 29, 2016**

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) of Tuesday, November 29, 2016, was called to order with the determination of a quorum at 7:01 p.m. by Chairman Robert Grimes in the Board of Supervisors Chambers of the George L. Gordon, Jr., Government Center.

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

MEMBERS ABSENT: None

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

DETERMINATION OF QUORUM

Mr. Grimes: 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 for 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; hear and decide on requests for Special Exceptions where the Zoning Ordinance allows for Special Exceptions. The Board consists of seven regular members and two alternate members. An alternate member may be called upon to participate when a regular member is unable to hear a case. Let the record reflect that we have a quorum tonight with 7 voting members present. The members present and voting tonight including alternates, who will not be voting, Mr. Apicella Ms. Brown, Mr. Larson, Mr. Kim, Mrs. Stefl, Dr. Ackermann. And our alternates sitting and listening tonight are Mr. Gibbons, and Ms. Bertoldi. The alternates will be hearing the case only and will not ask questions, participate in discussion or vote on any cases tonight unless otherwise directed by the Chair. The County staff tonight is represented by Ms. Melody Musante, the Zoning Manager, Ms. Susan Blackburn, the Zoning Administrator, and Ms. Denise Knighting, the Office Manage. 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 to 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 public 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 on the Board must vote for approval. In order to allow the Board time for appropriate review, the applicant or applicant's representative is required to submit relevant material to the Department of Zoning and Planning 10 business days prior to this hearing to be included in the staff report. The Board may accept additional relevant material from the applicant or the applicant's representative during the hearing; however, large amounts of additional material may require a deferral, at the Board's option, on

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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 hearing. The applicant should be aware that we have 7 voting members present, and you must have 4 affirmative votes to approve an application. If you do not think that there are enough members present tonight that will enable you to receive a fair hearing, then you have the right to defer the hearing until another meeting. However, you may defer the hearing for this reason only once in any 12-month period. Deferral requests are granted at the sole discretion of the Board. The applicant may also withdraw his or her application at any time prior to a vote to approve or deny the application provided that the applicant has not withdrawn a substantially similar application within the previous 12 months. Any person, or persons, who do not agree with the decision of the 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 at least one year from the date of our decision. I now ask that anyone who has a cell phone or other electronic device to please silence it. Thank you. It is the custom of this Board to require that any person who wishes to speak before this Board shall be administered an oath. Therefore, I ask anyone who wishes to speak tonight to stand and raise your right hand. Do you hereby swear or affirm that all testimony before this Board shall be nothing but the truth?

Mr. Kitfield: I do.

Mr. Grimes: Thank you, you can 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 the recording secretary can have an accurate record of the speakers. Also, please sign the form at the back of the room. Thank you. Are there any changes or additions to the advertised agenda?

Mrs. Musante: There are no changes.

Mr. Grimes: Before we hear the first case, does any Board member wish to make any declaration or statement concerning any cases to be heard before the Board tonight?

**DECLARATIONS OF DISQUALIFICATION**

Dr. Larson: Mr. Chairman, I visited the property in question for the Special Exception. I didn't talk to anybody there, just took a look from the road and drove by.

Mr. Grimes: Thank you.

Mrs. Sefl: Mr. Chairman, I too drove by home. I did not talk to the applicant but I did look at the residence and spent some time familiarizing myself with the area, especially since I live down, right by the home.

Mr. Grimes: Thank you. Anyone else? I will now ask the Secretary to read the first case.

**PUBLIC HEARINGS**

1. SE16-07/16151521 - Andrew Kitfield - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses and Standards," A-2, Rural Residential, (c) Special Exception, to allow a home business for the sale of firearms and firearm accessories on Tax Map

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Parcel No. 44A-2-D. The property is zoned A-2, Rural Residential, located at 15 Peach Lawn Road.

Mrs. Musante: Case SE16-07/1615152, Andrew Kitfield, requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses and Standards," for the A-2, Rural Residential, section C, Special Exception, to allow a home business for the sale of firearms and firearm accessories on Tax Map Parcel No. 44A-2-D. The property is zoned A-2, Rural Residential, located at 15 Peach Lawn Road. You have the application, application affidavit, plat of property and the diagram of 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. He intends to sell firearms and accessories over the internet. The applicant stated he does not intend to maintain an inventory of any kind. The only customers that will be received at the residence will be those who would have ordered a firearm online which requires a firearm transfer service from a federal firearm license holder. There will be no firing or testing of these weapons onsite nor will he store any customer's firearms or ammunition onsite. The applicant has stated that the customer visits will be by appointment only during the days and hours of Monday through Friday from 9:00 AM to 5:00 PM and no weekend hours. The applicant states he can provide five 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 five spaces for customers; but due to the code requiring customers by appointment only, the need will not be there for this many spaces. He anticipates one client per day. The standards for a home business allow for a maximum of 25 per cent of the gross floor area to be utilized for the business. This space is occupied by the office and the guns safe. The applicant has indicated 156 square feet will be used for the business. This area meets this requirement as the gross floor area of the dwelling is 2,100 square feet. According to The Bureau of Alcohol, Tobacco, Firearms and Explosives regulations, the applicant must have a physical address 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 Home Business through the Board of Zoning Appeals to sell weapons and accessories from his or her home. The single-family dwelling built in 1952.

Mr. Grimes: Thank you. Are there any questions of the staff?

Mr. Apicella: Just one quick question Mr. Chairman. These proposed conditions are similar... generally similar to the conditions proposed on the last application?

Mrs. Musante: Yes they are.

Mr. Apicella: Thank you.

Mr. Grimes: Any other questions for staff?

Mrs. Stelf: I have a question. On the tax map it listed 2,800 square feet for the home, where it says a total of 2,100 square feet. It says each floor is 952 feet times three. So I was just curious.

Mrs. Musante: Where are you looking at, in the staff...

Mrs. Stelf: On the tax map, like if you look up their property through Stafford County it lists the square... finished or gross is 2,856, finished is 1,428.

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Mrs. Musante: I don't have that information in front of me. So it could be a typo, but I would ask the applicant.

Mrs. Stefl: Okay. Thank you.

Mr. Grimes: Do we have any other questions for staff? Hearing none we will go ahead and open the public hearing. Will the applicant or his or her representative please come forward and present their case?

Mr. Kitfield: My name is Andrew Kitfield. I am just asking for a Special Exception to operate an online business through my home selling firearms and firearm accessories. I intend for there to be very little if any actual traffic to pick up a firearm from me. The need is only there if someone that I know buys one and has it sent to me. I expect less than one a week for one person a week. And for the square footage 1,428 is what I bought it at. I will go back and check, but I don't think it's that big, it certainly feels small.

Mrs. Stefl: I was just confused by what the county states the size of the home is verses what I saw on the application.

Mrs. Musante: His application says 2,100 square feet, so that is where I took it from.

Mrs. Stefl: Oh, okay. Alright. Yeah, I mean I looked up the county... what is it the county property... when you do a property search with the Commission of Revenue.

Dr. Larson: Do you have a basement in the house?

Mr. Kitfield: It is, yes.

Dr. Larson: Is it unfinished?

Mr. Kitfield: It's partially finished.

Dr. Larson: That could be the (inaudible).

Mrs. Stefl: It's stating three levels, first... floor one and a basement.

Mr. Kitfield: Yes.

Mrs. Stefl: So that's where I was just getting confused.

Mr. Kitfield: I would have to double check the square footage. I don't honestly know...

Mrs. Stefl: To make sure the house is big enough for what you are stating in the application.

Mrs. Musante: Well he is only asking for 156 square feet.

Mrs. Stefl: Okay, alright.

Mrs. Musante: So that's way less than what the 25 per cent is allowed.

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Mrs. Stefl: Okay.

Mr. Grimes: Even at 1,428.

Mrs. Stefl: Yeah at the 1,428.

Mrs. Musante: Yes.

Mr. Grimes: Yes, he will still be fine.

Mrs. Stefl: I just wanted to understand.

Ms. Brown: You might want to check though, to make sure your assessment is right.

Mr. Kitfield: Right. Thank you.

Mr. Kim: Mr. Chairman, can we ask the applicant a question or is he still presenting?

Mr. Grimes: I was going to check. Are you finished with your presentation?

Mr. Kitfield: Yes sir. That is all I have (inaudible).

Mr. Grimes: Alright. Any member of the public who wishes to... hold on here, I lost my place. Yes, that's where... alright, so are there questions for the applicant? Sorry, I lost my place.

Mr. Kim: No, that's okay. I do have one. I just wanted to clear here. In your description you stated that we only intend to do so, you know, storing of firearms. You don't plan to have an inventory then move into a brick and mortar place like you described in your description.

Mr. Kitfield: No, I do intend to move into a brick and mortar place but not with an inventory that I have. I really... my goal here is to set up a business relationships and kind of learn how this whole industry works and right now most of the distributors that I am talking to won't talk to us until I have the FFL. I am really just trying to get me foot in the door and then I want to move into a brick and mortar store but I won't have inventory before then.

Mr. Kim: Okay, brick and mortar then inventory?

Mr. Kitfield: Yes.

Mr. Kim: Okay, thank you.

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

Mr. Grimes: Yes, Mrs. Brown.

Ms. Brown: Hi, I would just like to know what class of FFL are you applying for? The type?

Mr. Kitfield: Class 2.

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Ms. Brown: Class 2. Thank you.

Dr. Larson: Question?

Mr. Grimes: Mr. Kitfield you have mentioned in your application you want to sell firearm accessories. Could you list some of those and give us an idea of what you are talking about?

Mr. Kitfield: Absolutely, most firearms these days are kind of like Legos and you can put any... flashlights on them, different hand rails, grips, you can change out the triggers, you can change out the... they are really plug and play. You can change out any component on them, so items like that, triggers, flashlights, magazines, holsters and things of that nature.

Mr. Grimes: Any other questions for the applicant?

Mr. Apicella: So in that regard, just to clarify, you understand that all sales must be done online. So if someone walks into your house as part of this transfer process and says I want one of those, and I want one of those and I want one of those and here is \$25 or whatever it costs, that is not permissible.

Mr. Kitfield: Right.

Mr. Apicella: Okay, I just wanted to be sure you understood.

Mr. Kitfield: Yes, all of those sales will be done online. The only thing from the house will be the actual logging in and out of the gun for federal requirements.

Mr. Grimes: Are you proposing to sell any ammunition?

Mr. Kitfield: No, I don't intend to.

Mr. Grimes: Okay. Not even online?

Mr. Kitfield: No, from what I have seen there is no market... there is no money in it.

Mr. Grimes: Any other questions for the applicant?

Mr. Kim: I do have one more. Did you talk to your neighbors?

Mr. Kitfield: I talked to one of my neighbors, twice. But the other neighbors are renters so I have not talked to them. And he was really excited about it.

Mr. Grimes: Dr. Larson.

Dr. Larson: In your application you have a drawing of the house, it's kind of a block diagram.

Mr. Kitfield: Yes sir.

Dr. Larson: It shows living space on one end and then the office on the other end. Is the living space toward the road?

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Mr. Kitfield: No, and that is only of the basement. The living space would be on the south side. So I guess what I am saying is that the...

Dr. Larson: Okay, so the...

Mr. Kitfield: So both rooms would face the road, but it's in the basement so there is no...

Dr. Larson: I am sorry, what's in the basement?

Mr. Kitfield: The office space.

Dr. Larson: Oh, okay. I did not interpret it that way, but I appreciate that.

Mr. Grimes: So that office space is taking over unfinished space at the moment?

Mr. Kitfield: Partially finished.

Mr. Grimes: Mrs. Stefl?

Mrs. Stefl: One of the conditions that we sometimes or we usually do is that no signage; is that going to be an issue?

Mr. Kitfield: It will not.

Mrs. Stefl: Okay.

Mr. Grimes: All the proposed development conditions... suggested development conditions, Melody has reviewed those with you and you are comfortable with all of them as presented to you?

Mr. Kitfield: The only one I have a question about is the need for a deadbolt on the room that the safe is in. If I have an alarm system, and I have a safe and I have deadbolts on the exterior doors, do I need that third or for the level of protection? I have not installed one yet and I can if that's an issue. But I would just... if it's not a big deal I would like to not.

Mr. Grimes: Melody, this condition is the same as the previous...

Mrs. Musante: Correct.

Mr. Grimes: ... several or just the last one?

Mrs. Musante: Just... I only looked at the last one that we did and this was taken from that.

Mr. Grimes: I will be honest, I don't remember us having the deadbolt lock, security on the room as well, if there is a safe.

Mrs. Musante: I know there was... we have had the condition of the security system and the weapons and the ammunition be stored, but not for the deadbolt on a room.

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Mr. Grimes: And I think that really came from, if there was ammunition stored that could not be stored in the safe...

Mrs. Musante: Correct.

Mr. Grimes: ... then we were looking for that security level. And if there is not going to be any ammunition stored here then I would almost think that we might revisit that development condition. But if we did that we would want to modify one of the other ones that says you can't have ammunition stored there for sale.

Mr. Kitfield: It would not be a problem for me.

Mr. Grimes: It was just a thought, I was thinking out loud here before we get in...

Mrs. Stefl: Because the current exterior door has a deadbolt and there would be like a door chime or something installed on them. So... okay.

Dr. Larson: Mr. Kitfield what kind of safe would you be storing the guns in? Can you describe it to us?

Mr. Kitfield: Sure, it's made of 14 gauge steel, the same as commercially available firearm safes. The brand is SecureIt Tactical and they make military storage and container rack systems for the military. It's got the same level of security of any commercially available firearms safe. The only thing it lacks is the fire rating, but as I understand it the fire rating is up for interpretation anyway.

Dr. Larson: So it is a tall safe or a small safe?

Mr. Kitfield: It's about 52 inches tall and it is 20 inches wide and I have two of them.

Dr. Larson: How heavy it is?

Mr. Kitfield: 150 pounds bolted... it's going to be bolted to the ground.

Dr. Larson: Bolted to your cement floor?

Mr. Kitfield: Bolted and actually built into a cabinet so you can't move it.

Dr. Larson: Okay, thank you.

Mr. Grimes: Any other questions for the applicant? Yes.

Ms. Brown: I am trying to think how I should word this, you will be collecting sales tax on your items that you are selling online?

Mr. Kitfield: Yes ma'am.

Ms. Brown: Thank you.



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Mr. Grimes: Any other questions? Alright you can go ahead and be seated. Any member of the public who wishes to speak in support of the application, please come forward. Seeing none, any member of the public who wishes to speak in opposition...

Mrs. Stefl: Sorry, I will turn that off.

Mr. Grimes: ... to the application, please come forward. Seeing none. Since I don't think you will need to respond or add any additional information, unless anybody has any other questions, we will now close the public hearing for this application and bring the matter to the Board for discussion.

Mr. Apicella: Mr. Chairman, on the issue of the room with the deadbolt lock, we always get smarter as we hear this particular item that is in front of us. And Dr. Larson asked a very good question about what kind of gun safe are you going to have because now that I read number 4, it really doesn't say gun safe. It says locked in separate containers that are secure. What does that really mean? So could it be just a box with a lock on it? That might be something we want to think about a little bit further and clarify what we mean here. Especially if we are going to potentially remove the deadbolt lock at the end of the sentence.

Mr. Grimes: And I think there was some discussion on this and it's because this has come to us in so many forms. One of them was a gentleman who had a lot of weapons and ammunition that was coming in and he was securing those in individual containers instead of a safe because he could not get a safe big enough to hold everything, or that is what he was proposing. So I could see this kind of meanders around depending on the applicant and how they prefer to do it. I guess if the goal is make sure that it is secure, if it wasn't in the safe and it was just in containers that could be carried away, then maybe the deadbolt lock makes sense.

Dr. Larson: That was one of the reasons that I was asking about the size and weight and if it was bolted to the floor, which I find particularly appealing. If it is a smaller safe, it could conceivably be just heisted. With a deadbolt that mitigates that somewhat. But again bolting it to the floor also does. But perhaps in this case we might put some of those words in there if we strike the deadbolt requirement.

Ms. Brown: I like the bolting into the floor, because a deadbolt only works if you lock it.

Mr. Grimes: And a safe only works if you close it and lock it.

Ms. Brown: If it's bolted to the floor though, you are more likely to close the safe than you are to close the deadbolt.

Mr. Grimes: Does anyone have any suggestions to changing that development condition? I think some valid points were raised.

Dr. Larson: We could consider changing item 4 to all weapons associated with the business would be locked in a safe that is bolted to the floor and then strike the rest of it. That would get rid of his requirement for a deadbolt and still have a secure non-moving safe.

Ms. Brown: I'm happy with that.

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

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Ms. Brown: Number 10. He said he's not going to be having ammunition. Do we want to keep that in or...?

Mr. Grimes: Well, I think... go ahead.

Mrs. Stefl: Nothing, nothing; I'm talking out loud. My mistake.

Mr. Grimes: I think that was one of the items that would be related to that if we're taking the deadbolt off the room that ammunition would have to be stored in the gun safe or none at all.

Ms. Brown: Well, that's why I'm... we need to do something with that because he said he's not going to have ammunition.

Mr. Apicella: Well, I think we have to either provide a cap or just say no ammunition sales, right; it's not...

Ms. Brown: I'm fine with no ammunition sales, but if we're going to leave it in, I want to know what kind of cans. It could be a soda can full of bullets, I mean...

Mr. Grimes: Well, the applicant stated he's not going to have any ammunition sales so (inaudible) strike it and...

Ms. Brown: I'm fine with just no ammunition sales, that's what I'm fine, like Steven said.

Mr. Kim: I do have one just question. I don't know a lot about gun safes. I mean, are there any other gun safes out there that doesn't need to be bolted that's as secure? I'm just kind of leery of putting a condition in there if we're not really familiar with gun safes because, I mean, does anyone else know about gun safes?

Ms. Brown: We want something I think the intent was not to be able to have it heisted, carried out the door.

Dr. Larson: Right. I have a large gun safe, 800 pounds, and it's still bolted to the floor. I don't have any guns in it but that's what I have. I think most of them, I can't say for sure if they tend to be bolted to the floor or not.

Mr. Kim: Well, I mean, I have a gun safe too and it's bolted to my, actually garage cement, but I don't... like, I got the one that was on sale at Gander Mountain. I didn't really look to see if there was any like... I'm okay with saying something that just couldn't be heisted, hoisted, but I wasn't too sure on making a stipulation on saying it has to be bolted.

Mr. Grimes: Well, the applicant has already stated that that's what he's done.

Mr. Kim: Oh, okay.

Mr. Grimes: And I think that, again, we're dealing with each one of these is a little unique.

Mr. Kim: Yeah, I was just kind of concerned that this wouldn't be something that would be our standard that we would push towards every FFL applicant.

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Mr. Grimes: I'd like to think that these development conditions are our starting point and we would adjust them for each individual case. And in this case, the applicant has stated he's bolted it to the floor and we'll just put that in writing to make sure that that's checked and confirmed and we'll be good to go.

Mr. Kim: Okay, I'm good with that.

Mr. Grimes: So, we've revised number 10 to state what exactly Ms. Brown?

Ms. Brown: There will be no ammunition stored on premises.

Mr. Grimes: Stored for sale on premises so that we don't...?

Ms. Brown: For the business, yes. Pertaining to the business, I don't care.

Mr. Grimes: So, no ammunition stored for sale on premises.

Ms. Brown: That's fine.

Mr. Grimes: Any other discussions? Melody, can I get you to go ahead and read back the suggested development conditions in this case?

Mrs. Musante: Okay. Number 1, days and hours of operation: Monday through Friday 9:00 AM to 5:00 PM with no weekend hours. Provide one off-street parking spaces for client. Number 3, customers by appointment only with no more than one customer at a time. Number 4, all weapons associated with the business will be locked in separate containers that are bolted to the floor.

Mr. Grimes: I think that is, all weapons associated with the business will be locked in a safe and the safe shall be bolted to the floor.

Ms. Brown: Shall be locked in a safe bolted to the floor is what I had earlier. Does that work?

Mr. Grimes: That works.

Mrs. Musante: Number 4, all weapons associated with the business will be locked in a safe and bolted to the floor.

Ms. Brown: Yes.

Dr. Larson: With the safe bolted to the floor.

Ms. Brown: How about locked in a safe that is bolted to the floor.

Mrs. Musante: Number 5, the business cannot engage in the retail sales of merchandise on the premises, meaning merchandise must be paid for online. Number 6, applicant must maintain professionally monitored security system. Number 7, no sign shall be erected on the property indicating a business is being conducted on the premises. Number 8, discharging of firearms on site shall be prohibited. Number 9, firearems and accessories shall be stored for no longer than five (5) days. Number 10, no ammunition stored for sale on the premises. Number 11, the applicant shall comply with all applicable

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State, Federal, and local codes and regulations for the operation of this home business. Number 12, approval of this Special Exception for firearm and accessory sales will expire when the applicant vacates the property and is non-transferable. Number 13, this approval may be revoked for noncompliance of the conditions imposed by the Board of Zoning Appeals.

Mr. Grimes: Thank you very much. Do we have any motions on this case?

Mr. Apicella: Seeing no one else, Mr. Chairman, I move for approval of SE16-07/16151521 with the conditions as just expressed.

Mr. Kim: I second that.

Mr. Grimes: Alright, Mr. Apicella, can you elaborate why you move to approve this motion?

Mr. Apicella: Mr. Chairman, we've done several of these. This is consistent both in the scope and complexity of other firearm and accessory sales home businesses that we've had in front of us before, also with similar conditions that have been imposed. I find no reason why this special condition should not be approved, therefore I recommend approval.

Mr. Grimes: Any other comments from the Board members?

Ms. Brown: I'm going to vote for approval as this is a rural home business and it doesn't have the residential component of the other zoning districts that I have issue with, so I'll be supporting it.

Mr. Grimes: Any other comments from the Board? I have a motion made by Mr. Apicella and seconded by Mr. Kim to approve the request for the special exception as stated in case SE16-07/16151521. All those in favor of the motion signify by saying aye.

Mr. Kim: Aye.

Dr. Ackermann: Aye.

Dr. Larson: Aye.

Mr. Apicella: Aye.

Ms. Brown: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye. Those opposed say nay. Let the record reflect that the motion is approved for this special exception in a 7 to 0 vote. Thank you very much for your application. Melody's office will be in contact with you for your next steps.

Mr. Kitfield: Thank you.

Mr. Grimes: Alright, that is the only case on board tonight, so that would move us onto Unfinished Business.

UNFINISHED BUSINESS

iPad Use

Mrs. Musante: Ready?

Mr. Grimes: Yes.

Mrs. Musante: First item on Unfinished Business is iPad usage. We spoke with the Director of our department today and everyone on the BZA will be issued new iPads. From what we've been told, this is not an option at this point. We will continue to deliver paper copies during the transition... I'm sorry, mail paper copies during the transition. And then once that's done, you're more than welcome to print off the package if you want to, but everyone will be issued iPads and you can either use it or not. But we will not be delivering or mailing paper copies after the transition is over.

Ms. Brown: I have questions about this. I mentioned this before and I'll say who I spoke to now. I had spoken to Mr. Romanello about this issue on several occasions. He said that this was not coming from his office nor from the Board of Supervisors, and he had not heard anything about it. So, and he didn't have a problem with us continuing as we were. So, I'm going to ask again. Who was directing this?

Mrs. Musante: I just said the Director of our department.

Ms. Brown: Okay, and as of... he's authorized to do that for the Board of Zoning Appeals?

Mrs. Musante: I can't answer that.

Ms. Brown: I believe not.

Dr. Larson: I would think he does not have authority over the BZA.

Ms. Brown: He does not.

Dr. Larson: So I don't think he can direct us to do things. I may be wrong.

Dr. Ackermann: As I've been doing in the past, but particularly for this meeting, as an experiment I did all my work online. There's tools freely available with that I can annotate with, put text on. In fact, I find this superior to dealing with the paper. And I would wholeheartedly like to go through online, or electronic access exclusively.

Mr. Kim: Is there any chance we can get the iPads a little earlier than, you know, like a week before our next meeting so we can fool around with it and maybe get a sample? Or is that too much to ask?

Ms. Knighting: You won't be getting the iPads anytime soon because we have been requested to order new ones for you, so they're in next year's budget. So it will probably be July before you get them. But you will get them for several weeks... you'll get the paper packages for several weeks, yes.

Mr. Kim: Okay.

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Ms. Knighting: Unless you want to take the old iPads that we have now and work with them and then we can transfer to the new ones. That's entirely up to you.

Mr. Kim: I don't want to be difficult, so just... I just would like whenever we're going to transition no more paperwork, I would like to at least have a couple weeks before.

Ms. Knighting: You will have them for probably several months before we transition to no paper.

Mr. Kim: Oh, sweet.

Ms. Brown: I'd like to comment. I had to sign a writ... this month? It seemed like so long ago. The first thing I did on the case that was going to court for us was I went home and I pulled my notes, which are all over my Board package, to kind of see because, you know, we are... have been tabulating what's going on with these cases and why are they going to court and which ones. I wouldn't have all that if I didn't have my package and all the notes that goes with it. Again, the last time we talked about this, it did come out that this was a request from staff even though it was portrayed as something else. And that's why I talked to Mr. Romanello about this, and he assured me that it was definitely not coming from anyone else and the cost was pretty insignificant is what he said to do our Board packages. So, I am not interested still. I don't want to print off anything at my expense; I'm a volunteer. I go through the packages very thoroughly. I make a lot of notes on them. So that's how I feel about it.

Dr. Larson: I also feel the same way. Ditto.

Mr. Grimes: So, given there are two members concern, one I think needs to be answered because it's a valid question. Can the Director mandate the required use of the iPads? And I did hear you say that; you're going to have them. If you don't want to use it, you don't have to use it. And you'll have it come to you in an email or mail form, but that's only for a certain period of transition. Then those documents would stopped being delivered in hard copy, correct?

Mrs. Musante: That is correct.

Mr. Grimes: And those documents then would not be available to the person unless they use the iPad.

Mrs. Musante: They would have to use the iPad to deliver or to download, to print them off, right?

Ms. Knighting: They can print them off online. Anybody can print them off online at any time.

Mr. Grimes: The entire package that we get?

Mrs. Musante: Yes.

Dr. Ackermann: I guess if we have material that's of large size, then that's another story.

Mrs. Musante: And we did discuss that and if it is large plans or large documents, those would be mailed. Apparently that's what you still do with the Planning Commission.

Ms. Brown: How can anybody download these documents? How do they download draft minutes and things like that? How does the public do that? You said anybody could do it.

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Ms. Knighting: You go online to the agenda and download them.

Dr. Ackermann: Yeah, it's on the Stafford County website.

Mr. Apicella: Yeah, just as an example, when the Planning Commission agenda is ready to go, I mean, I do have an iPad. As a Planning Commissioner I go to the website and I click on each PDF file and I print it out. So, it's not easy and sometimes the material is voluminous, at least for the Planning Commission. It's not as voluminous here for the BZA, but it's... as long as it's posted, you know, within a reasonable amount of time it's really not an issue. I appreciate where you're coming from. It's probably a cost issue in terms of printing out the documents versus, you know, just using an iPad exclusively.

Ms. Brown: I like our color maps. When we go through these cases, as my seat-mates know, I tend to... I have several piles going at once and I will not be able to have multiple windows up at one time to see everything at a glance. I have my notes out, I have my questions, and I have the conditions and I have the plats and I have the pictures (inaudible). You can't have all that going on the iPad all at one time.

Mr. Apicella: And so, sometimes again for very large packages, I don't print out everything. I'll print out some of the key material like, you know, smaller maps and I'll have it by my side so I'll look at it when I need to. I will tell you also the iPad provides you some utility that you wouldn't get from a hard copy. You can expand the field so that you can look directly onto a specific piece of information, as compared to a hard copy; you know, you get it in 8 by 11 form, that's it. So there is... sometimes there is some utility. Taking notes, I mean, that's you know... you can actually take notes on the PDF documents as well.

Ms. Brown: You have to download and get the software for it and license it. I'm not interested in doing that.

Mr. Apicella: Well, I think the County will pay for the app, whatever it is. It's like ten bucks or something.

Ms. Brown: Well, again, the cost is negligible. I don't think that we can be forced by anybody to do this. And if this was not coming from the, like I said, the County Administrator nor the Board of Supervisors as a request, there was not a concern of cost. So, that's how I feel about it.

Mr. Grimes: I would ask that the office seek some clarification on that just to be able to answer the question that was posed. I know that this is still a ways away so I think that will end the discussion because once we have that answer about whether it's directable or not, then we'll have the next discussion that needs to take place. Is everybody comfortable with that?

Ms. Brown: Mm-hmm.

Dr. Ackermann: Fine with me.

Mrs. Stefl: And the staff did say... I just heard real quick, they're new iPads? We're not getting like the Planning Commissioners' old pads or something like that?

Ms. Knighting: Brand new.

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Mrs. Stefl: Brand new, okay.

Mr. Apicella: From 1980. Brand new from 1980.

Mrs. Stefl: Well, I know the speed of government, you know.

Ms. Knighting: I said we have the old ones if you want them to get used to, to practice, play, whatever you want to call it, before the new ones come in. But the new ones won't be here until after July.

Mrs. Stefl: Right. And then you said... so we'll have to do the research for the annotations, or is there like a County approved apps that will be...?

Ms. Knighting: The app is called iAnnotate.

Mrs. Stefl: Oh, just iAnnotate, okay.

Ms. Knighting: And it costs about \$9.95 and you bring me a receipt and I will reimburse you for it.

Mrs. Stefl: And that would probably be the only app that I would probably have to get?

Mr. Apicella: There's also a bunch of free apps, too, that do the same thing. A bunch of PDF apps. So you don't have to use iAnnotate, it's just the one that the County uses.

Mrs. Stefl: Okay. And it would be something that's pushed to the iPad when the new package, or we would have to go to the County and download it?

Ms. Knighting: No ma'am, we would send you an email and let you know that the information is ready to download to your iPad.

Mrs. Stefl: Oh, I understand. Thank you so very much understanding the logistics.

Mr. Grimes: I was going to say, I assume that when this takes place, because I think it's inevitable no matter how we look at it, is there going to be a training session even if it's 15 minutes to show folks how to do that?

Ms. Knighting: Sure.

Mr. Grimes: I'm sure there's folks...

Ms. Knighting: Mr. Apicella would be happy to train you.

Mr. Apicella: For a small fee.

Mr. Grimes: And that's exactly what I was saying; Dr. Ackermann is already doing it. I know that I've done it, but I didn't know if there was any kind of formal session or this was just something that we do as part of one of our meetings.



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Ms. Brown: Well, just for the record I'd like to state I use an iPad, a brand new iPad. It's not a problem that I'm a technophobe or afraid to use it or don't know how to use it. It's a convenience thing and it helps me a lot in my deliberations and my decisions and how I present.

Dr. Larson: Yeah, and for the record, I program and have programmed in other languages, so it's not like I'm a phobic from technology. I'm a PhD Physicist, okay. But I prefer to have hard copies to work from in this case because I'm like her, I remember where things are and I have separate stacks and I know where to go. The... when you use an iPad, it's all serial; you have to go here, here, here, and now where was that page? Oh, okay, you search. It's just a pain for me from my perspective to operate that way. Paper is easier.

Mr. Grimes: I understand and did not think anybody was not capable of using the equipment. It's a way we work.

Dr. Larson: We're all volunteers here, so I think if it's more convenient for us to do it a certain way, the County ought to do it that way. You know, if there's an inconvenience, they're paid for their inconvenience; we're not. I rest my case.

Mr. Grimes: Alright. Well, we'll defer this until we get the additional... well, we'll get the additional information and we can discuss the next steps. Continuing education; do you have an update on that?

Continuing Education - \$900.00 for 4 hours

Mrs. Musante: Yes. I did get approval from again the Director to move forward with continuing education for you all. But we need to know what exactly you want. Now, this \$900 you see here for four hours is Dr. Chandler's quote. We don't necessarily need to use him. We might be able to go elsewhere to get somebody to come in and do training, depending on what you actually want training on.

Ms. Brown: I would like to use him and I would like training on special exceptions. The class that I went to a year or so ago was concentrated mostly on variances because I think there's only, what, five counties in the State of Virginia that let BZA's do special exceptions. So we had a very small unit on that, mostly examples from Stafford County. So I would like... I think he's very knowledgeable. He's been doing this a long time. I would prefer to see him and I would concentrate on that.

Mr. Grimes: And I would suggest that we'll take what we can tonight, but then also think about it, email Melody or myself, it doesn't matter, your thoughts on topics that should be reviewed as a continuing education process. And then we, as the Board, can discuss and prioritize those to figure out where we can best spend those dollars. Yes.

Mrs. Bertoldi: And actually I'm going to agree because even now, that I'm going to the class now, literally special exceptions was grazed upon in about five minutes. Like, I don't even think they gave examples of special exceptions. I had to ask a question (inaudible - microphone not on), back up just a second, may I ask a question. So I actually think because there is so much leeway for the Board to give special exceptions, I think having a lot more guidance here I actually really think that would be very useful.

Mr. Apicella: I've been to Dr. Chandler's workshops. I think he's a brilliant guy. He knows all the topics. And I... my preference would be to cover the realm of what we do. I mean, I certainly would say let's give at least an hour to special exceptions, but I don't know that we could spend four hours on

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special exceptions and I'd probably get tired of it after 90 minutes.

Mrs. Bertoldi: Oh, I don't think all four hours.

Mr. Apicella: So, I mean, special exceptions, variances, you know, review of Zoning Administrator determinations. I mean, if he could cover all the bases but make sure he gives adequate time to each one of those things.

Mrs. Bertoldi: Well, I don't think either of us are saying I think though actually giving a concentration on that, because you're going to naturally talk about variances because you'll be talking about the difference between variances and special exceptions. But I think that instead of glazing it over, actually be the focus but not of course all four hours.

Mrs. Stefl: I agree.

Mrs. Bertoldi: But I don't think doing like a hodgepodge because it's going to get lost again.

Ms. Brown: I don't know how long ago everybody's been to class and I know there's been some zoning changes. When I was going through class is when they changed the variance thing and they were doing it right as I was going through; it hadn't even all been flushed out yet. So, I mean, I certainly wouldn't mind finishing up with that again just because we've had some question on the ex parte communications and just clarifying things just a little bit. I think we're fine on it, but it always seems to come up. So I would, you know, like to discuss that a little bit, you know, the changes in the variance laws. But I would really want to talk about special exceptions because I learned nothing about that in class hardly at all. Like I said, I had to give examples from Stafford and so Stafford... we had individual cases discussed. And one of the things we discussed was the FFL's and things like that and retail sales, just all kinds of everything that we do; you know, beauty shops. Because, like I said, the five counties in Virginia I think is the only ones that allow BZAs, you know, out of 92 counties or however many we have to do special exceptions so that's why it's not covered in the course. So that doesn't really help us in Stafford because that's like 75% of our business, special exceptions.

Mr. Apicella: What I would say with regard to special exceptions, if he could kind of compare and contrast special exceptions to CUPs. Because, in my mind, they're almost exactly the same. The only difference is the Planning Commission does CUPs and the BZA does special exceptions; otherwise, they're the same piece.

Mrs. Blackburn: And you can place time limits on a special exception and you cannot do that with a conditional use permit.

Mr. Apicella: Right, so there are some differences but, for the most part...

Ms. Brown: But we haven't been through CUP training. We're not Planning Commissioners so we didn't get that.

Dr. Larson: So, is there \$900 total available for this continuing...? Okay, that's that bottom line, okay.

Mr. Grimes: Right, so that's why I solicit topics from the Board members so that we can prioritize them so that we can get the best use of the time. Maybe there's a chance that that four hours for \$900 can be broken up in two 2-hour sessions or four 1-hour sessions; I don't know how he charges but maybe we

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could do a focused special exception for an hour and then meet...

Mr. Apicella: He comes up from Blacksburg, right?

Mr. Grimes: He charges travel time?

Ms. Brown: Let's just do one.

Mr. Grimes: Well, that's why I want to... let's gather then all together and see what we have and see where the time is going to be best spent.

Mrs. Musante: I can see if he can do just a 2-hour session if you think that we can do everything in two hours, or if you want the full four hours. And then we need to discuss whether you want to do a workshop on a Saturday or mid-day. I mean, I don't see him coming up here at seven o'clock at night and speaking for four hours, I just don't see that.

Mr. Apicella: By the time we ask our questions, you're going to take up an hour just there.

Mrs. Bertoldi: Four hours will go by like that.

Mrs. Musante: Yeah.

Ms. Brown: I think the four hours, maybe a Saturday. I don't know what your schedules are.

Mr. Apicella: I would prefer not to take a day off from work. That would be my issue. I could do a Saturday or I could do an evening from 6 to 10, but I really wouldn't want to take another day off from work, if possible.

Mrs. Bertoldi: I prefer a Saturday as well.

Ms. Brown: Would we be able to meet here? Okay.

Mr. Grimes: Probably up in the ABC Conference Room.

Ms. Brown: I didn't know if it was open on the weekends for us to come in.

Mrs. Blackburn: We can get it open.

Ms. Brown: Okay.

Mrs. Musante: It might be 50 degrees in here.

Mr. Apicella: And it's going to be catered by the Chair.

Dr. Ackermann: Or by the Director of Zoning, who's going to give us the iPads.

Mr. Grimes: That's right, take an extra 70 bucks out of there and get your Mission Barbeque on the way over.

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Mrs. Blackburn: Can I suggest something you all can just mull over, if you would also ask to have a refresher course on appeals.

Ms. Brown: Sure.

Mrs. Blackburn: Because I know we have another one coming up and that seems to be... we went through a slew of them and I just would love it if you all were very confident in the way you reviewed basically what I did. And really felt that, not just because it was me, but that it was actually correct.

Mr. Apicella: Well, vesting is definitely a key issue. We had a special session I think on vesting and I think we've got some new people here as well.

Mrs. Blackburn: We had a special session on vesting and I think that went very well.

Mr. Apicella: So, that's why I say, there's a lot of broad topics that I think he can help us with and I agree, special exceptions would be one of those things that we want to emphasize. But, to me, the full realm of what we do would be helpful. I mean, I haven't had the training for five plus years.

Ms. Brown: Yeah, and like I said, there's been changes in, you know, two years ago in the zoning variance, you know, requirements and how it's done. And like I said, I didn't get the full benefit of the training because it was being done while I was being trained. And I don't know how many people have gone since then. I think just Adela, right? Yeah.

Mr. Grimes: Alright, I appreciate that discussion. Expense reimbursement.

**Expense Reimbursement**

Mrs. Musante: There's been some inconsistencies on reimbursement for the members, and it was... actually it was mentioned today possibly putting it in the By-Laws on what you are reimbursed for. It's very broad; it just says travel. It doesn't define what travel is in our code. So that's something that you can address, and I think it would be a good idea to put in the By-Laws on exactly what you get reimbursed for. That way there's no issue.

Mr. Grimes: What does the County reimburse the employees for?

Ms. Knighting: Nothing. We have a per diem; if they're traveling so far away, it's a per diem that they get for meals and things like that.

Mr. Grimes: But if they're using a personal vehicle to drive somewhere, they don't get mileage?

Ms. Knighting: No, because we offer County vehicles.

Ms. Brown: I want to say our code... because I remember when I went and we had this trouble because there was inconsistencies on what I was getting reimbursed for per what the code said. And I remember bringing it in and I thought it said mileage on there. And because I remember you had said you had a car and got to go down with a car; I didn't have a car and I didn't get mileage. And even though it was in the code and I brought that to you and you were going to take it to Jeff and get back to me and we never did. So, I think it's in the code. I think it's a problem with, God love him, Jeff. I think the administrator is making random decisions and not being consistent. So, I don't know that we should put

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it in our By-Laws since it's in our code. I don't think we can change code.

Ms. Knighting: I think what Melody was saying, to be more specific, mileage is broad. Is it mileage from home to here? Is it mileage when you go to a site visit? Is it mileage when you go to Richmond?

Ms. Brown: No, it was for training is what I read. We get nothing. When we were down at training, you know, we did look at other counties and some counties get salaries, some counties get mileage for every meeting. We don't get that and I think it's in our code that we don't get that. But for training...

Ms. Knighting: I thought it just said... I thought it said travel.

Mrs. Stefl: And my statement, when I was talking about the car, was that when Steven... because Steven and I went to training at the same time and it was a case where, because we took our personal vehicles, we weren't going to be reimbursed. But if there was... since there was two of us going, we could have had a County vehicle but we would not have had a County vehicle as an individual. But because there was two of us, a County vehicle would have been provided. But then that was, as Steven pointed out, five years ago when we went through training.

Ms. Brown: Again, it's in the code.

Mrs. Stefl: So, there was inconsistencies on when a car is provided, when a car is not provided, and then the whole travel about reimbursement. I think we were only reimbursed for our hotel and the County paid for the training, if I recall. There was no food because it was included in the... it was like included in the hotel and the training package, but any food that we got by going down early or staying late was on us. There was no per diem or anything.

Ms. Brown: Yeah, somewhere in there it said about mileage because I went to submit for that, and I submitted the code and I was rejected. I'd have to look it up because I don't know what code that was.

Mr. Grimes: Because I have a concern about incorporating something into the By-Laws that would allow us to be paid for something, reimbursement or otherwise, that would violate the County code.

Ms. Brown: Yeah, we have to go by code.

Dr. Larson: Yeah, I don't think this is an appropriate thing for the By-Laws.

Mr. Grimes: I just don't think it's our job to set that.

Dr. Larson: And we should follow the County's rules.

Mr. Grimes: The County rules say that we serve for no...

Dr. Larson: Whatever a County employee gets when they travel for training, that's what we should do.

Mrs. Blackburn: Oh, you guys will probably get more than we get.

Dr. Larson: I beg your pardon?

Mrs. Blackburn: You would probably get more than we get.

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Dr. Larson: Well, right now I think we get reimbursed for the training, the cost of the training, and the hotel. And I think that's it.

Mrs. Stefl: That's it. That was all Steven and I were...

Mrs. Musante: Members of the Board of Zoning Appeals shall serve without pay, other than traveling expenses.

Dr. Larson: Right. But I think whatever the County considers traveling expenses would apply to us.

Mr. Grimes: And that's where I was headed. It's what's in the ordinance and the County code says it is and then...

Dr. Larson: And I'm fine with whatever it says.

Mr. Grimes: Exactly. And reimbursement travel must be defined in their definition somewhere I would think.

Ms. Brown: I would think. But I do agree it has been applied very inconsistently across this Board.

Mrs. Stefl: Well, like what's the County's policy if we do get a County car, we pay for gas to drive to? I mean, what would happen with a County employee?

Ms. Brown: Well, Jeff said we weren't supposed to have cars because I asked him. We're not supposed to take cars.

Ms. Knighting: The County employee, the County pays for the gas when they drive a County car.

Mrs. Stefl: Okay, but like we went... I think...

Mr. Grimes: We're not County employees.

Mrs. Stefl: We're not County employees. So when sometimes you travel, I think we went like 2, 3 hours at times so that's... that's possibly another tank of gas. So then I would be filling up the tank before coming home; am I reimbursed for that?

Mr. Grimes: Since you're not a County employee, you should not be allowed to take the vehicle period. It's for County employees only.

Ms. Brown: Yes. And that's what Jeff told me when I mentioned that. He says, you're not taking anything.

Mr. Grimes: The insurance and everything else that's associated with this...

Mrs. Stefl: But we're acting as a County employee by... when we go to that training. I mean, we're...

Mr. Grimes: We're appointed to serve for the County, but not as a employee of the County. That's why (inaudible).

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Mrs. Stefl: Well, that's what I'm just trying to understand, what the policy would have been as an employee.

Ms. Brown: It doesn't matter; we're not employees.

Mrs. Stefl: Well, alright. I guess I would like to see some consistency.

Ms. Knighting: To answer your question as an employee, if I were to travel, the County provides the gas. There's a gas card in each vehicle. If there's some place that doesn't... I can't use the gas card, I would pay for the gas and get reimbursed for it.

Mrs. Stefl: I see, okay. Well, Mr. Chairman, I also have another question. I don't know if it's unfinished business or if it'd be part of other business in regards to an email that I sent to the entire Board about a case that we had heard. Would that be other business or unfinished business?

Mr. Grimes: Let's pick that up in other business, because I know what you're talking about and we did not add it to the agenda, but we can pick it up because we do have a couple other items there.

Mrs. Stefl: And then court cases, anything, status.

Mr. Grimes: So, to close out the expense reimbursement, if we could get some feedback on what the actual code states and what the definition in the County code is for travel. Because I think that defines it. And then if we have any issues with that definition, we can then send it up the line. But I really don't believe that it's our position nor do we have the power to decide what we get reimbursed for.

Ms. Brown: I don't mind putting something in our By-Laws per code, but I don't want to define the code. If we even need to do it; I mean, I don't know if we even need to do it. Because it says in code it specifically mentions BZA members.

Mrs. Musante: That's what I just read.

Ms. Brown: Yeah, right.

Mr. Grimes: Yeah, I was going to look up in the definitions under traveling expense, but I don't know if it's there.

Ms. Brown: Maybe we could ask Mike Chandler.

Mr. Grimes: Yeah, it doesn't look like it's defined but maybe you'll find something. Maybe there's some County policy somewhere that clarifies that. Okay. Alright, onto the meeting minutes. Or actually, I'm sorry, the Zoning Administrator's Report.

**ZONING ADMINISTRATOR'S REPORT**

Mrs. Blackburn: I have nothing at this time.

**ADOPTION OF MINUTES**

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Mr. Grimes: Thank you. Meeting minutes, adoption of the meeting minutes from September 27, 2016. I have a couple small adjustments. Line 809; I believe that should say Mr. Gibbons. I'm impressed at the job that you guys do.

Ms. Knighting: I just do that to see if you all really read them.

Mr. Grimes: And line 1773; I believe plug should be push. I may have said plug it back up to the Board but I doubt it. Those are the only changes that I noted in my review. Any other comments on the minutes? Do I have a motion to approve the minutes?

Ms. Brown: Motion to approve the minutes from September 27, 2016.

Mr. Grimes: Do I have a second to approve?

Mr. Kim: Yes, I second.

Ms. Brown: Thank you.

Mr. Grimes: Alright, we have a motion to approve from Ms. Brown, a second by Mr. Kim to approve the meeting minutes of September 27, 2016. All those in favor say aye.

Mr. Kim: Aye.

Dr. Ackermann: Aye.

Ms. Brown: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye. Those opposed nay?

Mr. Apicella: Mr. Chairman, I'm going to abstain since I wasn't here.

Mr. Grimes: Thank you.

Dr. Larson: I'll abstain as well.

Mr. Grimes: Thank you. The meeting minutes are approved. Other Business; first topic, variance application discussion. Mrs. Bertoldi put together a nice little packet of information for everybody. I don't know if everybody had a chance to review it. If you'd like to give us a little brief on that.

**OTHER BUSINESS**

**Variance Application Discussion**

Mrs. Bertoldi: Well, actually it's a paper I had to write for my class. I don't know if you guys had to do that but we had to write a paper based upon the book... one of the books we read, Easley's book and her six elements of a variance and then compare it to our variance. And so I just shared it with Melody that says FYI and she took it to the Board. So, I appreciate it. I think that I learned a lot from this course



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and I think that our variance application is actually very well written. But just going through the variances and sitting in the cases that we have and looking at the six elements, it became very apparent that, you know, there are certain areas where we can improve and make it a little clearer so that people understand that it's not us that is just sitting here trying to have a heavy fist, that it's actually the statutes and the ordinances and that there actually are more than just the ordinance and that, you know, there's certain definitions and things that we don't have control over. And so I think I flushed it out in the paper. If anyone has any questions for me, they can, but if... I think Melody wanted to share it because I am very willing to sit with her. I did not put it in my paper because it would end up being 10 pages long, but I actually flushed out certain questions to kind of, you know, I think it would make it... it would give us answers in I think the way that we would want them on the Board. I think that it would help them understand a little better what we're, you know, what is a hardship, what's a personal hardship, what's not a hardship, you know, what can be a hardship. And I'm more than willing to spend my personal time with Melody and flush that out even further if that's something the Board would be interested in.

Ms. Brown: Was it Gail Easley?

Mrs. Bertoldi: Yeah.

Ms. Brown: Many nights reading that. I like, on the last page, it's b., make clear that conditions may be attached to the variance, if granted. That is kind of important because we do spend a lot of time on the conditions and it'd be nice if they weren't, oh, what are you doing?

Mr. Apicella: Mr. Chairman? Dr. Larson might remember this and some of the longer term members. We actually had a subcommittee that worked on this, Larry Ingalls and I, several years ago. And I think what we did was we pulled variance applications from other jurisdictions and used that as kind of a starting point and used kind of the best practices and the best language that we could find, at the time, from those documents and incorporated it into some version. It may not be the version that's in front of us, but I thought that was kind of a helpful process. And that's kind of like how I prefer to do things on the Planning Commission is to reach out to other jurisdictions and see what they've come up with rather than kind of inventing the wheel on my own. So, what I would recommend is a subcommittee be formed; Mrs. Bertoldi could chair it and maybe one other person. On the one hand I think we need to... I think it would be great... we ought to be very customer focused when we have an application so that folks know how to navigate and what the ground rules are. I also think in doing that we would need to be careful that we're not putting in language that might otherwise be seen to discourage them from proceeding forward. So, I think that's a delicate balance. And that's why I say we might want to look to other jurisdictions to see how they've kind of grappled that issue. I will say, the term hardship is a terrible word for a variance, because it has nothing to do with a hardship in layman's terms or what anybody else would think a hardship really is. And so that's why I think, again, maybe some other jurisdictions have found a better way to express what that really means, because it has nothing to do with personal hardship or financial hardship; it's all about the property and any unique issues with them...

Mrs. Bertoldi: Well, right, which is actually... it doesn't run with the property and I think that it needs to say that in there or attach the ordinance or the statute that actually does say that in there.

Mr. Apicella: I think though even if you attach the ordinance, a lot of people still might not understand it because it's again a little (inaudible). So again, my recommendation is for version whatever it is, 4.0, a subcommittee be created with at least two BZA members and that as part of that effort they look to

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other jurisdictions to see what they've come up with and see what language we might want to incorporate into our version. Plus I think the website itself; I'm looking at the first page of the website. What can we do about the website also to help.

Mrs. Bertoldi: Oh, I saw you printed that there.

Mr. Apicella: Yes. So, because that's the first thing people see, you know, what is a variance.

Ms. Brown: I'm not a proponent of re-inventing the wheel or redrawing them. My thought was maybe a little updating.

Mrs. Bertoldi: Which is all I was suggesting; I'm not re-inventing the wheel.

Ms. Brown: Yeah, I'm not interested in redoing the whole thing. And I do know, you mentioned hardship, part of the new variance when they changed the requirements, they redefined hardship. So, you know...

Mr. Apicella: They did, but they really didn't.

Ms. Brown: Well, they kind of... I thought they made it a little more lax, so I don't know what your opinion was. But I'm not a proponent of redoing this.

Dr. Ackermann: Honestly, I think the paper was very well done. I enjoyed reading it and I liked the points you made. One thing that struck me though as I was reading it is that when people come in for a variance, they almost always have legal representation with them. It's not this notion of a variance I think is going to a naïve person. I mean, I don't know that you say I need this condition on my property then I'll see a lawyer on it.

Ms. Brown: I don't know, the cases here, the case down near Falmouth where she wanted to take that second lot. She didn't have an attorney.

Dr. Ackermann: Well, she had legal representation.

Ms. Brown: I don't remember that she did. I remember she got it afterwards.

Dr. Ackermann: She had legal representation. And I was thinking of that case specifically when I was trying to go through in my mind to remember about the cases. But I think if we can make it clear to people to know that this is possible for them to do and also for them to know that it's not the easiest thing to do and it's not something that just because they feel something should be changed they can go ahead with it. Because it gets to be expensive for them, for people to do that.

Dr. Larson: And there was something else you said that I'm not sure you intended this or not. But it put me in mind of some other situations we've had where sometimes we need to explain a little bit about what we're doing to them. For example, appeals. I remember...

Mrs. Bertoldi: So what did I say, before you go on, what did I say?

Dr. Larson: I can't remember now and I didn't have a chance to read your paper, but I will. But sometimes when we do an appeal, you know, there will be drifting off into another area and we have to

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explain that that's very relevant but we're only here to consider her decision. And if there's something else that people want to say, that's great but it has no relevance on... if it has no relevance on her decision, then it doesn't mean anything. And that's just an example. But sometimes it's helpful for us if we sort of realize that there's a misunderstanding, just to explain what we're doing and what our limitations are.

Mrs. Bertoldi: Oh, absolutely I think we need to do that. And I think one of my suggestions was, is in the front part of the variance where you actually have a definition section, you know, actually stating not personal hardship, must run with the land, you know, like certain things that you really kind of have to slap them in the fact with. You know, before I represented banks, I did class action consumer fraud litigation for consumers, and that's a completely different area of the law where you really have to spoon feed your own clients very difficult areas of the law; you know, truth in lending, FDICP, all these different areas. And so I had to learn how to talk to people who didn't have educations, very complicated situations in which they actually had to talk intelligently in a deposition in order to win their case. And so I do understand; I did that for a lot of years before I represented banks and actually decided to make money and it's a very fine... so that's what, when I wrote this paper, that's what I had in mind was to be able to talk to the people who don't understand the law because, you know, I don't think everybody should have to get a lawyer in order to seek a variance. And I think that that is somewhat that happens and, you know, you already have a large fee for a variance. I think that we can't sit and counsel them on it. I mean, from here we can but not before they get a lawyer. So I think that we should make it more accessible to people so that people can go, you know what, maybe I'll try to apply for this first. But if people are looking at it, they're going oh, I have to get a lawyer and I don't think that's always necessarily fair. I mean, not everybody can afford a lawyer.

Mr. Grimes: Every variance application, when it comes to your office, is reviewed with your office.

Mrs. Musante: Yes.

Mr. Grimes: So, they're walked through the process...

Mrs. Bertoldi: Oh, they are, absolutely.

Mr. Grimes: ... and the issue of the hardship is explained in addition to what's written in the documentation, right?

Mrs. Musante: Yes.

Mr. Grimes: Okay. So I think that's where the key is, right? We can update... I'm never against updating and making more current documentation.

Mrs. Bertoldi: You don't have to, I'm not going to be offended. I had to do this for a class.

Mr. Grimes: I think it's worth revisiting all of these things on a regular basis, because there's always process improvements that can be made. I think working with Melody's office getting a couple folks together to do it together, getting some opposing viewpoints is always helpful. So, I'm not opposed to having a subcommittee. I like that idea. It gets a couple of folks involved, especially somebody with more recent training. Maybe somebody that sat through several variances, some experience. Those two positions would be I think well represented for that. And then a meeting with Melody's office to discuss any process improvements that could take place.

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Dr. Larson: You know, one thing that...

Mr. Grimes: (Inaudible) would have to be approved by the Zoning Administrator also because we don't want to go down that road, to Mr. Apicella's point, of putting something in writing that could hurt the County and/or us.

Mrs. Bertoldi: Well, you wouldn't be giving any type of legal like interpretation at all. And you have to be very careful about that, yes.

Mr. Grimes: Exactly.

Mrs. Bertoldi: I thoroughly understand that.

Dr. Larson: Well, one of the things that has happened since we or since that subcommittee did their work on the previous variance package was the ex parte communication thing. And that might be worth a couple of sentences up front just to explain why nobody's coming out to talk to them individually about their variance, you know, because they may see that as some sort of, well, they're just not interested or aloof or whatever and they don't understand the law. So that might be an example of what you're talking about, too.

Mr. Grimes: Okay. Do we have any... is anybody opposed to doing a subcommittee?

Ms. Brown: I'm not opposed to a subcommittee, but my opinion is I'm not looking at it for a total teardown on this. I think we have a good package. I did the same assignment; we got high marks because everybody has to turn it in. My class was full and we had one of the better ones. So, I think we're good.

Mrs. Bertoldi: Yeah, my suggestions were only flushing out some questions, adding a few things. I mean, I'm not looking to retool.

Mr. Apicella: And I wasn't suggesting that. All I'm suggesting is, again, it's been a couple of years and other localities have probably tweaked their applications and there might be some language that they've already put in that we could amend to our application. Not starting from ground zero; and we didn't do that last time. We fine-tuned, we tweaked what was in front of us, so that's kind of the road I would suggest going forward on this.

Ms. Brown: Just if we're going to have a subcommittee, I wanted to make sure that that's understood, that we're not starting from scratch.

Mr. Grimes: Does anybody else want to volunteer for the other seat on that, somebody with some experience hearing on a few more variances?

Mr. Apicella: Come on, Dr. Larson.

Mr. Grimes: That's exactly what I was thinking.

Dr. Larson: Okay.

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Mr. Grimes: Excellent, excellent. I think we'll move forward on that one. Thank you very much for putting that document together. I think it was great.

Mrs. Bertoldi: Thank you.

Mr. Grimes: Additional other business. I know Mrs. Stefl wanted to bring up a couple items.

Mrs. Stefl: Well, it's been a while since I sent an email to the Board, but I noticed that the Gallahans, after we...

Mr. Grimes: Glasgows?

Mrs. Stefl: The Glasgows, sorry, we clearly stated that, you know, that no weddings would be held up on the second floor, we had conditions until they met. They stated and I meant to look up in my minutes that they said that they already had the loan, that they were looking to just begin the process. And then I saw a Go Fund Me account created by their daughter. And it really kind of put us in a really bad light. And it was almost to the effect of this mean, bad government, the man is coming down and saying we gotta do all these things and we're just a poor little farm trying to make it kind of thing. And so it really just kind of hit a nerve for me. And I sent it to the Board and then my other volunteer commitment sort of took precedent and I remembered it after a while, and I called Melanie to say hey, it's kind of weird; I haven't heard back from anyone. Sort of what's going on? Am I jumping the gun? Am I just being oversensitive and I need to buck it up buttercup? And I talked to her and she said that there had been communications within the County and that I guess a couple County employees went to an event, a couple of events there and noticed that they were using the second floor, that they did not get their loan. So, there was a lot of stuff that was kind of going on and I just sort of wanted to bring it out into the light and kind of see what's happening, what's not happening.

Ms. Brown: I have a comment about that. I... as you might recall, I was not in favor of letting them operate until they had met these safety conditions, for the public safety. I was not supported by this Board on that. I did talk to my, you know, County Supervisor about this when the email came out. (Inaudible) concern, that's bad PR for the County. I wanted her to know, and her comment was, well, why would they allow to continue when they weren't in compliance? And I had to say, well, because my Board decided to do that. So, we wouldn't have this problem had we waited.

Mr. Grimes: Well, I'd like to clarify something real quick on that. There was specific requirements that they have to be in compliance by December 1<sup>st</sup>. It's not even December 1<sup>st</sup> yet. We have no idea, nor is it our responsibility to follow up that they've received the two permits that were required for them to allow to continue operating. That's specifically what was in the letter from the County to the Glasgows was you need an electrical permit and you need to do, I don't remember what the second one was, but there was two things that they had to do which were really just permit related. There was no other requirements...

Ms. Brown: There was fire issues and stuff as I recall. The Fire Marshal...

Mr. Grimes: It was for them to continue operating, they had to get two permits. That was it. They didn't have to fix anything. They had to be moving in a direction to fix. And I appreciate that the Board has a concern what's happening and maybe the way that the parties wrote those emails. I went to that Go Fund Me page and I did not see any derogatory comments from the person that was trying to raise the money. I saw some derogatory comments towards the County from comments on the board which

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are different; they come from other citizens outside of that. But, again, in either case, it's the County's job for enforcement and it's great to ask a question to see where things have gone. But they still don't even have to be in compliance till tomorrow. So... Thursday, I'm sorry, it's the 29<sup>th</sup>. So, I just, you know, we didn't...

Ms. Brown: My concern was granting the special exception when they don't have all their ducks in a row. And I felt we were jeopardizing the public's safety because this was not little things; this was fire stuff. I mean, we're talking candles and straw and you know.

Mr. Grimes: I understand your position.

Mrs. Bertoldi: You know, if I may comment on this. Originally, I mean, I was totally with you, Ms. Brown, but upon as the case was evolving, the reason why I asked staff specific questions about what the actual County employees felt, the Fire Marshal and how they felt, you know, what was important. And that's not our job to understand and go to the site and look at it and say if they thought it was so unsafe, they would have shut them down. And I felt that that was overstepping our bounds. While I didn't like it, it is still not our responsibility, in my opinion, to be saying well, because I'm concerned about citizens, I'm going to take one step further over the Fire Marshal and decide that we're going to shut them down. That's the reason why, if you remember, I asked several questions of staff. Well, what did the Fire... so they (inaudible) requiring this, so they didn't say that they have to be shut down. And if, you know, they said no. I mean, I was actually trying to look in the minutes here; it's kind of hard to at a glance. And so that's the reason why I flipped. Because I was a thousand percent with you but, you know, as we are quasi-judicial, it is not... and even though we are... we have leeway to grant those, I don't think it's our position to say you know what, I know better than you, Fire Marshal, even though you went there and did this.

Ms. Brown: That wasn't the case. My issue was there was a small clause, if you are granted a special exception by the Board of Zoning Appeals. And I'm thinking, my personal self, was that they figured we would no way would approve something so out of compliance.

Mrs. Bertoldi: But they would not have let them... yeah, but they gave them till December 1<sup>st</sup> and they didn't say no you can't have any there.

Mr. Kim: (Inaudible).

Mrs. Bertoldi: Right, so that's the reason why I chose. So, I mean, I hear you but I still think even though it was a tough decision, I felt that that was overstepping our bounds. I just want to say that for the record. Because I did feel that it was overstepping our bounds, if we weren't going to allow them to have weddings. You know, the fact that they were going to have weddings that weekend and, you know that was not... that did not have any influence on me. Sorry. I mean, that's really too bad. That doesn't pull out my heart strings. I was looking at what I felt was right and within the realm of our ability and how far we could go on that decision.

Ms. Brown: Well, I'm just mentioning my Supervisor was surprised.

Mrs. Bertoldi: No, I know, I'm just saying.

Ms. Brown: What is our next step?

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Mr. Grimes: But again, I think the record's real clear from last month where everybody stands, the positions were stated, we're not going to change our position or vote at this point. We could ask the County for a follow-up to see where they are, but I don't know that they would have an update.

Mrs. Musante: I have some additional information. They actually were shut down. They did not listen to what the building official said by not using the second floor. They were using the second floor. She actually sent them a letter, a certified letter, stating that they could no longer use the facility. There has been several meetings with County staff and Supervisors with the Glasgows since then but I do not have an update from there.

Ms. Brown: I thought they could do everything until the 1<sup>st</sup>? No?

Mr. Grimes: They violated the conditions of that letter which stated they can't use the second floor.

Mrs. Musante: Yes.

Ms. Brown: So, how does this work? Because we were discussing this earlier because, you know, my very first case on here was our brewery out at the campground. How does the special exception... does it automatic that it's revoked? Or do we have to revoke it? It comes to us, does it not?

Mrs. Musante: We would have to bring it back to you to revoke it.

Ms. Brown: That's what I thought, okay, okay. How... are they going to be working on getting this better?

Mrs. Musante: I don't know what's happened since the last meeting. I had asked for an update and I have not gotten one. From the meeting they actually met with our County Administrator.

Ms. Brown: I haven't checked the Go Fund Me site in several weeks. Is it still...?

Mrs. Musante: I haven't checked it.

Mrs. Stefl: I have not because I have another volunteer commitment that took a lot of precedent.

Ms. Brown: Well, I guess we'll know when you bring it back to us; is that how it works?

Mrs. Musante: I'm sorry. I'm trying to listen to both of you at the same time and it just doesn't work.

Ms. Brown: How soon would it come back to us to revoke the special exception if they choose not to comply?

Mrs. Blackburn: We'll have to look into that. We have to get first the update on what's going on.

Ms. Brown: So it won't be December or January?

Mrs. Musante: No.

Ms. Brown: Okay.

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Mrs. Blackburn: But just to let you know, the administration did get all the minutes from the meeting and had everything laid out for them as to what was discussed in our meeting. So they were well aware of the information that you were given to make your decisions.

Mr. Grimes: Mrs. Stefl, did you have another item? I could not remember. Was it ust that one, or two?

Mrs. Stefl: It was just that one.

Mr. Grimes: Okay. Any other business? I'd like to bring up one; December meeting. Do we have a case?

Mrs. Musante: No.

Mr. Grimes: That makes it easy.

Mrs. Musante: Well you had already voted back in January not to have a December meeting.

Mr. Grimes: Well, I forgot back in January that we moved this meeting a week too.

Mrs. Musante: Yep. So nope, nothing for December.

Mr. Grimes: Okay. Any updates on any other cases?

Mrs. Musante: We're going to have an appeal come in to you probably for January.

Mr. Grimes: (Inaudible - microphone not on).

Mrs. Musante: No, it's on the appeal of a determination she made.

Mr. Kim: What's the status on Wild... the brewery? If you don't mind me asking.

Mrs. Musante: I don't. Of course, you saw him in the audience.

Mr. Kim: Oh, was that him? Okay.

Ms. Brown: That was him?

Mrs. Musante: He did not... he submitted his application...

Mr. Kim: But not on time?

Mrs. Musante: He submitted it on time, but he did not give me the information that I needed. The application was not complete. So, I gave him an additional time of November the 7<sup>th</sup> and, as of close of business that day he had not supplied me with the additional information that I needed. I'm not sure why he was out here tonight.

Mr. Grimes: Any other business?



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Member of the audience: I have a question; I don't know if it's appropriate for me to ask at this point, since you were asking you don't know why people were out here.

Ms. Brown: Everybody's welcome.

Mr. Grimes: Could you stand up and state your name? I mean, we closed the public hearing but (inaudible).

Mr. Waters: I wasn't aware of the nature of this meeting. My name is Parrish Waters. And the reason I came tonight is really education for myself, to understand how this works. The entire area I live in is being... or there's a petition to rezone; it's called Falmouth Village by Mr. Lloyd Taylor who owns four of five of the properties right around there. And I came here tonight really to figure out this thing works. And I assume that you're more zoning appeals and not zoning changes, if he's asking. Is that the Planning Commission?

Mr. Apicella: Yes.

Mr. Waters: Okay. So I'll have to make sure I go to that meeting just to understand.

Ms. Brown: You're welcome any time.

Mrs. Bertoldi: You can watch it on TV too. You can watch the Planning Commission on TV.

Mr. Waters: Okay.

Mrs. Blackburn: The Planning Commission would give recommendations and the Board of Supervisors would take the final vote, and both are on TV.

Mr. Waters: I'd rather be here so I can say something if I wanted to.

Ms. Brown: If you have a computer, I think they stream them, don't they?

Mr. Waters: They stream them online? Okay. I can definitely do that.

Ms. Brown: And you're welcome at our meetings. We don't rate high enough for televised.

Mr. Waters: No, no, that's fine. This was actually educational. And I figure there will probably be some amendments or allowances asked for by those properties.

Mrs. Blackburn: We're hoping not. And do please contact the Planning office and we can fill you in on any information we have on what's going on in Falmouth.

Mr. Waters: Good, good. Thank you so much.

Mr. Grimes: Thank you.

**ADJOURNMENT**

Ms. Brown: Mr. Chairman, can I make a motion to adjourn?

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Mr. Grimes: Yes you can.

Ms. Brown: I'd like to make a motion to adjourn tonight. Can I get a second?

Mr. Kim: I second that.

Mr. Grimes: We have a motion to adjourn. All those in favor say aye. Nays are zero. Thank you everyone. Have a Happy Holiday, Merry Christmas and a great New Year.

With no further business to discuss, the meeting adjourned at 8:31 p.m.