

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
March 28, 2017

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) of Tuesday, March 28, 2017, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Robert Grimes in the Board of Supervisors Chambers of the George L. Gordon, Jr., Government Center.

MEMBERS PRESENT: Robert Grimes, Steven Apicella, Ernest Ackermann, Adela Bertoldi, Dana Brown, Dean Larson, Heather Stefl (7:05), Robert Gibbons

MEMBERS ABSENT: Danny Kim

STAFF PRESENT: Susan Blackburn, Melody Musante, Stacie Stinnette

DETERMINATION OF QUORUM

Mr. Grimes: Good evening ladies and gentlemen. 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 Zoning 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 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 seven voting members present: myself Robert Grimes, Mr. Apicella, Ms. Brown, Dr. Larson, Dr. Ackermann, Ms. Adela Bertoldi, and Mr. Gibbons, who will be sitting in to hear the second case because I will be recusing myself for the second case we are hearing this evening. County staff represented tonight by Mrs. Blackburn, the Zoning Administrator, Mrs. Musante, Zoning Manager, and Mrs. Stinnette, Senior Administrative Associate. 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 will be a 3 minute time limit for each individual speaker, 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 represent and 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 of the Board must vote for approval. In order to allow the Board time for appropriate review, the applicant or applicant's representative is required to submit relevant material to the Department of Zoning and Planning 10 business days prior to this hearing, to be included in the staff report. The Board may accept additional relevant material from the applicant or the applicant's representative during the hearing; however, large amounts of additional material may require a deferral, at the Board's option, on behalf of the applicant to allow the Board time to consider the additional material. Members of the public and/or staff may also submit relevant material during the hearing. The applicants should be aware that we have seven voting members present, and you must

***Board of Zoning Appeals Minutes
March 28, 2017***

have four affirmative votes to approve an application. If you do not think... strike that. If you do not think that there are enough members present 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 this 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 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'll now ask that anyone with a cell phone, pager, 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 that 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?

Members of the audience: I do.

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

Mrs. Musante: There are no changes.

Mr. Grimes: Thank you. Before we hear the first case, does any Board member wish to make any declaration or statement concerning any case to be heard tonight? And before I do that, Mrs. Stefl is here so we now have the full Board. I knew you were going to make it just in time. So, before we hear the first case, does any Board member wish to make any declaration or statement concerning any cases before the Board? Ms. Brown?

DECLARATIONS OF DISQUALIFICATION

Ms. Brown: Yes. I just wanted to state that I visited the property at 16 Buck Road yesterday. I spoke to no one. And I also went today just down to look at the empty lot, down there at Banks Ford Parkway and Warrenton Road, and I also wanted to disclose that Mr. Leming lives in my magisterial district and his wife is my School Board member, but that will not affect my ruling on the case. I can be impartial. Thank you.

Mr. Grimes: Any other declarations? I have one to make. I will be recusing myself from the second case, which is A17-02/17151682. Yes ma'am.

Ms. Bertoldi: Since Ms. Brown also stated, I'll also state that I also live in the same magisterial district as Mr. Leming and Patricia Healy is also my School Board representative, but it will not affect any of my decisions here today.

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

PUBLIC HEARINGS

Board of Zoning Appeals Minutes
March 28, 2017

1. SE17-03/17151691 - Michael Wilsher - Requests a Special Exception per Stafford County Code, Sec. 28-35, Table 3.1, "District uses and standards," R-1, Suburban Residential, to allow a home business for the sale of firearms and firearm accessories on Tax Map Parcel No. 19D2-1-258. The property is zoned R-1, Suburban Residential, located at 16 Buck Road, Vista Woods Subdivision.

Mrs. Musante: Case SE17-03/17151691, Michael Wilsher, requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District uses and standards," for the R-1, Suburban Residential, to allow a home business for the sale of firearms and firearm accessories on Tax Map Parcel No. 19D2-1-258. The property is zoned R-1, Suburban Residential, located at 16 Buck Road, in the Vista Woods Subdivision. You have the application, owner's consent, application affidavit, plat of the property, and a diagram of the area to be used. The applicant is requesting a Special Exception to operate a home business that will consist of firearm and accessory sales over the internet. The applicant states he does not intend to maintain an inventory of any kind. The only customers that will be allowed at the residence will be those who 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. Firearms and accessories will be stored for no longer than five days onsite. The applicant has stated that the customer visits will be by appointment only during the days and hours of Monday through Friday from 4:00 p.m. to 6:00 p.m.; Saturday and Sunday 8:00 a.m. to 6:00 p.m. As shown in the drawing and 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. Due to the code requiring customers by appointment only, he is only required one additional space. He anticipates 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 the single-family dwelling is 2,485 square feet, and 108 square feet will be used for the business which is comprised of an office and a gun safe. 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.

Mr. Grimes: Thank you. Are there any questions for staff? Yes?

Ms. Bertoldi: Tell me if I need to ask the applicant this, but I did notice in the property ownership it said that, in the application on page 9, that it was also held in interest by Tabetha Dace but then she signed it as Tabetha Wilsher. Did you... I mean, I'm sure they are the same people, but did you find out why there was two different names, Tabetha Dace and Tabetha Wilsher?

Mrs. Musante: Tabetha Dace is her maiden name.

Ms. Bertoldi: Right.

Mrs. Musante: They have since married, but his name has not been put on the deed.

Ms. Bertoldi: Okay, so you have a reasoning, meaning that it was her maiden and they just never changed it off of the deed and then she signed it after when she changed her name.

Mrs. Musante: Correct.

Ms. Bertoldi: Okay, thank you. I just wanted a clarification.

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Grimes: Thank you. Any other questions for staff? Thank you. Will the applicant or his or her representative please come forward and present their case.

Mr. Wilsher: My name is Michael Wilsher. I don't really know how to present my case other than what has already been said here and the documents that you guys received. It is my intention, or hopes, to open a home business to sell firearms and firearm accessories over the internet for profit. Really, it's kind of hopefully something that will carry into retirement over the next 8 years. I don't know what else to present other than what I have here. This is a whole new process for me.

Mr. Grimes: That's fine.

Mr. Wilsher: But if you have questions, please certainly I'm willing to...

Mr. Grimes: I'm sure that will. Is there any questions for the applicant? Yes, Ms. Brown.

Ms. Brown: Hi. I have a couple questions, just regarding tax. You're going to be buying and selling, so are you going to be collecting sales tax and then remitting that yourself?

Mr. Wilsher: Yes, I will be.

Ms. Brown: Okay. That's all I have for right now, thank you.

Mr. Grimes: Yes sir.

Dr. Ackermann: So what types of accessories?

Mr. Wilsher: Accessories are anything related to firearms; that means magazines, it could be firearms parts, so on and so forth. It could be holsters. It could be any of those types of items.

Dr. Ackermann: Yeah, I've never purchased a firearm so bear with me.

Mr. Wilsher: Oh, okay.

Dr. Ackermann: So, how are the firearms delivered? I mean, do they come in a box or...?

Mr. Wilsher: So, what happens is, the firearms are delivered to me. I have records I have to keep on the firearm for the transfer. So, if I transfer a firearm to an individual myself, I have to take appropriate steps to grab the serial number off the firearm, who I'm transferring it to, and so on and so forth. That goes into a bound book before I transfer that firearm to the individual. That's assuming they pass the background check before that transfer occurs of course. That's if it's an onsite transfer. If they transfer it to another FFL, then I have to provide my FFL information to wherever else that firearm may be going.

Dr. Ackermann: I see. And are the firearms ready for use when you get them?

Mr. Wilsher: They're not loaded; they're ready for use. All firearms are sold that way, for the most part.

Dr. Ackermann: And how big is the gun safe?

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Wilsher: The gun safe is pretty big; I can fit inside of it... two of me can fit inside of it. I guess it'll hold about 40 firearms.

Dr. Ackermann: So you think it's definitely sufficient for the business?

Mr. Wilsher: Yes.

Dr. Ackermann: I have an interest in suicide prevention... I'm sure we all do, as a matter of fact.

Mr. Wilsher: Absolutely.

Dr. Ackermann: And there's a Rappahannock Area Community Services Board which is a state agency that serves our region. There's a program, I just want to tell you about it, called Lock and Talk, and they're providing free trigger locks and cable locks. And I don't know if you wanted any of those. You can give them to your customers.

Mr. Wilsher: I would be very interested in that. I certainly have no problem including them. In fact, I know that some states require firearms to be sold with locks; some states don't. So, as far as I'm concerning, if you have a firearm, it should be locked up to begin with. So that's kind of my personal take on it, but I would be interested.

Dr. Ackermann: (Inaudible) and I don't know if you're going to stay till the end, but these are yours if you want them.

Mr. Wilsher: Oh, please, yes.

Dr. Ackermann: Okay, thank you.

Mr. Grimes: Yes Ms. Brown.

Dr. Larson: Okay, thank you.

Mr. Grimes: Dr. Larson.

Dr. Larson: Your gun safe. Where is it located?

Mr. Wilsher: It is located in the basement of the house, up next to a wall.

Dr. Larson: Is it bolted to your floor.

Mr. Wilsher: It is not currently bolted to the floor. The foundation may not support that; I'm not sure if it will or won't. But it's a fairly large safe.

Dr. Larson: And you'll be also dealing in accessories I hear.

Mr. Wilsher: Yes.

Dr. Larson: How will that be handled?

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Wilsher: So, accessories are pretty much over the internet. Some will be drop-shipped, some will be shipped to me and then shipped on. Hopefully I can get most of that stuff drop-shipped. It depends on who the supplier is, so there are a variety of suppliers that would be involved with this.

Dr. Larson: So, would it be the same kind of thing as an actual weapon where somebody would purchase it on the internet, it would be shipped to your house for pickup by a customer?

Mr. Wilsher: Okay, so are you talking accessories?

Dr. Larson: Yes.

Mr. Wilsher: Okay, so accessories aren't weapons.

Dr. Larson: I know. But I'm asking the question.

Mr. Wilsher: So the question is, is someone may come by for those items; yes. If I'm understanding what you're asking.

Dr. Larson: Okay, I guess what I'm getting at is there is a restriction that you can't accept money on your premises for anything.

Mr. Wilsher: Absolutely.

Dr. Larson: So, the...

Mr. Wilsher: Yeah, it would have to be prepaid for... oh, I'm sorry, I get where you're going with this. Okay, so, it'll be ordered on a website, credit card or whatever the method payments that I can accept electronically. I don't intend to take any cash on the property at all.

Dr. Larson: No payment on the property.

Mr. Wilsher: No.

Dr. Larson: No further questions.

Mr. Grimes: Ms. Brown?

Ms. Brown: I remembered what I wanted to ask you now. What class of ATF license are you applying for?

Mr. Wilsher: I am planning for a... hold on, because I forget because I've been back and forth. I think it's an 0307 but I have to look. Hold on just a second and I'll tell you. Because I've been back and forth with this.

Ms. Brown: Okay, that's fine. While you're looking, I just wanted to say your business hours are good. I see it's from 4 to 6 p.m. I don't know if anybody realized when they went over there, but the property is inside of a school zone. It's within a thousand feet of Garrisonville Elementary and the flashing sign for the school zone to slow down to 25 is actually on the property or in the easement in front of the property.

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Wilsher: I don't have that paperwork here with me. Wait a minute, I might have it right here. My apologies; I'm unprepared for that question.

Ms. Brown: I think it would be like 1 through 7, something like that, like a class 3 or class 1.

Mr. Wilsher: I am going to have to say that I don't know because I forget the class numbers. No I don't have it here. So, I don't have that information with me. Anyway, I can get it to you if you would like, but I do not have that with me on the spot.

Ms. Brown: That's kind of important because it could be a manufacturing, it could be any one of those.

Mr. Wilsher: Okay, that's one thing, yeah. I don't have any intention of doing manufacturing, and the reason for that is twofold. One, I don't have any interest in it, and two, I don't want to have to get caught up in the State Department's exportation. You have to file with the State Department if you do any kind of manufacturing. That means any kind of drilling or machining on a weapon, and that's another \$3,000 a year or whatever it is, and a whole bunch of extra steps you have to go through. But, bottom line is, I'm not interested in manufacturing.

Ms. Brown: So, you don't know if it's a 1, 2, 3, 4, or 5 class?

Mr. Wilsher: I don't because I don't remember the class numbers and I should, but I don't. Most people don't. They know specifically what they're applying for, but I haven't gone down that road yet because I wanted to be sure that I had permission and I could do this before I went down the steps of trying to get my FFL. I do not have my FFL currently.

Ms. Brown: Okay, thank you.

Mr. Grimes: So, Mr. Wilsher, the reason you're here is that this is a requirement of the ATF for you to have a business license.

Mr. Wilsher: Yes.

Mr. Grimes: And when you approached the Zoning Office to get a business license, they guided you through this process and basically told you that you were going to have to apply for a Home Business because that's the only one they can give a business license to.

Mr. Wilsher: Yes.

Mr. Grimes: Otherwise, you would have done this as a Home Occupation, correct?

Mr. Wilsher: Yes.

Mr. Grimes: And you wouldn't have had to come in here at all.

Mr. Wilsher: Right.

Mr. Grimes: Okay. And, what is your experience in this business? Have you done this before or is this new to you?

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Wilsher: The sales of firearms is new to me. I have some knowledge of it from reading about it and researching and stuff like this. Other than that, I don't have, for the sales of firearms, I don't have a whole lot of experience with that at all, other than I've taken an FFL course, an online FFL course. And that's it. I've got 40 years of firearms experience but (inaudible).

Mr. Grimes: That was going to be my next question. So what level experience do you have with handling and using firearms?

Mr. Wilsher: I've got some close quarter combat training, I've got... well, actually I've got quite a bit of training. I've got a variety of training with firearms, years of hunting, stuff like that as well.

Mr. Grimes: Okay. And you've taken the various safety courses online?

Mr. Wilsher: Yes, and I also hold a concealed carry permit.

Mr. Grimes: Which requires a certain level of safety courses to be taken to acquire that, correct?

Mr. Wilsher: Yes, for Utah as well as Virginia.

Mr. Grimes: And have you read the suggested development conditions that were imposed by the office?

Mr. Wilsher: Yes, I sure did.

Mr. Grimes: Do you have any comments, exceptions, concerns about the conditions as stated?

Mr. Wilsher: I can abide by all of those. Even though they're suggestions, I can actually abide by them. I think they're pretty good suggestions.

Mr. Grimes: And that includes the professionally monitored security system?

Mr. Wilsher: Absolutely.

Mr. Grimes: Okay. And I didn't see in the development conditions the safe mentioned. I see all weapons associated with the business will be locked in separate containers that are secure and located within a room of the home that is secured with a deadbolt.

Mr. Wilsher: That would be where the safe is.

Mr. Grimes: So, these will be locked in separate containers inside of a locked safe inside of a locked room?

Mr. Wilsher: Well, they'll actually be in the... that was the one part that I did have a question about, the separate containers piece. They'll be in a safe. There's no way to put them in separate containers nor to make sense to put them in separate containers inside the safe. They will be labeled per customer and per requirement from the ATF. And everything has to belong to somebody in there but the customer it has to be labeled.

Mr. Grimes: So, typically, when weapons are shipped from a manufacturer or some Gander Mountain or whoever it might be to you for the transfer, they usually arrive in a case. You're going to take it out of the case and then put it into the safe that's located within a locked room.

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Wilsher: If I can't move that firearm on, I'll do that, yes. I have to do that. I can't let it sit in there. A lot of times firearms will be sent in a simple cardboard box.

Mr. Grimes: Long guns especially, right?

Mr. Wilsher: Yeah, exactly, yeah, so it's not really a good place to keep it.

Mr. Grimes: Okay. Are there any other questions for the applicant? Yes, Ms. Bertoldi.

Ms. Bertoldi: I just have a couple questions. I know you said in the application that you estimated about three customers per week. How do you derive at that number?

Mr. Wilsher: It's a high number. I really, to be quite honest with you, I'm hoping that I have fewer than that. But I randomly picked that number saying, you know what, at the most, if things got busy and if I had people here locally interested, and I suspect that volume will be low, that I could potentially have that and that would really be more of surge number and not a typical number.

Ms. Bertoldi: How do you derive at three customers per week as a high number, I guess I'm asking. Because it sounds like this is kind of a new business for you, it's not from experience. So I just want to know where you came up that we're on the same page, you know, to make sure that, you know... you know what I'm saying, right?

Mr. Wilsher: Yeah, yeah.

Ms. Bertoldi: I'd like to know where you derive that this is a high number.

Mr. Wilsher: I really pulled that number out of the air. I really expect not more than one, if one. I said okay, anytime I do an estimate... if I were to do an estimate for building something, I'd build in some buffer room. That's my buffer room. I said, you know what? I'll take a number, I'll multiply it by three. I'm not going to ever have that. And if we decide that that's too many, we can always lower that number. And that was my contention is, if you guys said, hey look, you can only have two, I'm okay with that.

Ms. Bertoldi: Okay. And then my other question is, is you said that you would not be keeping any I guess merchandise for lack of better words for longer than five days.

Mr. Wilsher: Yes.

Ms. Bertoldi: Is that a realistic number? I mean, by the time that you get it and then, you know, what if someone, you know, scheduling and I mean where did you come up with five days? I just want to make sure that you've allowed... you're asking and you've allowed yourself, you know, enough time that we make sure that, you know, we're all on the same page. Because if it says five days, you can't have it longer than five days.

Mr. Wilsher: I certainly have no problem with that at all. So, what I did was I talked to other FFL's, what is your turn around on stuff? How long are you holding stuff? How long, you know... what's the worst case scenario? They have had some worst case scenarios where people just... a guy orders something, it comes in, and he goes on vacation, you know, and then it sits. There's always a potential for that. But that's so rare with this kind of stuff, people don't like to let that kind of stuff sit, particularly with the firearms. Accessories, yeah, you might get an accessory maybe, but a firearm, no,

***Board of Zoning Appeals Minutes
March 28, 2017***

people want that quick. And I want the stuff out, moved out quick; I don't want to hold on to anything. I have no interest in holding any kind of inventory. I'm responsible for the inventory. If something happens to that inventory, it's money I lose.

Ms. Bertoldi: And my last question is, I know this was mentioned, but one of my questions is do you already have a professional secured system in your house or do you have to install one?

Mr. Wilsher: I have to get one installed. I didn't want to do anything more, putting money into this until I knew how far I was going to go with it. It just didn't make any business sense to me.

Ms. Bertoldi: Okay. Alright, that's it. Thank you.

Mr. Grimes: Any other questions for the applicant? Mrs. Stefl.

Mrs. Stefl: As I'm looking at the configuration of the home, I guess I've got the... it's the downstairs and so like the garage would be say up in the upper right off the page. You don't have it drawn on the photo that I'm looking at that says lower level.

Mr. Wilsher: Let me look real quick here.

Mrs. Stefl: I mean, you have the one that shows the house and the garage and driveway, because you enter and park on Choptank. That's where your driveway and the customers will be utilizing the driveway there.

Mr. Wilsher: Yes.

Mrs. Stefl: So then, are you going to have them entering what is your exterior door that's off your den? Or are you going to ask that they go to your front door?

Mr. Wilsher: I have a door... oh, hold on, let me see if the door is drawn. There's a door on the side of the house...

Mrs. Stefl: Right.

Mr. Wilsher: ... that walks right into the basement that can be accessed, so that's the door they'd be entering in.

Mrs. Stefl: Okay. So would you have any kind of signage to indicate, you know, your business name entrance there and private, you know, at the front door or something?

Mr. Wilsher: Absolutely not actually.

Mrs. Stefl: Okay.

Mr. Wilsher: Before I would have someone come out, I'm going to tell them where they need to go. I don't want signage on the house.

Mrs. Stefl: Alright. And so then any business that would be conducted in what is called the office for the business, the customer and you will walk through that den, there wouldn't be like a desk or any kind of reception or area like that like, hey, sit here while I go into my office and get your stuff?

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Wilsher: They'll actually be...

Mrs. Stefl: Or would all business be in that office?

Mr. Wilsher: All business will be conducted in that office.

Mrs. Stefl: Okay, alright. I guess that was my concern Mr. Chairman. Alright, thank you.

Mr. Grimes: Thank you. Any other questions for the applicant? Hearing none, Mr. Wilsher you can take a seat for the moment.

Mr. Wilsher: Okay.

Mr. Grimes: Any member of the public who wishes to speak in support of this application please come forward. Seeing none, any member of the public who wishes to speak in opposition of this application please come forward. Seeing none, I guess you don't have to respond to any questions Mr. Wilsher from comments. We'll now close the public hearing for this application and bring the matter back to the Board for discussion. I'd like to just first look at the suggested development conditions. I think that there's a... I'd like to suggest a change to number 4. He does have a safe, so I'd like to put that in there that all weapons associated with the business will be locked in a safe that is secured and located with a room of the home that is secured with a deadbolt lock. I'll acknowledge that we expect all the firearms to be stored in the safe since they won't be stored in separate containers, which we've seen done in the past.

Ms. Brown: I have a question about that then.

Mr. Grimes: Yes.

Ms. Brown: Will he be... when the gun is removed from the house, will it be in a separate container that it was shipped in? Or how will it be... just handed over?

Mr. Grimes: We could ask the applicant, but I would suspect that it's going to be handed over in the packaging that it was delivered to him. And again, sometimes it's a cardboard box, sometimes it's a plastic case, sometimes it's a metal case.

Ms. Brown: Again, the reason I'm asking is because I looked up the school zone thing for the... it's a federal law about the thousand feet. And I don't know how you would even enforce this, but apparently, when anybody is driving, licensed or not driving, with a firearm through a school zone on a public street, it has to be locked in a box, separately. It can't be out. Only while you're in that thousand foot part of the school zone if it's a public thoroughway which Choptank is, which is how he would get to his house. So, I wanted to make sure that the customer was leaving with it in a box, not...

Mr. Grimes: I'll let Mr. Wilsher speak to it, but again, my experience has been that firearms, when they leave the FFL, they have to be locked in the State of Virginia. But we can always bring the applicant back up for additional questions.

Ms. Brown: Can we ask him that? That's kind of important.

Mr. Wilsher: I'll come back up. I hear you talking up there.

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Grimes: Can you clarify those two issues?

Mr. Wilsher: And actually, you kind of clarified it for me. First of all, they'll leave the house in a box. I don't want people walking out of the house with guns. It would make some people nervous and I can certainly understand that. And it'll be probably the same material that they were packaged in. As far as it being locked in the State of Virginia, I believe you are correct. They are supposed to be locked when they leave. If they are not, well, I certainly have some locks that I can start with. And I certainly don't have a problem with that.

Ms. Brown: Is there any reason that you wouldn't store them in the safe in the box that they came in that you're going to be leaving?

Mr. Wilsher: Because of size constraints. So, the box, the packaging... if it's a metal container, some of the metal containers are fairly big. The plastic containers are fairly big too. I would really lose a lot of space by doing that. So I simply take the firearm... I have to take the firearms out of the packaging anyway to get serial numbers, record serial numbers and information off the firearm anyway. So, when I do that, then it goes in the safe or it gets shipped on.

Ms. Brown: Okay, thank you.

Dr. Larson: Mr. Chairman, I have a follow-up question.

Mr. Grimes: Yes.

Dr. Larson: First of all, I see no problem with taking the guns out of the... what they arrived to your house in, whatever it is, a box or something. Because the gun safe... a locked gun safe is perfectly fine and it's about as good as you're going to get for something like this. I guess the question I had was, when people take the guns from your house, is there a requirement in the State of Virginia to put it in the trunk?

Mr. Wilsher: I don't believe that there is. Actually, there might be a federal requirement and it's something that I have to look, but anybody can transport a firearm. It has to be unlocked, out of your reach, and I believe it has to be at the farthest part of your vehicle that like if you don't have a trunk, if you have a jeep you don't have a trunk, it has to be all the way in the back. It can't be within the driver's reach. And then typically, the firearm has to be unloaded and the... if there is any ammo, it's got to be separate from the firearm.

Dr. Larson: Thank you.

Mr. Grimes: That... for clarification, I believe that only applies if you don't have a concealed carry.

Mr. Wilsher: Yes, exactly.

Mr. Grimes: Because a concealed carry, technically they could walk out with it on their hip, because Virginia is an open carry state.

Mr. Wilsher: That's true.

Ms. Brown: Well, except in the school zone. That was the exception.

***Board of Zoning Appeals Minutes
March 28, 2017***

Mrs. Stefl: No

Ms. Brown: If it's on a public street.

Mrs. Stefl: He... no. He can, as he said, put it on his hip as they were leaving.

Ms. Brown: That's contrary to what I read last night, so... And it only applies if it's a public road in the thousand foot school zone. And I know it's... I don't know how you would even enforce that, but that is what you're supposed to do if you are carrying one through a school zone. Now, perhaps, because it's going to be after 4 p.m., it wouldn't be considered a school zone. When do the light... I know that the elementary school gets out at 3:40.

Mrs. Stefl: It's school property versus school zone.

Ms. Brown: No, it's school zone. It's a thousand feet from the property. There's both.

Dr. Ackermann: The Sheriff's Office site says that the flashing light goes off at 4:20 p.m.

Ms. Brown: At 4:20, okay.

Dr. Ackermann: But the school zone, it goes from 2:45 to 3:45. That's when the...

Ms. Brown: Well, the school gets out I think at 3:40, so they're doing pick-up and buses, and kids are walking home (inaudible).

Dr. Larson: Mr. Chairman, might I suggest that the applicant doesn't have any control over these regulations and we move on.

Mr. Grimes: Mr. Wilsher, you can take a seat unless we have a follow-up.

Mr. Wilsher: Alright, thank you.

Mr. Grimes: We can bring this... continue our discussions here. Is there any other comments on the suggested development conditions?

Ms. Bertoldi: Yes, I do.

Mr. Grimes: Yes ma'am.

Ms. Bertoldi: On number 6, where it says applicant must provide and maintain a professionally monitored security system, I think we should add some language, you know, stating before he accepts merchandise, guns, however you want to word it. But I think that it's very important that that is actually in place and we state it must be in place before he can accept any.

Mr. Grimes: I believe that the... just a comment on that... I believe that the suggested development conditions all have to be complied with before it's signed off on. So, we would be adding something that would be a little bit redundant because the development conditions, if there are any that apply to the physical residence and/or his operation of the business, have to be done prior to this being approved and signed off on and issued the...

***Board of Zoning Appeals Minutes
March 28, 2017***

Ms. Bertoldi: I think it's assumed that, but where does exactly it say that? Like I don't see it on...

Mr. Grimes: That's been... it's all development conditions for all special exceptions.

Ms. Bertoldi: Alright.

Mr. Grimes: Melody, can you kind of elaborate on that?

Mrs. Musante: What'll happen is...

Mr. Grimes: The process?

Mrs. Musante: ... after he, if this is approved, he'll come in and apply for a Certificate of Occupancy. He has to comply with all of these conditions prior to us signing off on his Certificate of Occupancy.

Ms. Bertoldi: Gotcha, okay. Alright.

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

Dr. Larson: Mr. Chairman, I'd just like to note something.

Mr. Grimes: Yes.

Dr. Larson: One of the conditions is the firearms and accessories shall be stored for no longer than five days. And I note that the applicant has said that he has no intention of maintaining the inventory. But, basically, the fact that he can't store anything for more than five days suggests that you cannot maintain an inventory. The other thing I'd like to point out is that, and I just want to make sure this is very clear, retail sales are not permitted, so any kind of exchange of any kind of currency, not just cash -- credit card, anything else -- any kind of payment at your home isn't permitted. It has to all be done on the internet.

Mr. Wilshire: Sure.

Dr. Larson: Thank you.

Mr. Grimes: Any other comments? Discussion? Do we have a motion on this case?

Ms. Brown: Okay, I'll make one. I move to deny, and this should be no surprise, the application. A couple reasons: I don't... not comfortable approving something we have no kind of FFL that's going to be applied for. And I've said this before, our current code says no retail sales for home business in this particular zoning district. This is not a home business rural. Retail sales, defined as buying or acquiring something and reselling for profit; that's retailing, which is what he stated he's going to do. He also stated he's going to be collecting and remitting retail sales tax. Online sales are still retail sales and, in my opinion, no amount of semantics is going to change that. If you... online retailers doing business in Virginia, collecting pay, retail sales tax -- I even went to Gander Mountain today and attempted to buy a gun, put it in my shopping cart, and the first thing before I could check out was I needed to pay \$22 in sales tax on the \$350 gun... retail sales tax. Until the Board of Supervisors modifies or clarifies our code to say that online sales are exempt from retail, I can't support this as I feel it's a violation of our current code. I do know that the Board of Supervisors is getting ready to review the language to make

***Board of Zoning Appeals Minutes
March 28, 2017***

sure it reflects their intent; not my intent or anyone else's, but their intent. So, I move that we deny on that basis.

Mr. Grimes: Do we have any other motions or a second of the motion on the table from Ms. Brown?

Dr. Ackermann: I share some of Ms. Brown's sympathies, but given the actions we've taken in the past I feel that it would be ingenuous for me to second that motion at this point.

Ms. Brown: Well, I'd like to point out that each case is unique and we don't need to continue to make a bad mistake over and over again.

Dr. Larson: Mr. Chairman, I'm going to move that we approve the special exception in question.

Mr. Grimes: Are you submitting an alternate motion or substitute motion?

Dr. Larson: I note that the motion was not seconded, so it's not a motion on the table.

Mr. Grimes: Thank you.

Dr. Larson: I move that we approve the special exception with the development conditions that we have talked about and staff will read before the final motion. I will also note that when I was the Chair of the BZA, I talked with the Chairman, the then Chairman of the Board of Supervisors about the retail sales issue and explained what we were doing, and they had no objections. As I understand, the Planning Commission also agrees with what we're doing here. I concur with Dana that this is not... it's not written in the books, but I also submit that it's unclear in the age of the internet that our statute actually applies to that. So, that's why I'm moving to approve the special exception.

Mr. Grimes: Thank you. Do we have a second of the motion presented by Dr. Larson?

Ms. Bertoldi: I'll second.

Mr. Grimes: Second by Ms. Bertoldi. Would you like to elaborate on that second? I think, Mr. Larson, do you have anything to add on your...?

Dr. Larson: Nothing, no.

Ms. Bertoldi: I just concur. I concur. For time sake, I concur.

Mr. Grimes: Alright, I have a motion by Dr. Larson, seconded by Ms. Bertoldi to approve Special Exception SE17-03/17151691, with the development conditions. But before we vote on it, I'd like to go over the development conditions just one more time to make sure we only made a change to number 4 that it's correct. Can you read number 4 back to us?

Mrs. Musante: Yes. Number 4: all weapons associated with the business will be locked in a safe that is secured and located within a room of the home that is secured with a deadbolt lock.

Mr. Grimes: Thank you. All those in favor...

Dr. Larson: Mr. Chairman?

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Grimes: Yes.

Dr. Larson: Would you mind if they... if the staff reads all of the conditions for the record please?

Mr. Grimes: That's fine. Mrs. Musante?

Mrs. Musante: Number 1: Days and hours of operation: Monday through Friday 4:00 p.m. to 6:00 p.m.; Saturday and Sunday 8a.m. to 6:00 p.m. Number 2: Provide one off-street parking space for clients. 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 a safe that is secured and located within a room of the home that is secured with a deadbolt lock. Number 5: The business cannot engage in the retail sales of merchandise on the premises, meaning merchandise must be paid for online (there shall be no exchange of money concerning the firearms). Number 6: Applicant must provide and 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 onsite shall be prohibited. Number 9: Firearms and accessories shall be stored for no longer than five (5) days. Number 10: Ammunition must be stored in cans with no more than 5,000 rounds. Number 11: The applicant shall comply with all applicable 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 this applicant vacates the property and is non-transferable. And 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. So, we'll call for a vote to approve this special exception. All those in favor say aye.

Dr. Ackermann: Aye.

Mr. Apicella: Aye.

Ms. Bertoldi: Aye.

Dr. Larson: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye. All those opposed nay?

Ms. Brown: Nay.

Mr. Grimes: Thank you. This special exception is approved with the development conditions as stated. Mr. Wilsher, Melody's office will be in contact with you for your next steps. Thank you very much.

Mr. Wilsher: Thank you!

Mr. Grimes: Mr. Wilsher, don't forget your locks. Oh, there they are; thank you.

Mr. Wilsher: Thank you very much.

Dr. Ackermann: You're welcome.

Board of Zoning Appeals Minutes
March 28, 2017

Mr. Grimes: I will be handing over the Chair to Mr. Apicella for the second case. Thank you.

2. A17-02/17151682 - H. Clark Leming Agent for Redus Virginia Commercial, LLC - Per Stafford County Code, Sec. 28-349, "Appeals to board generally," the applicant is appealing a Zoning Administrator's determination letter dated January 18, 2017, to confirm whether the use of a freestanding emergency department (FSED) proposed for Tax Map Parcel No. 44Y-15C is a by-right use in the B-2, Urban Commercial Zoning District.

Mr. Apicella: Thank you Mr. Grimes. Okay, will staff read the second case?

Mrs. Musante: Case A17-02/17151682, H. Clark Leming Agent for Redus Virginia Commercial, LLC. Per Stafford County Code, Section 28-349, "Appeals to board generally," the applicant is appealing a Zoning Administrator's determination letter dated January 18, 2017, to confirm whether the use of a freestanding emergency department proposed for Tax Map Parcel No. 44Y-15C is a by-right use in the B-2, Urban Commercial Zoning District. You have the application, Owner's Consent Form, Zoning Administrator's Determination letter dated January 18, 2017, and a copy of the Ordinance O08-66. The applicant, Spotsylvania Medical Center, Inc., is proposing to construct a freestanding emergency department on Tax Map Parcel No. 44Y-15C, which is located at the intersection of Warrenton Road and Banks Ford Road. The property is zoned B-2, Urban Commercial, and was rezoned from A-1, Agricultural to B-2, Urban Commercial in 2008 as part of Ordinance O08-66. The applicant submitted a request for a zoning determination in October 2016 to validate the facility as described to be considered a medical clinic. The appeal was submitted within the 30 days appeal period. An application for a conditional use permit has also been submitted for review and approval. The applicant, Spotsylvania Medical Center, Inc., is appealing a determination that was issued by the Zoning Administrator on January 18, 2017. The applicant submitted a request for a determination to confirm the use of a freestanding emergency department is considered permitted a by-right use in the B-2, Urban Commercial Zoning District. The determination did not confirm the use of a freestanding emergency department as a medical clinic but as a hospital. The description included in the request was as follows: *...The freestanding emergency department will provide emergency services to patients 24 hours a day and 7 days a week. The freestanding emergency department will include a full array of diagnostic services including CT services. Although the freestanding emergency department would be open 24 hours a day, patients would not be admitted to the center. Patients needing to be admitted would be transported to a hospital.* In doing the research, this description was compared to the definition of a medical clinic, since the applicant believed the freestanding emergency department was a comparable use. It was also compared to other definitions in the Zoning Ordinance that addressed a medical use; these were a medical office and a hospital. The definition for a medical clinic in the Zoning Ordinance is as follows: *Clinic, medical, dental or psychiatric. A room or group of rooms used for a medical dental or psychiatric practice offering medical services on an outpatient basis, including in-house diagnostic testing facilities, medical counseling services, internal surgery, general anesthetics, and similar services, but not including overnight stay or treatment.* The definition for a medical office in the Zoning Ordinance is as follows: *Office, medical/dental. A room or group of rooms used for a medical dental, or psychiatric practice offering medical services on an outpatient basis and including a total of not more than the full-time equivalent of two principal health care providers and two other health care providers, exclusive of administrative or clerical staff, providing services on the premises. A medical dental or psychiatric office may also contain associated in-house ancillary services such as in-house diagnostic testing facilities, medical counseling services and similar services. There shall be no overnight stay or treatment. Normal activities shall not include internal surgery, nor use of general anesthetics.* The definition for a hospital in the Zoning Ordinance is as follows: *Hospital. A facility licensed in accordance with the Code of Virginia in which the primary function is the provision of diagnosis, of treatment, and of medical and nursing services, surgical or nonsurgical, for two or more*

Board of Zoning Appeals Minutes
March 28, 2017

nonrelated individuals, including hospitals known by varying nomenclature or designation such as children's hospitals, sanatoriums, sanitariums and general, acute, rehabilitation, chronic disease, short outpatient surgical, and inpatient or outpatient maternity hospitals. The definition for medical office was not comparable since the use was restricted to only two health care providers and it prohibited any activities that included surgery or general anesthetics. The definitions for medical clinic and hospital did not include such prohibitions and did provide a list of comparable uses that could be conducted in both facilities. These included such activities as diagnostic services and surgeries. The medical clinic does not provide for overnight stay or treatment, and the hospital definition does not specify the size of the facility. But there is the provision in the definition that a hospital is a facility licensed in accordance with the Code of Virginia, which is not stated in the medical clinic definition. According to the Code of Virginia, a facility that requires a certificate of need is required to be licensed. Both a hospital and a freestanding emergency department are required to have an approved certificate of need. Therefore, the Virginia Department of Health requires the freestanding emergency department to be licensed and it licenses the freestanding emergency department under the same license as the sponsoring hospital. It is because of this requirement in the definition of the Zoning Ordinance that a licensed facility used for medical diagnosis and treatment is a hospital that the determination was made that a freestanding emergency department was to be considered a hospital and not a medical clinic.

Mr. Apicella: That was a mouthful, thank you. Questions for staff?

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

Mr. Apicella: Dr. Larson?

Dr. Larson: In the background, the appeal justification, they cite a CUP for the Spotsylvania Regional Medical Center, approved on December 16, 2008, Resolution R08-380. I requested a copy of that resolution via email earlier today; you may not have gotten it in time. Is that a Stafford County resolution? Can anybody tell by this? Okay.

Mrs. Musante: Dr. Larson, she's going to look and see if we can get that resolution on the S: drive, but I do not have that email from you.

Dr. Larson: Okay, I sent it probably 3 or 4 hours ago.

Mr. Apicella: Any further questions? Ms. Brown?

Ms. Brown: Yeah, for staff. I noticed a couple of our members... we had some additional information requested. Was there time to get that information, Melody?

Mrs. Musante: I'm sorry, repeat the question?

Ms. Brown: I noticed that one of our members had asked for some additional information regarding the freestanding emergency units. Were we able to get any information about this yet? Was there not enough time?

Mrs. Musante: There was not enough time.

Ms. Brown: Okay, thank you.

Mr. Apicella: Other questions?

***Board of Zoning Appeals Minutes
March 28, 2017***

Dr. Larson: I have other questions.

Mr. Apicella: Good. Dr. Larson?

Dr. Larson: For the staff, does a clinic require a license? Do we know that? If we don't know it, I'll... maybe we can get the information later.

Mrs. Blackburn: We can easily get that information.

Dr. Larson: Okay, the other question I had was what other medical facilities require a license other than a hospital? That's all I had Mr. Chairman.

Mr. Apicella: Okay, I've got some questions. The staff report indicates on page 3 of 6 that some research was conducted to arrive at the conclusion that an FSED -- so I'm going to be using that acronym a couple times -- falls under the definition of a hospital vice a medical clinic. So can you explain what research... what that research included and how it led you to the conclusion that an FSED is either an independent hospital or is part of an existing hospital that must be licensed?

Mrs. Blackburn: Mr. Apicella, it was... in the research that I did, I contacted the Virginia Department of Health. And in their correspondence they stated that depending on, and not just so much an FSED, but depending on the facility, in this particular case the FSED was required to have a certificate of need. And the certificate of need was a requirement of services they were providing at the facility. And being a certificate of need, then they would be required to be licensed and they would be licensed under the hospital; it would be an add-on to their license was my understanding.

Mr. Apicella: And given what you've just stated, can we get a copy of that correspondence?

Mrs. Blackburn: I can make it available to you, yes.

Mr. Apicella: What sections of the State Code define a hospital and detailed provisions on establishing a hospital in the State of Virginia?

Mrs. Blackburn: That I don't have with me right now, but I can get that for you.

Mr. Apicella: Okay, I believe it's under Virginia State Code 31.2. Does the State Code use the exact same definition for a hospital that the Stafford County Code uses? Or, quite frankly, does the Stafford County Code use the exact same definition of a hospital as the State Code provides?

Mrs. Blackburn: No.

Mr. Apicella: Are you sure? Because I read them side by side.

Mrs. Blackburn: They're very close. We don't get into the big detail as different things within the State Code does.

Mr. Apicella: Okay. I think it would be helpful though to see a side by side.

Mrs. Blackburn: That's fine.

Board of Zoning Appeals Minutes
March 28, 2017

Mr. Apicella: How does Stafford view or define acute care facilities as noted in the definition of a hospital?

Mrs. Blackburn: We do not have a definition.

Mr. Apicella: Okay, but the word acute is referenced in the definition of a hospital, both in the State Code and in the Stafford County Code?

Mrs. Blackburn: Yes.

Mr. Apicella: Are there regulatory provisions for the establishment and licensing of hospitals, inpatient and outpatient facilities, and where are those provisions? So, you've got a State Code and you've got regulatory provisions that are put forward by the State. Do we know where those State Code... it's in the Virginia Administrative Code; do you know where?

Mrs. Blackburn: It is... to get exact sections, I would have to get that for you.

Mr. Apicella: Okay, but it's somewhere in title 12 I believe, of the Virginia Administrative Code.

Mrs. Blackburn: Yes, we have Virginia Administration Code Chapter 12.

Mr. Apicella: You sort of spoke to it when I asked you a prior question, but which state entities are responsible for administering the state laws and regulations governing hospitals and inpatient/outpatient facilities?

Mrs. Blackburn: Virginia Department of Health is my understanding.

Mr. Apicella: Under the auspices of the Board of Health, right?

Mrs. Blackburn: That's my understanding.

Mr. Apicella: Okay. Is there a specific division at VDH that deals with the licensing of hospitals?

Mrs. Blackburn: I will have to get that information for you.

Mr. Apicella: Okay. I believe it's the Division of Licensing and Certification, OLC is the acronym.

Mrs. Blackburn: Okay.

Mr. Apicella: And so you've indicated that you've actually reached out to VDH...

Mrs. Blackburn: Yes sir.

Mr. Apicella: ... to basically ask them this question of how they would view this particular set of circumstances and, based on that information, you believe and put it in your determination that this particular FSED is a hospital under that definition.

Mrs. Blackburn: According to the definition we have in our Code, yes.

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Apicella: But also under their requirements. They're the ones who establish whether or not hospitals have to be licensed.

Mrs. Blackburn: Yes sir.

Mr. Apicella: Do we know or can we find out if the ER at Stafford Hospital is licensed and/or is part of the Stafford Hospital Center Mary Washington Hospital's certificate of need?

Mrs. Blackburn: We can find that out, yes sir.

Mr. Apicella: And can we get some examples of FSEDs in the Commonwealth of Virginia and what was required to set them up?

Mrs. Blackburn: Yes sir, we can.

Mr. Apicella: Do we have any medical clinics in Stafford that provide services 24/7/365 that you're aware of?

Mrs. Blackburn: I'm not aware of, no.

Mr. Apicella: How does staff review or treat Urgent Care Centers? For example, we have Patient First, NextCare under the Zoning Ordinance. And to what extent are they similarly or differently licensed like hospitals or ERs by the state and the County?

Mrs. Blackburn: I will have to research that sir.

Mr. Apicella: Okay, last question. Can you advise us where in the County Code, and also cite, the specific language that indicates any use not otherwise listed in a particular zoning category requires a CUP? If you don't have it right now, you generally can tell me that that is true or not.

Mrs. Blackburn: Yes, that is true.

Mr. Apicella: Okay, but at some point in time you'll try to find the specific language.

Mrs. Blackburn: Yes I can.

Mr. Apicella: Okay, thank you. Any other questions for staff?

Dr. Larson: Mr. Chairman, just a clarification if I could of the Zoning Administrator.

Mr. Apicella: Yes, Dr. Larson.

Dr. Larson: So, you... if I understood it right, you spoke with the Virginia Department of Health Office of Licensure and Certification, is that correct?

Mrs. Blackburn: I spoke to an individual who was in charge of licensing for acute care facilities.

Dr. Larson: And what did you ask them?

***Board of Zoning Appeals Minutes
March 28, 2017***

Mrs. Blackburn: I specifically asked them how they or if they handled a... how they licensed a freestanding emergency department.

Dr. Larson: And what did they say?

Mrs. Blackburn: They said, if it requires a certificate of need, it must be licensed. And they would license it under the sponsoring hospital.

Dr. Larson: Thank you.

Mr. Apicella: Yes, Mrs. Stefl.

Mrs. Stefl: I do know that there are a number of freestanding ERs in the State of Virginia, one being very close to us down in Spotsylvania at Lee Hill. And I know of another one on my way to Charlottesville; I want to say it's in the Madison area. It's now part of Sentara. Was there any information provided by the applicant on how it went through those particular counties and guidelines and looked to... you know... I guess I was looking at other counties on how they have handled these particular freestandings within the State of Virginia.

Mrs. Blackburn: No, not to my knowledge.

Mrs. Stefl: Okay, thank you.

Mr. Apicella: Ms. Bertoldi.

Ms. Bertoldi: This is a follow-up in your conversation. When they indicated to you that if they need a certificate of need that it would be under the hospital license by the sponsoring hospital, did you ask the follow-up questions on whether or not that that meant that they were presumed to be a hospital? Or if that made them a hospital? Do you know what I'm saying? Like, did you ask that follow-up question like did that mean that they're not at their own individual clinic?

Mrs. Blackburn: In the conversation, it was they would be licensed under the hospital and I didn't really ask anything further.

Ms. Bertoldi: Okay. Thank you.

Dr. Larson: So follow-up. So, was it your impression that they were assuming that the FSED, or whatever it is, is like a department of the hospital or part of the hospital?

Mrs. Blackburn: That was my understanding, yes.

Dr. Larson: Thank you.

Mr. Apicella: I don't know if it's appropriate for me to say this, but I made a phone call today to the same office. I spoke to a Ruth Ann Dissler, and she basically said the same thing to me that they were responsible for acute care facilities, they consider FSEDs to be acute care facilities, and they would fall under the sponsorship of a specific hospital. And to her knowledge there were no FSEDs that aren't adjoined to or in partnership with existing hospitals. Any other questions? Okay.

***Board of Zoning Appeals Minutes
March 28, 2017***

Dr. Ackermann: Just what you said, in partnership with. They don't have to be physically next to each other?

Mr. Apicella: No, they don't have to be physically, but they have to be part of the hospital system in order to be able to get a certificate of need and ultimately a license.

Dr. Ackermann: Thank you.

Ms. Bertoldi: But I guess does that mean that... I guess the question is that does that mean that they must be part of the hospital? You know, I guess that is the issue. Does that mean that they cannot be their own facility? Like, just because you fall under an umbrella does not mean that you don't have your own identity outside of a facility.

Mr. Apicella: Again, the way it was described to me, and we can certainly follow-up, and may need to, that there were no FSEDs that aren't affiliated with a sponsoring hospital. There's no independent FSEDs as far as she was aware of in the Commonwealth of Virginia. Again, that's something we can verify.

Dr. Larson: But I agree... I have the same confusion that Adela has, that does that... what does that apply? Because I've known of other situations, not medical, where you can be associated with somebody and sort of get some advantages of that association, but you're not actually one of them. You know, so in this case the FSED wouldn't have to be a hospital, but still get the benefits of being associated with a hospital. So, I'm not sure where this falls yet.

Ms. Bertoldi: Right. I think there needs to be some clarification with that because, I mean, I understand what they're saying, but I think that there is some assumption, and the assumption may be correct, but the assumption is that that means that they are not their own identity, their own facility. Kind of like a parent corporation and, you know, what is the makeup of... the actual organizational makeup of the relationship I think is important.

Mr. Apicella: Well, hopefully we'll get some more as we ask some questions of the applicant. Would the applicant like to come forward?

Mr. Leming: Good evening Mr. Chairman and members of the Board of Zoning Appeals, I'm Clark Leming. I'm here on behalf of the applicant. I have with me Mr. Tom Stallings. Tom is a partner with... you've asked a number of questions that I hope we can answer fully tonight. Tom is a partner with McGuire Woods and he specializes in health regulation... health care regulation. I also have with me tonight Mr. David McNight who's the CFO for Spotsylvania Regional Medical Center. And between the three of us I hope that we can be responsive to a number of the issues that you've raised. Now, what we have prepared here is a binder for you. Now, lest you be concerned about new materials, what this consists of is my outline that is what we're going to talk about tonight, but also each of the code sections that Mr. Apicella has already asked about, as well as the State regulations that we believe governs this particular situation. So, and I will be using those and referencing them as I go through my presentation. So, Mr. Chairman, I would request permission to provide a binder to each of the members of the BZA and to staff, each member that's going to be hearing the case. I think Mr. Grimes is seated back there now. Are you okay with that? Now, based on the questions, you all are on top of a number of these issues from the outset. But I would like to frame the narrow issue that I believe is before you. And it comes down at its first level to two competing definitions in the County's Zoning Ordinance. The one that the Zoning Administrator relied on, the definition of hospital, and the pertinent language that the Zoning Administrator cites for that within that definition is a facility licensed in accordance with

the Code of Virginia. Now, the other definition that's already been touched on, we don't need to talk about medical offices, is the definition of medical clinic. Now, the broader backdrop, of course, is the state procedure. And what triggers the need for a certificate of public need? What triggers the need for the license? Are they the same? Now, what I will tell you from the outset, to give you a broad sense of where I'm going, is that first and foremost they are not the same. The fact that you need a certificate of public need does not mean that you also require a license. They are perhaps overlapping, concentric of subsets of each other to some extent. But what staff has indicated in the staff report, specifically that according to the Code of Virginia a facility that requires a certificate of need is required to be licensed is simply incorrect. Now, I will also tell you from the outset that the freestanding emergency department... and I'm glad that some of you all are familiar with these. They are more and more frequent throughout the state to enhance patient care, to be closer to where the patients' are living and may need the initial diagnosis and possibly treatment. So, it's a more and more common facility, and there are a number of them throughout the state. But, the freestanding emergency department that's at issue here will not apply for a license, will not receive a license, is not required to have a license. This facility is not required to have a license. So, that's an overview. And let me walk you through this ultimately fairly complex issue. First, if you would look in your folders at tab A, these are the... this is the co-provision and Mr. Apicella is absolutely right, title 32.1; this is Chapter 4, Healthcare Planning. And this governs certificates of public need. It defines what kinds of facilities require them and what projects require a certificate of public need. Now, I would note right off the bat, if you'll turn down to the definition of medical care facility, the second line there -- medical care facility is used in this title means any institution, place, building or agency, whether or not licensed or required to be licensed. So, there are any number, and I'll give you some specific examples, any number of medical care facilities that are not required to be licensed. Take particular note of number 9 here. Now, the term freestanding emergency department is nomenclature that I think arises from the industry. It is not something that is contained in the code. But I think that it is most consistent with what we're talking about here at 9, a specialized center. Now, if you turn the page, you will also see a definition of project. And if you want to take a moment and peruse through that, you will see some of the things that trigger or that are defined to mean project, that constitute a project. And we're talking largely about beds here. There's some language about nursing homes. At the bottom here you'll notice, and I point this out at number 5 for later reference, a reference to CT scanning, which is relevant here. Now, so we have the definition section which tells us what medical care facility is and what a project is. Now, if you'll turn to B, tab B, and this is the next section I think relevant in this chapter of State Code. No person shall commence any project without first obtaining a certificate issued by the Commission. Now this means a certificate of public need, and it's keyed to project. It's the project, not the facility, but the project that determines whether or not a certificate of public need is necessary. Now, so... so from the outset, I think it's important to clarify that. Certificate of public need is one thing; it's handled at title... or Chapter 4 of this same title. Licenses are handled at Chapter 5 of that code section. And we'll talk in more detail about those in just a moment. Now, calling your attention back to a couple of things, one is the definition, number 9, the specialized center. And as I indicated, I think this is what best describes it or best matches the freestanding emergency department that we're talking about here, and again, onto project. And you'll notice the reference at number 5 under project to CT scanning. Now, this, the proposed freestanding emergency department does require a certificate of public need, not because it's a hospital but because it's going to provide CT scanning. There is, and we've included that here, a lengthy response from Virginia Department of Health reviewing the application both for this certificate of public need and one submitted by Stafford Hospital; both, in the same document, both institutions submitting an application for this because of the CT scanning. Now, that is what... that is what drives the requirement for the certificate of public need. Now, to finish, and Mr. Chairman, I'm already getting a yellow light and we're barely getting started, so I'd ask the BZA's indulgence here, you'll never get through the substance of this. The... some examples of facilities that do not require a license but do require a certificate of public need, would be things like an orthopedic medical office offering in-house

***Board of Zoning Appeals Minutes
March 28, 2017***

magnetic renaissance imaging; ear nose and throat medical office offering in-office computed tomography -- I have no idea what some of these things are -- CT imaging. But I think you get the idea. These are all things... and go on down the list here... these are all things that I think based on the code sections that we've reviewed, would require no question a certificate of public need. But now let's move to the next major point that I think is important. Now, as I indicated a moment ago, there is a report in your package, staff report, coming back in response to applications to certificates for public need that were required. Now, the language in that report, and we've cited exactly where it appears in that report, page 2 of 22, states specifically, the construction of a freestanding emergency department is not subject to a COP review or State Health Commissioner approval. Now, we are. I've told you that we do need to seek a certificate of public need because of the CT scanning, but a freestanding emergency department in and of itself does not even require the certificate of public need. Now, there are... while it's correct I think that most freestanding emergency departments are connected to a hospital and do require a certificate of public need, because most of them do have CT scanning, there is at least one that we have found. This is the INOVA emergency room at Reston/Herndon. They don't have CT scanning, so they don't even need a certificate of public need. Now, they maybe... they are associated with a hospital, but they don't even need a certificate of public need for that reason. Now... turning your attention to the issue of licensure, and go back to the ordinance; remember what the ordinance says here -- a facility licensed in accordance with. And as I've indicated, there will be no application for a license submitted or part of this effort, and none will be issued by the state for the freestanding emergency department. Now, if you'll take a look at tab C, and I'm moving to... I'm sorry, I've given the wrong tab number here. We're going to move ahead to actually tab F, and skipping over a few things which we'll come back to. And I want to talk about the issue of licensure. Tab F comes from Chapter 5. Chapter 5 is what governs licensure. Chapter 4 is what governs certificates of public need. And there is a definition section that runs with this also, but there also, as Mr. Apicella noted, there are also extensive regulations that further define and regulate the licensing procedure. Now, the language here I think that's pertinent, no person shall own, establish, conduct, maintain, manage or operate in this Commonwealth any hospital or nursing home unless such hospital or nursing home is licensed or certified as provided in this article. So, we're talking about at this level, hospitals and nursing homes. Now, if you'll turn over to tab F, here is... this is 12 VA AC 5, and this... these are the regulations for the licensure for hospitals in Virginia. And the first section that I have included are the definitions, and there are three definitions of hospital here. There is general hospital, and you can see for yourself what that entails. And again, notice the definition incorporating inpatient beds. Then we have outpatient hospital, on the next page. It means institution, those defined by this other code section. The primary (inaudible) provide facilities for the performance of surgical procedures on outpatients. Well, isn't an emergency room that? No. We did not do... the freestanding emergency department will not do surgical procedures. Now, if you need stitches or you need a cast, then yes, they will take care of that. But if you need surgery, you'll be referred... you'll be admitted to a hospital. So we have outpatient hospital, rural hospital, which I don't think anybody thinks we're dealing with here, and then special hospital. And if you'll look at the definition of that, you'll see that that's not really relevant to licensure here. Now, if you'll turn to page... to tab G, tab G is an email. And the email comes from Mr. Stallings who I introduced to you, and it's addressed to Sara Pendergrass. Ms. Pendergrass is with VDH; in fact, she is the person that is referenced as a contact in their... in the cover letter that contains their license, the license for the hospital, which is... was originally issued in 2008 and, Mr. Larson, that approval you were asking about goes to... it wasn't a CUP, it was just a rezoning action there. So, that CUP is incorrect there. The license was issued to the Spotsylvania Regional Medical Center when it opened, and is renewed each year. At the end of each year, there is an application submitted and it says renewal of license. So that is the process to obtain the license. Now, Mr. Stallings posed some questions. Ms. Pendergrass is the one that you contact if there are issues regarding the certification. And you'll actually see a letter, a cover letter with a reference to her at that same tab. So, that's who Mr. Stallings contacted. And he posed several questions to her. And... and, this is very informal I realize, but we've

been talking here about phone conversations with people at VDH. So, we tried to do a little more than that. It may be good to have them come and say something themselves. But, you'll see, these are her correct... she has outlined her responses in red and you can read for yourself what she has responded to. And of significance. OCL. We know what that means now. It does not issue licenses for freestanding emergency departments. Correct. And then, it goes on from there to say what it does issue licenses for. But I think the code is very clear itself, coupled with the regulations that we're talking about issuing licenses to hospitals. Now, if you turn the page, the very last highlighted response that she says correct to Mr. Stallings, the question is, OLC will not issue a license of any type to the freestanding emergency department, and she says correct. So, from our perspective, that is all pretty conclusive. Certificate of public need, application for that may or may not entail a license. If it's a hospital applying for a certificate of public need, yes they're going to have to get a license, too. But this facility is not required to have a license, will not be issued a license. Now... the ultimate question then I think is, what is this? What is this... we're back to the Stafford County Ordinance? Now, we reject the contention that the freestanding emergency department is a hospital. And it was interesting noted that the definition of hospital here is very much like the state definition of hospital. Well, hospitals are licensed. I hope that's clear now that that's what gets licensed; hospitals. And the freestanding emergency departments do not get licensed. They may need, in this case they do, a certificate of public need. But, back to this. A facility licensed in accordance with (inaudible)... you know, the term licensed, past tense, is not something that is defined in the Code. But we did... you may see... we did look at a bunch of definitions, just dictionary definitions of what licensed means. It means having an official license. The freestanding emergency department does not have, does not need, an official license. It operates... it is independent of that process altogether. Now, it is and has been the contention of the applicant here that, and this goes back to the very first inquiry which I was not involved in, but the engineer I think who raised the issue didn't think it was much of a controversy. Now, why do we think it meets the definition of clinic? A clinic is a room or group of rooms used for medical, dental or psychiatric practice offering medical services on an outpatient basis, that's us, including in-house diagnostic... including in-house diagnostic testing, which we do, facility, CT, medical counseling facilities, yes, internal surgery. Now, as I said, we don't perform surgery at the freestanding emergency department. So, but this is including general anesthetics; you know, I mean if somebody needs to get stitches, yeah. Similar services. So, it's a pretty broad definition, but specifically, not including overnight stay or treatment, and we don't. There is nothing like that here. If somebody requires admission, even though we're open 24-hours, if somebody requires admission they are sent to a hospital. Now, because I am an absolute novice substantively in this area, I know the legal procedures for getting to you all but... Todd, is there anything else that you would like to add?

Mr. Stallings: I'd be happy to answer any questions.

Mr. Leming: Okay. Well, Mr. Stallings, who specializes in state health care regulation, and Mr. McKnight are here to... and myself, to respond to any questions that you may have. But I think that's the gist of the presentation. We simply do not accept that the freestanding emergency department is a facility licensed in accordance with, and that's what it hangs on. If you go back and look at Mrs. Blackburn's letter, that's really what it comes down to. And to the extent that any of the determination relies on this assumption that certificates of public need and licensure are the same thing, I hope we have dispelled that notion. They are entirely different procedures controlled by different parts of the State Code, different divisions within the Virginia Department of Health, and different output; entirely different processes. Okay, I'm sorry, I've probably overworn my welcome.

Mr. Apicella: Questions for the applicant? Dr. Ackermann raised his hand first.

***Board of Zoning Appeals Minutes
March 28, 2017***

Dr. Ackermann: So, what does one have to do to get a certificate of public need? Is that based on the population and services that are available to the population?

Mr. Leming: It's an elaborate process, but I'm going to let Mr. Stallings answer.

Dr. Ackermann: (Inaudible). I mean are we...

Mr. Stallings: I brought a visual aid in case that came up, so there's an application process...

Mr. Leming: For the record, if you would introduce yourself.

Mr. Stallings: I'm sorry. And can everybody hear me okay or do I need to use the microphone. Alright, sorry, so again I'm Tom Stallings, I'm with McGuire Woods. I've worked on the certificate of need for this particular project, but I do health care regulatory work including certificate of need and licensure. So I'm based here in Virginia. The certificate of need licensure application is set forth in code and regulation and this is an example of the application form. It gets lots of attachments to it. It's reviewed, at least in our case, by the Division of Certificate of Public Need which is Tab C of our notebook. They do a thorough review. If there's contesting, it would go to an adjudication officer and the ultimate decision is made by the State Health Commissioner.

Dr. Ackermann: So, it's based on the need in the area. (Inaudible).

Mr. Stallings: Yes, there's a set of standards called the State Medical Facilities Plan that are set forth in regulation that generally govern. There's also statutory criteria that the Commissioner has to take into account in making her decision.

Dr. Ackermann: Thank you.

Mr. Apicella: Dr. Larson?

Dr. Larson: Thank you. Yes, is the freestanding emergency facility administratively a part of the hospital? And if so, how?

Mr. Stallings: Yes, that would be operated as a department of the hospital and the certificate of need application is in the name of Spotsylvania Medical Center, which is the hospital.

Dr. Larson: And the statement was made that there will be no inpatient care discussion about no overnight stays. My question is about observation. What if somebody needs to be observed for an extended period of time? What happens then?

Mr. Stallings: You know, I may ask Mr. McKnight if he knows the answer to that one.

Mr. McKnight: Certainly. If they need to have observation, we would probably again transfer them to a facility. Again...

Mr. Leming: David, come on up here because they're recording all of this and, if you stand back there, they won't get it.

Mr. McKnight: Absolutely. If it was something they actually ordered observation services, they would need to be placed in a bed and we would transfer them to a facility and be put in observation.

***Board of Zoning Appeals Minutes
March 28, 2017***

Dr. Larson: And for the record...

Mr. Apicella: Can you state your name?

Mr. McKnight: I'm David McKnight.

Mr. Apicella: And your affiliation?

Mr. McKnight: CFO at Spotsylvania Regional Medical Center.

Mr. Apicella: Thank you.

Dr. Larson: Okay, thank you for that. And then I have one last question. I think Mr. Leming might be able to take this. You talked about it just a bit earlier. To expand on the abbreviations in the appeal justification, it says, the Board of Supervisors approved a Conditional Use Permit for the Spotsylvania Regional Medical Center on December 16, 2008, via resolution R08-380. I believe you just told me that that was not a CUP.

Mr. Leming: Yeah. Remember, this is the Spotsylvania center.

Dr. Larson: That, well, and that was my next question. What County are we talking about?

Mr. Leming: Spotsylvania County.

Dr. Larson: So whatever approval...

Mr. Leming: I don't believe it was a CUP.

Dr. Larson: Whatever approval this was, was a Spotsylvania County approval, not a Stafford County approval.

Mr. Leming: That's right. And we, you know, we should have indicated which Board of Supervisors we were talking about there.

Dr. Larson: True.

Mr. Leming: Since this is an appeal to the Stafford Board of Zoning Appeals. But they've got one down in Spotsylvania also. But I think that was the time that the hospital was established down there. Now, I will tell you this, I do not... I came across this when I was reviewing for today and said wait a minute. Because I also was checking to see if in Spotsylvania County even a hospital required a conditional use permit, and it doesn't. It does not. So that's how I knew this was a zoning rather than a CUP. There's some mixed use districts where it would require, down there they call them SUPs, but in the regular commercial district, even a hospital does not require a CUP. Here, you know, Stafford Hospital I think had to obtain a CUP because that's what was required by the Stafford Ordinance.

Dr. Larson: Thank you Mr. Chairman.

Mr. Apicella: Other questions? Ms. Brown?

***Board of Zoning Appeals Minutes
March 28, 2017***

Ms. Brown: I just have a couple troubled ones here to ask. Just so I can get an idea of the facility, are we going to have ambulances taking people there?

Mr. Leming: Let's talk to the hospital guy.

Mr. McKnight: Yes, we would.

Ms. Brown: To the FSED.

Mr. McKnight: Yes, we would.

Ms. Brown: Okay, and so, you said no surgeries. Does that mean there's not going to be any general anesthesia administered there?

Mr. McKnight: Correct.

Ms. Brown: Okay. And if they do need surgery or observation, and you said you have to refer them to a hospital facility, where would that be? Would that be their hospital of their choice? Or Spotsylvania Hospital?

Mr. McKnight: It could be either. I mean, Spotsylvania certainly, but if they need a higher level of care, something that Spotsylvania does not have, then we would transfer them to either Mary Washington or one of our other sister hospitals.

Ms. Brown: Would it be their choice what hospital?

Mr. McKnight: It could be, absolutely.

Ms. Brown: Okay. And then, Mr. Leming, this question is probably for you.

Mr. Leming: Let me just add, to the extent they're able to make that choice. I mean, there are some contexts where that's not possible but, other than that, I would say it is the patient's choice, correct, to the extent the patient is cognizant.

Ms. Brown: Okay. This is just... this could be I'm just not reading this right, but in your packet on Attachment 4, page 1 of 6, it was the copy of the Stafford County Board of Supervisors Ordinance, it talks about the rezoning to go to B-2 over in commercial, but it mentions all these lot numbers but not the particular lot number that we're discussing, which is 44Y-15C. Did I miss that?

Mr. Leming: Well, I think you're talking about something that staff included in the package. You mean, this is the rezoning for the parcel on which the freestanding emergency department would be constructed?

Ms. Brown: Yeah, I thought this was your attachment?

Mr. Leming: Yeah. We both have a series of attachments, but I think you're into... I think that was one that Mrs. Musante referred to. Our attachments included the certificate of public health. But then, you know, you see you get back to attachment 1 again starting on page 12 of 16; I think that's where the County attachments pick up because they were back so...

***Board of Zoning Appeals Minutes
March 28, 2017***

Ms. Brown: Okay, so to clarify, Attachment 4, page 1 of 6, this one, is not yours?

Mr. Leming: Okay. Attachment 4, which is a zoning resolution?

Ms. Brown: Yep.

Mr. Leming: Yes, I believe the staff, and they can speak for themselves, I think they include this just so you know what's already been approved for this property.

Ms. Brown: Is that what the... because it has adjoining parcels, it just doesn't have the particular one that we're talking about. So I just wondered what the relevance was for that.

Mr. Leming: I think you'll have to ask staff what the purpose of that was.

Ms. Brown: Okay.

Mr. Apicella: We can ask them later after we're done with the applicant. Any other questions? Mrs. Stefl?

Mrs. Stefl: Since this would be a I guess an entity of Spotsylvania Hospital, it would fall under a network for someone who, for their insurance purposes would be...?

Mr. Stallings: Yes, that's correct.

Mrs. Stefl: Okay, and it also falls under the Medical Treatment and Labor Act?

Mr. Stallings: Yes, that's correct.

Mrs. Stefl: Okay. So, I mean, you hear horror stories of some also Medicare and Medicaid patients who have gone to freestanding institutions that are not... they're actually privately held, they're not owned by a hospital and receiving astronomical bills and not realizing that it's not a hospital in the traditional for Medicare and Medicaid reimbursements.

Mr. Stallings: Yes, I suspect many of those stories are from outside of Virginia. Certainly Texas is one state where you hear a lot about that and they have a different regulatory approach than Virginia.

Mrs. Stefl: But Virginia, we would still fall under... it would be considered part of the insurance plan as if going... driving down to Spotsylvania Hospital.

Mr. Stallings: In our case it would, absolutely.

Mrs. Stefl: Okay.

Mr. Stallings: I hesitate to speak for how anyone else setting up a freestanding ed, but in our case absolutely.

Mrs. Stefl: Okay. And also, jump... leap-frogging off Ms. Brown's question about patients, when they... you know, if a 9-1-1 call said... came from my home since I live in the Hartwood District and I wish to go there and it's found that I need more care, would another ambulance be called? Since none

***Board of Zoning Appeals Minutes
March 28, 2017***

of the hospitals I believe in this area have their own ambulance services, it would be another service of the fire department to transport down to say Mary Washington or Spotsylvania then.

Mr. Stallings: And I'm going to ask Mr. McKnight to address that. One thing I'll say is often times the needs of the patient are assessed before they're actually put in the ambulance. And so...

Mrs. Stefl: Right.

Mr. Stallings: ... if it's identified early on that the patient needed to go to a higher level of care, in some instances that's already addressed on the front end. But certainly there would be... there could be cases where a patient comes to the freestanding emergency department, is assessed, and for example, if they need inpatient admission and there would be a second transport, how that's handled (inaudible).

Mr. McKnight: That's correct. So, if an EMS or a local station actually brought a patient to the freestanding ed, they needed to be transported, we actually do have a service, AMR, who handles that service for us. Then we would dispatch them to go and take that patient to another facility.

Mrs. Stefl: You would only work with that particular service, or do you work with Lifecare?

Mr. McKnight: We work...

Mrs. Stefl: Because I have a lot of unfortunate history with Lifecare.

Mr. McKnight: We primarily we use AMR. We have used Lifecare in the past, but primarily AMR who is a national company that we use and we have (inaudible) throughout the state.

Mrs. Stefl: Okay, but one of the things that I, at least my only experience is with Lifecare. They do not have the same level of care provided to the patient while in transport. And my concern would be if that patient is not stable at that freestanding and you obviously assess that it needs the higher level of care, those few minutes, even going from where you're going to be to Mary Washington, which I believe is probably a little closer than even Stafford or Spotsy depending on 17 traffic, that could be a very big concern.

Mr. McKnight: That is true. I mean, as far as we would stabilize the patient and it would be no different than if you went to Mary Washington and they needed to go to a higher level of care such as a Level 1 Trama...

Mrs. Stefl: Okay.

Mr. McKnight: ... or if Spotsylvania needed to send a patient to a higher level, we would stabilize and we would pull in air transport, whatever we needed to do to transport (inaudible).

Mrs. Stefl: Okay, so there is that ability to still get a more critical care transport rather than the basic medical transport and Lifecare and AMS you said?

Mr. McKnight: AMR.

Mrs. Stefl: AMR provides.

Mr. McKnight: That's correct.

***Board of Zoning Appeals Minutes
March 28, 2017***

Mrs. Stefl: Okay, now what about it is staffed by emergency room physicians. So, there's no consultation by say ortho or neurology or something along those lines. Is that correct?

Mr. Stallings: No. They would be available. So, just as at the emergency room at the hospital, there's an on-call list of specialists. So if I come in and I have neurologic issues, there would be an on-call neurologist. The group of physicians that would be there all the time would be specialists in emergency medicine.

Mrs. Stefl: Correct.

Mr. Stallings: But the full resources of the panel of specialists would be available to be consulted just like at the emergency department of the hospital.

Mrs. Stefl: And what type of response differential do you notice between having, because ortho and urolo... I mean, neurology and everything, they're already there and sometimes they can come down the floors quicker than even someone coming from say their home who's taking calls for that night.

Mr. Stallings: That's sometimes the case, but certainly the most common scenario, even at the hospital, is that the specialist is not physically present at the hospital...

Mrs. Stefl: Correct.

Mr. Stallings: ... and is subject to the on-call list.

Mrs. Stefl: But he's probably there more often at the hospital regularly, you know. I mean, yes, evenings are different and things like that. But, I mean, concern... a few floors versus traveling a time...

Mr. Stallings: Many physicians, of course, are in their private medical office most of the time.

Mrs. Stefl: Correct.

Mr. Stallings: But if you're part of a group, you have a schedule so that certain individuals are available to respond to emergencies and that's the typical approach, the on-call schedule.

Mrs. Stefl: Okay. Alright. Thank you very much.

Mr. Apicella: I'm just going to ask a follow-up question. How many physicians would be on... doctors would be onsite at any given time?

Mr. McKnight: That I don't know off the top of my head. There would probably be at least a couple, but it will work through the model as far as once we open. But probably like a couple ER physicians; probably an APC as well.

Mr. Apicella: And total staff.

Mr. McKnight: Total staff I believe is, of course we look at the CT only, yeah, CT only.

Mr. Apicella: Okay, and what amount of parking... how big is this facility?

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. McKnight: It is... the square footage, I don't have it... it's approximately on a 2-acre lot and it is our standard prototype for most of the freestanding. We've got several of these throughout the state, HCA does.

Mr. Apicella: So, square-footage-wise?

Mr. McKnight: I don't have that in front of me.

Mr. Apicella: Number of parking spaces?

Mr. McKnight: Yeah, we would be up to code on the parking spaces.

Ms. Bertoldi: Just for clarification, so, you're a freestanding emergency room, you're not going to be providing... I'd like to focus on what you're not going to be providing. Because we're talking a lot... you know, it seems like what kind of threw me for a loop was when you said that you would be bringing ambulances *to* this facility. Now, I guess I want to know why you would... if you had someone who was in such dire need of medical attention that they have to be in an ambulance, why would they be going to your facility instead of the emergency room? So, I'd like to focus on what you're not providing. You're not providing surgeries, correct? Okay. You know, you're not going to be doing inpatient. Okay, we got those two. What other things are you not going to providing, services you're not going to be providing? Because it just doesn't seem correct to me that if you're not a hospital, you'd be having ambulances flowing in your direction as opposed to just away from.

Mr. Leming: Let me ask for... is your question really go to what the differences would be between this emergency room and one at a hospital?

Ms. Bertoldi: I guess I would like to know why you would have an ambulance going to your facility if you are a medical clinic that provides certain heightened services such as CT scans or, you know, maybe doing some stitches or, you know, that type. That's really that you've kind of lost me a little bit on the fact that you have emergency ambulances going to your facility. So I just would like for you guys to elaborate that.

Mr. McKnight: Certainly. I think the intent would obviously to be stabilize the patient as quickly as possible. So, if they came into that freestanding ed and again, as we said earlier, trying to make sure that we are servicing some of the patients that we're already seeing. So they may take them an extra amount of time to come down to Spotsylvania Regional Medical Center.

Ms. Bertoldi: Before you go, so you would be like using it as (inaudible) like a pit stop, like they're in an ambulance, they're going to go there to try to stabilize them and to assess them. And then if they need more you keep moving them down the line?

Mr. McKnight: So, if every moment counts, we would be treating and release a fair number of patients. If they need a higher level of care, just like any other ed, then we would transfer them to a higher level of care facility. They would be admitted or put in observation or whatever, at a higher...

Mr. Stallings: (Inaudible) many emergency patients, because this again is a model that it has in other parts of the state. Many emergency patients can be treated faster and fully appropriately at a freestanding emergency department. We all recognize there are some more serious conditions that ought to go to the hospital, but many of the cases that come to emergency departments are very

***Board of Zoning Appeals Minutes
March 28, 2017***

appropriate for this sort of facility. And in most respects it's the same as any other emergency department; it just happens to be not on a hospital campus.

Ms. Bertoldi: Well, how can an ambulance determine whoever is in charge of assessing that particular patient determine what facility would be appropriate?

Mr. Stallings: Usually the EMS squads, and I'm sure it's the truth for here as the squads are very experienced and management of patients with emergency conditions and do an excellent job of determining where a patient should go.

Mr. Bertoldi: Okay. Because I kind of think of it like, I kind of thought about this facility kind of like KidMed. You know, KidMed does a lot of, you know, I have a three and a half year old, I've visited KidMed quite often. And that's originally in my thought that this would be more like that facility. So it actually is... it's even higher...

Mr. Stallings: My assumption... and again, I live in Richmond rather than here so I'm not familiar with that facility, but it's different from an Urgent Care Center. It really is an emergency department. It's staffed the same way. It provides the same level of care and so it's definitely not comparable to an Urgent Care Center.

Mr. Leming: I think she's assuming that surgery would be performed in a hospital contained emergency department.

Ms. Bertoldi: Well, I guess I'm just trying to... and maybe this is something for Mr. Leming, but I guess then how is it not a hospital? How is it a medical clinic? I mean, I know you're going on the legal... I mean, I understand the legal definitions of you know what you went through with the certificate and the license and what is it, but it's... if you are, you know, you're saying sir you know that it's providing everything that an emergency room is; it's going to have all of these doctors, it's going to have all, you know, all of this, we have ambulances going there but we're a medical clinic. It sounds contradictory.

Mr. Leming: There are two things. Of course, the Stafford Ordinance is not keyed to the state definitions, with the exception that Mr. Apicella referenced with the similarity in the definition of hospital. But, your ordinance definitions are creatures of Stafford County. You know, that's what we fit into or don't fit into to decide whether or not a CUP is necessary or not. Then, that's against a backdrop of all of these state definitions. And they definitively tell us what a hospital is, at least for purposes of licensure. That's where we go for that.

Ms. Bertoldi: Okay.

Mr. Leming: So, all of these day to day operation questions I think you know are important to understand, and may be relevant to which... where you decide this fits. But, I think that initially it seems to me the first level of inquiry is what is the Ordinance definition that it best fits into and, you know, if we're looking for definitions at the state level you have all of those in front of you for purposes of helping to understand the local ordinance which talks about a facility licensed.

Ms. Bertoldi: Okay. So, just in... this is my last, if you can indulge me just for a second longer. I just want to make clear. Your argument is not... is that we should not be worried, and I'm not making any determination by this, I just want to make sure I understand your position. Yours is one of a technicality so to speak. Just by legal definition, look at legal definition that we really should not be looking at, you

***Board of Zoning Appeals Minutes
March 28, 2017***

know, what is being provided necessarily. We're looking at what is the actual definition and within the definition you are a medical clinic and not a hospital.

Mr. Leming: Darn lawyers. Always focusing on the technicalities.

Ms. Bertoldi: Oh, trust me, you know I know that.

Mr. Leming: Yes. But, this is a zoning determination.

Ms. Bertoldi: So, is that correct though?

Mr. Leming: Yes, it is.

Ms. Bertoldi: I'm saying. So you're thinking this is much more of a technical... let's focus...

Mr. Leming: I'm not sure I would characterize it as a highly technical legalistic argument. I think we go to the determination made by the Zoning Administrator. And she's looked at the ordinance and said this is what this is. That ultimately is a legal decision; you know, where do we fit under the Stafford County Ordinance. And I think it's one place or another. Going back to an earlier question of yours. First of all, the service area of Stafford... I mean, Spotsylvania Regional Medical Facility does overlap into Stafford County. And one statistic that was given you by the hospital today, Dan, is that 30% of the existing patients, that is, those that have used the Spotsylvania Regional Medical Center would actually be closer to this facility on Route 17 than they would the facility in Spotsylvania County. So, that's you know primarily the logistics of all this. And Mr. Apicella, I did want to point out to you, the staff did include... this was a layout, a conceptual, a pretty well engineered layout that came with the zoning determination, the request from the engineer. And it is Attachment 1, page 16 of 16 of the staff submission. So that pretty well shows you what the square-footage is; it's almost 11,000 square feet, and it shows the parking and the access.

Mr. Apicella: Ms. Brown, did you have something else?

Ms. Brown: I did. I want to piggyback off a little bit of Adela's stuff, but I'm trying to differentiate the FSED from who would want to go to an FSED versus a real emergency room. So let me ask you this -- is it cheaper to go to an FSED than a full-blown emergency room?

Mr. Stallings: No, it'd be the same price structure.

Ms. Brown: Same price structure, okay.

Mr. Stallings: And again, we would say it actually is a full-blown emergency room. It's a freestanding emergency room as opposed to an emergency room that's connected with the hospital building, or in the hospital building.

Ms. Brown: Because I would think it's kind of between a high level Urgent Care and a hospital, because you can't... you're limited on what you can do. And one of my scenarios was, you know, out in Hartwood it's kind of out in the country out there. We have a woman in labor and she cannot make it to the hospital. So she'd rather stop at your place than the side of the road.

Mr. Stallings: Absolutely.

***Board of Zoning Appeals Minutes
March 28, 2017***

Ms. Brown: Now, when she gets in there, she might need an emergency C-section. She's going to need anesthesia for that and she may not have time to get transported. So will you not be able to help her?

Mr. Stallings: We will do our best and that's... there's a reference to EMTALA, the Emergency Medical Treatment and Active Labor Act. Every emergency department will do whatever it can within its capabilities to assess and stabilize patients in an emergency medical condition or in active labor. So, we would actually absolutely do everything possible. But we won't have an operating room in this facility. That... facilities with operating rooms actually do require a license. So, there's a special licensure category in Virginia for what's called outpatient surgical hospitals. But we're not that and...

Ms. Brown: How about just delivery? What would that be considered if she doesn't need any special kind of delivery?

Mr. McKnight: There would not be an OB doctor there obviously, but an ER physician in an emergency situation (inaudible).

Ms. Brown: Better than a husband on the side of the road. I'm just, you know...

Mr. McKnight: An ER physician can deliver a baby.

Ms. Brown: Okay. And you would be able to have some kind of, not anesthesia, but some kind of pain medication for her so she could make it there...? Okay. I can see where your facility would be used like on the ballfield, you know. I've been out there when kids have been hit in the head with a ball and they go down, they break a leg; might not need to go to the emergency room, but, you know, let's go get a CT scan to get it, you know, checked out and get the leg set. You could do all that?

Mr. McKnight: Absolutely.

Mr. Leming: In their emergency room.

Ms. Brown: The freestanding emergency room.

Mr. Leming: Yes, that's right.

Ms. Brown: Alright. But there's no cost difference?

Mr. Stallings: Well, (inaudible) depending on the level of service. The pricing is based on what services are provided. If the same service is provided at the freestanding emergency department as at the hospital, they're exactly the same.

Ms. Brown: Okay, thank you.

Mr. Apicella: Mrs. Stefl?

Mrs. Stefl: Just, I guess, a personal note. I have utilized both a freestanding ER and a regular ER for issues when my husband, who was in liver failure, had high levels of ammonia and hepatic... HE, I can never pronounce it correctly... and actually I received I felt more critical care at that freestanding ER because there wasn't as many fellow patients as was occurred at the emergency room within the hospital. And my bill was actually the same even though he had the exact same... he had two different episodes, one when I went to Mary Washington, one when I was out of state at a freestanding, and it was

***Board of Zoning Appeals Minutes
March 28, 2017***

the exact same bill, same reimbursement from my insurance. And I had two types of insurance; I had private insurance and I was also on the Obamacare. That was my... I mean, I really personally felt... and he did need to be transported and that was one of my concerns was the Lifecare... you know, critical care... they didn't have critical care and I wanted an actual ambulance to be called because I was concerned. So, I just want to say that utilizing a freestanding is not such a bad thing.

Mr. Stallings: And that experience is typical of what many patients report is that generally speaking, and we can all find exceptions to this, but generally speaking the emergency departments at a hospital are busier, more hectic places and, for the right kind of patient, a freestanding emergency department will be faster service and obviously in an emergency speed makes a difference. That's often reported by patients. It's also often reported by ambulances that the turnaround times... so one of the things that ambulances have to do, of course, is not only take care of the current patient, get that patient where he or she needs to be, make sure they are in good hands, but then get back on the road and go help somebody else. And so many EMS systems around the state report high levels of satisfaction with freestanding emergency departments because, for the right patient, they get them in, they get them treated in good hands, and then can turn around and take care of the next patient.

Mr. Apicella: Ms. Bertoldi?

Ms. Bertoldi: Real quick; are the co-pays going to be same if someone goes to the freestanding ER as if they went to an ER attached to a hospital?

Mr. McKnight: Yes, it would, but that's insurance specific (inaudible).

Ms. Bertoldi: Well, because they defined it... that's how they define if, like, I go to a KidMed it's \$35. If I go to an emergency room it's \$150. So, I'm just saying, so, how do they identify? So you're saying that it has nothing to do with you guys; how will they decide. But the co-pays would be the same?

Mr. McKnight: That's correct.

Ms. Bertoldi: Okay.

Mr. Apicella: Okay, I've got some questions. You've indicated that the FSED would not be an inpatient hospital. Is that correct?

Mr. McKnight: That is correct.

Mr. Apicella: And would it also not be an outpatient hospital?

Mr. McKnight: That's correct.

Mr. Apicella: Okay. Can you read me the definition of 32.2123 Mr. Leming?

Mr. Leming: Okay, 32...?

Mr. Apicella: 32.1-123 Hospital.

Mr. Leming: Yes. This is the one we were talking about. It's very similar to the Stafford definition, the one you wanted the side-by-side comparison.

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Apicella: Right.

Mr. Leming: It is very close. This definition, and the reason I gave you the regulations, is because the definition of hospitals requiring licensure is amplified by those definitions. I mean, frankly, I didn't find this particular provision particularly helpful in understanding what needs to be licensed. The regulations I think are much more illuminating than that in that respect. But this is almost... I read through this. I've looked at them side-by-side. It is, with the exception of the lead-in and the end, it's very comparable to what Stafford has incorporated into its Ordinance in the definition of hospital there.

Mr. Apicella: Right, but for the record, can you read it out to me?

Mr. Leming: You want me to read it for the record?

Mr. Apicella: Please.

Mr. Leming: Medical care facility... I'm sorry, I'm sorry...

Mr. Apicella: No, Hospital under 123.

Mr. Leming: Yeah, I'm sorry. The wrong section there. Okay. Hospital means any facility licensed pursuant to this article in which the primary function is the provision of diagnosis, of treatment, and of medical and nursing services, surgical or nonsurgical, for two or more nonrelated individuals, including hospitals known by varying nomenclature or designation such as children's hospitals, sanatoriums, sanitariums and general, acute, rehabilitation, chronic disease, short-term, long-term, outpatient surgical, and inpatient or outpatient maternity hospitals

Mr. Apicella: Thank you. So, the word acute is in the definition of a hospital in both the State Code, the one that you just referenced, and the Stafford County Code. What is the definition of acute?

Mr. Leming: Who wants to take that on? Is there a working definition of that?

Mr. Stallings: I'm not sure it's defined, but I guess (inaudible).

Mr. Apicella: Really, because I looked through several (inaudible)...

Mr. Leming: We know it's not defined under the Ordinance.

Mr. Apicella: ... and it said emergency services.

Mr. Leming: I think it's more a medical term than a legal term, but it is not defined in Stafford Ordinance either.

Mr. Apicella: Right, but we go by the normal definition, right, when we interpret things.

Mr. Leming: Acute means... acute means very serious.

Mr. Apicella: Or emergency services. I mean, that's what I found in a medical dictionary.

Mr. Leming: Yeah, mm-hmm.

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Apicella: So then, why then is the emergency department of this facility not providing acute services?

Mr. Leming: Well, we do to the extent that they're the same. We do provide emergency services. A freestanding emergency department does provide emergency services. And if you equate that with acute, they do provide that.

Mr. Apicella: Right, but that's in the definition of a hospital.

Mr. Leming: The issue... well, it's one of the things. The issue is still, what does the state require as far as licensure.

Mr. Apicella: Right.

Mr. Leming: And there is no license. We're not going to...

Mr. Apicella: I'm not sure we're there yet. I appreciate that that's your opinion.

Mr. Leming: I mean, that's the starting point.

Mr. Apicella: You may have mentioned this, but do you have examples of FSEDs in Virginia that are independent entities not licensed by the Commonwealth?

Mr. Leming: Do you know of any?

Mr. Stallings: Actually, I'll take that. That again, I think the position of the Health Department is they don't license any freestanding emergency department. You saw that in our communication...

Mr. Apicella: I'm glad you mentioned that. So, I'm reading, and I'm going to the bottom of the page and I highlighted this point so I'm not going to read the whole paragraph, but it says addition of freestanding facilities box, in the upper right corner of page 1, F equals freestanding boxes for diagnostic imaging and emergency services. That's in the communication that you had. So there's obviously a form that's provided VDH that has a box that says freestanding facilities.

Mr. Stallings: Yes.

Mr. Apicella: Can we get a copy of that form?

Mr. Stallings: Absolutely, I've got copies.

Mr. Apicella: Okay. And what is that alluding to?

Mr. Stallings: So, this is the Annual Licensure Renewal form.

Mr. Apicella: Right.

Mr. Stallings: For inpatient hospitals. And so... I'll wait till folks have copies of that.

Mr. Apicella: So, I have some more questions, but how am I not to take what we got from your correspondence with the Virginia Department of Health to mean that they're just simply not going to

***Board of Zoning Appeals Minutes
March 28, 2017***

issue another license, that you would be essentially folded under the license under the Stafford... I'm sorry, Spotsylvania Medical Center?

Mr. Stallings: And I'm sorry, by folded under, you mean...?

Mr. Apicella: Right. So, what I see in this correspondence is yes, we're not going to issue another license. You already have a license. The form says, or has a place to talk about freestanding facilities. And I guess, you know, from a bureaucrats perspective, and I'm one of them, if they don't have to issue another license why would they if it's already incorporated under I'll call it the master license of the Spotsylvania Hospital Center?

Mr. Stallings: Right. And I will say I think our position is, in the Zoning Ordinance definition of hospital is a hospital licensed in accordance with the Code of Virgin... I'm sorry, facility licensed in accordance with the Code of Virginia, licensed means having an official license. And so the question is...

Mr. Apicella: Right, and so the Spotsylvania Medical Center has a license.

Mr. Stallings: Correct, but that's not in Stafford County on this parcel. So the question is, is the facility...

Mr. Apicella: It's the hospital that has a license, right, and this part of that hospital system.

Mr. Stallings: The hospital does have a license, but we're asking the question does the facility that's located on this particular parcel in Stafford County have a license? That's the definition...

Mr. Apicella: But to me they're one in the... you've already indicated that it's part of the Spotsylvania Medical Center, that it's going to have the same pricing structure, presumably you're going to be billed by Spotsylvania Medical Center...

Mr. Stallings: That's correct.

Mr. Apicella: It's got the same corporate board, right?

Mr. Stallings: That's correct.

Mr. Apicella: So, hospitals are required to publicly display a license. Will there not be a publicly displayed license at this ER facility?

Mr. McKnight: No, there will not be.

Mr. Stallings: Again, it's not a hospital.

Mr. Apicella: I'm just asking the question because I certainly want to know from the Virginia Department of Health...

Mr. Stallings: Sure. Maybe this is helpful. Behind Tab G, so the email correspondence we were just referencing...

Mr. Apicella: Right.

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Stallings: ... immediately behind that is the cover letter and the actual license for Spotsylvania Regional Hospital, so the last page of our notebook. And you'll see...

Mr. Apicella: I'm sorry, one more time?

Mr. Stallings: Sure. The very last page of Tab G of our notebook...

Mr. Apicella: Right.

Mr. Stallings: ... is the actual license for Spotsylvania Regional Medical Center.

Mr. Apicella: Right.

Mr. Stallings: And you'll see it lists the address in Spotsylvania, and the correspondence with the Health Department confirms that they're not going to issue a new license adding a new address...

Mr. Apicella: I got that. But I'm looking at the form and it says, addition of freestanding facilities.

Mr. Stallings: Correct.

Mr. Apicella: So, it certainly seems like the dots are connected, at least in terms of VDH. Why would they ask that question on this form?

Mr. Stallings: Yeah, they definitely want to know what services are being offered under the hospital's umbrella.

Mr. Apicella: Under the hospital's license. It says applications for hospital licensure.

Mr. Stallings: Well, the cover letter, which is the second to last page, says if there's any changes during the year, let them know. And the email correspondence says if they get changes, if they don't issue a new license, they don't issue a license to the emergency department.

Mr. Apicella: Right, they don't issue new licenses. Why would it be there if there's no connection to the license? Why would they even ask the question? You're saying it's not a license issue, and it says it right here on the form.

Mr. Stallings: Well, I'm saying that the freestanding emergency department is not licensed.

Mr. Apicella: It says, addition of freestanding facilities. It doesn't make a distinction about emergency departments; it just asks about... You've asked the question, right?

Mr. Leming: If you look at the other categories on the same form, Mr. Apicella...

Mr. Apicella: Right? Change in bed capacity, addition of programs or services.

Mr. Leming: Yeah, so, all that is done here is to update Virginia Department of Health as to this new facility. That's what...

Mr. Apicella: Are you submitting... are you submitting any information...

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Leming: Let me finish. That's what the purpose...

Mr. Apicella: I'd like to finish my question sir.

Mr. Leming: That's what the purpose of the form is.

Mr. Apicella: I'd like to finish my question. So, are you not going to provide any information along with this application, okay, about this freestanding emergency department in Stafford County?

Mr. Stallings: This would be the extent of the form that would be completed. The form... this is the inpatient hospital licensure form. This is what's annually submitted.

Mr. Apicella: I got that.

Mr. Stallings: And so, the cover letter, again which is in Tab G, says essentially if there's been any changes, let us know in writing.

Mr. Apicella: But you're saying there is a change. There's an addition of freestanding facilities. A freestanding emergency department. That's why the box is checked, right?

Mr. Stallings: That's correct.

Mr. Apicella: On this form called Applications for Hospital Licensure. To the Virginia Department of Health, Office of Licensure and Certification.

Mr. Stallings: Again, if you look at the second page it says Inpatient Hospital Licensure Form. And so this is the... so the heading on the second, third, and fourth pages specifically say Inpatient Hospital Licensure Form. This is the form that inpatient hospitals complete.

Mr. Apicella: Right. And so, on the third page, again, diagnostic imaging is checked and emergency services is checked.

Mr. Stallings: Correct.

Mr. Apicella: Again, under the same hospital licensure application form.

Mr. Stallings: It's updating information on the inpatient hospital licensure (inaudible).

Mr. Apicella: I'm kind of where Adela is in terms of semantics and technicalities. I've got some more questions. So, I'm sorry, I may have lost the bubble and asked this question already, but how about FSEDs that are part of an existing hospital but are not covered by that hospital's license? It kind of goes to this point.

Mr. Leming: Are you aware of any?

Mr. Apicella: Are you aware of any FSEDs in the Commonwealth of Virginia that are part of an existing hospital but are not covered by that hospital's license?

Mr. Stallings: Again, I would say the answer to that is yes.

Board of Zoning Appeals Minutes
March 28, 2017

Mr. Apicella: Can you provide us some examples?

Mr. Stallings: Well, again, the question of covered by the license, I'm not sure that's exactly the right way to characterize it. But, I will tell you, in Virginia all freestanding emergency departments are affiliated with hospitals. They don't have to be as a matter of law, but they are as a matter of medical economics that the reimbursement for hospital affiliated emergency rooms is different and higher than if it were the case that Clark and I would go out and open an emergency room. Under Virginia law we could. There's no requirement that a freestanding emergency department be affiliated with a hospital, but as a practical matter it wouldn't make sense to invest in the resources of a freestanding emergency department if you weren't going to be affiliated with a hospital because the earlier question about the freestanding emergency department affiliated with a hospital is reimbursed at the same rate as a hospital.

Mr. Apicella: Is the ER at the Spotsylvania Medical Center covered by the SMC license? Or is it your contention that that ER is not covered by the SMC license?

Mr. Stallings: No, it is; it's part of the hospital.

Mr. Apicella: Okay.

Mr. Stallings: It's physically part of the hospital on that particular campus.

Mr. Apicella: Right. And so why is there a distinction between an ER that's part of a campus versus an ER that's not part of a campus, but still affiliated with the hospital?

Mr. Stallings: Because the separate campus doesn't have its own license.

Mr. Apicella: Right. It's part of the license of that hospital. That's what I'm trying to get to.

Mr. Leming: I think it really goes back, from our standpoint, to the ordinance. That's what this is about, the ordinance section. And what is the reference in the ordinance to facility? What facility are we talking about here? And our position is simply that the facility that is being discussed tonight, and the facility that there's an application for, is the freestanding emergency department. That is the facility, and that particular facility is not issued a license.

Mr. Apicella: When I go to my primary care or Urgent Care Center, they have what's called, I call it examination chairs or examination tables. But when I go to the ER, and unfortunately I've been too many times, they typically have beds. So, will the Stafford FSED have beds of any type?

Mr. Stallings: In licensure, beds means something different. So, typically they wouldn't be beds like an inpatient bed. In terms of what the actual horizontal platform that the patient be in, it would certainly be not like what's in your doctor's office. It would be higher tech than that. But it's, at least from a licensure perspective, it's not an inpatient bed.

Mr. McKnight: Physically they're a bed but we could not admit a patient to that bed.

Mr. Apicella: So let's just say I unfortunately go to the FSED, I probably will at one point in time unfortunately, but... because I don't live that far from where it might be... so I get there, I'm admitted, I'm in a bed; is it the same sort of thing that I would see at a normal ER? You've got a curtain, you're sitting in a bed, there might be a TV. How long might I... what's the maximum duration that you would keep somebody there?

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. McKnight: Ideally, treat and release we should be under 2 hours. I mean, that's...

Mr. Apicella: Okay, but what's maximum amount of time somebody might be there?

Mr. McKnight: The maximum, again if somebody waiting for the admission side, I mean, it would probably be 240 minutes, depending on how critical they were, depending on a number of things. But that's kind of the goal there.

Mr. Apicella: Okay. I appreciate your bearing with me on my questions. Any other questions? Ms. Brown?

Ms. Brown: I just had one. Okay. When you were talking about you and Mr. Leming, you could open up your own freestanding emergency department, would you need a license?

Mr. Leming: No, I would not.

Ms. Brown: Okay. That's what I wanted... I just wanted to ask. So, not affiliated with a hospital, you and Mr. Leming went out and opened one up right down the street, you would not need a license.

Mr. Leming: That's correct.

Ms. Brown: Okay, thank you.

Mrs. Stefl: (Inaudible - microphone not on) possibly could not fall under the medical (inaudible)?

Mr. Leming: That would be possible, yes.

Mrs. Stefl: (Inaudible - microphone not on).

Mr. Leming: Tom and I wouldn't do that though.

Mrs. Stefl: (Inaudible - microphone not on).

Mr. Stallings: No, I suspect what you're saying is right. And again, there are other states where there's... where it's not unusual to have freestanding emergency departments that aren't affiliated with hospitals. And Texas is the one that I keep hearing about. There may be others but, as I mentioned earlier, I don't believe there are any in Virginia. But theoretically there could be, because the law doesn't require it and again the rule is clear that freestanding emergency departments per se neither have to have a license nor have to have a certificate of need. Now, if any facility, whether a freestanding facility... sorry, freestanding emergency department or otherwise, wants to provide CT imaging, which is what we've proposed and what most freestanding emergency departments propose, but not all. We know at least one in Virginia run by INOVA that doesn't have CT. But, if you want CT, you have to have a certificate of need. And that's why we filed for the certificate of need, but you see we highlighted (inaudible), freestanding emergency departments don't require a certificate of need. So, I think the short answer is, if Clark and I thought it was a smart investment to open a freestanding emergency department without a CT scanner and unaffiliated with a hospital, we could do so and there would be no certificate of need requirement and there would be no licensure requirement.

Mrs. Stefl: (Inaudible - microphone not on).

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Stallings: Well, that's only the certificate of need question. It doesn't change the licensure. So the statement in the staff memorandum that equated having a CT and having license is incorrect. And I'm the first to say it's a complicated area and it's easy to get confused; but that's not a correct statement of the law. And as we've indicated in our material, it's the law in the fact that it's explicit that unlicensed facilities can be subject to certificate of need, and there are a whole long list of those we've included in our materials that are... that don't have a facility license but do require a certificate of need.

Mrs. Stefl: Okay, thank you.

Mr. Apicella: Dr. Larson?

Dr. Larson: My line of questions was going to try to establish how dependent or independent your freestanding emergency development was going to be. And I think my esteemed colleague here just went right to the chase and we found out that even if it was totally independent of the hospital, it wouldn't need a license. Is that correct?

Mr. Stallings: Correct.

Dr. Larson: Thank you.

Mr. Apicella: Other questions? Okay, thank you very much. I'm going to open the public hearing on this matter. Any member of the public who wishes to speak in support of the application please come forward. Okay seeing no one, any member of the public who wishes to speak in opposition to the application please come forward. Remember that we need you to please state your name and address.

Mr. McGranahan: Thank you Mr. Chairman, members of the Board of Zoning Appeals. My name is John McGranahan. I'm an attorney with Hunton & Williams and I represent Mary Washington Healthcare in this matter. And you all asked a number of excellent questions which has caused my outline to go all over the place in terms of trying to succinctly say the most critical points. Let me say this; I did represent Mary Washington in 2007 to obtain the conditional use permit for Stafford Hospital which is right down the road here. That's what began my affiliation with Mary Washington. And we submitted, or I submitted a letter date March 22nd which I believe you all have, I'm not going to try to walk through that in the time that's been allotted. But I do think you all got to the heart of the matter. And one thing I'll try to clarify, because I think there was some confusion early on, was the COPN versus license. The COPN is different from license. I agree with Mr. Leming and his team on that as they were presenting that. This facility is seeking a COPN for a CT imaging machine. Where we disagree with them is this facility also will be licensed by the Virginia Department of Health. It will be. It's part of the Spotsylvania Regional Medical Center's license. True, there won't be a separate brand new license issued for this site specific location, but it is going to be subject to regulation under the license for the main hospital; it'll be subject to the same standards; it's affiliated -- I mean, all the things that you all highlighted that we presented in our letter, and I have some other folks who will come up here and go through even more of those. But the long and short of it is, it is part of; it's a department. It's right in the name of it. It's a department of a hospital. And it is regulated by the Department of Health as a hospital under its licensure program. It just doesn't technically have its own standalone license. I do want to say something about the reference to medical clinic, because everybody sort of says well, you know, this could be a medical clinic because there are no overnight stays. But look at your definition of medical clinic. A room or group of rooms used for a medical, dental or psychiatric practice. That's a doctor's office. A practice. It's not an emergency department of a hospital. And the significance of that is one of intensity. A number of you noted that there will be ambulances that come to this facility, that bring patients to this facility. That would not happen at an Urgent Care; would not

*Board of Zoning Appeals Minutes
March 28, 2017*

happen at a doctor's office. The ambulances are going in the opposite direction. So, this is more intense than a medical clinic, boiling down to land use analysis. The CUP process is to give the Planning Commission and Board of Supervisors the opportunity to look at this and say is it an appropriate location for this type of use. It's generated by an intensity question. And your ordinance appropriately says hospitals are more intense and we have to look at them through the CUP process. Medical clinics are not; they're allowed by-right. This is, and a number of you pointed this out too, in terms of distinctions, forget the semantics and the definitions, but in substance this is a hospital emergency room. That's what it is. They'll be able to do anything that you can find in a hospital emergency room and it needs that level of land use scrutiny. Let me mention this too; the Spotsylvania Medical Center, in the filings that they submitted to the state in connection I believe with their COPN application, made the point that, and this was talking about is this a permitted use on the property. They said, the fact is that Stafford County does not have a definition under the Zoning Ordinance that fits the proposed FSED, which appears to fall somewhere between a hospital and a medical clinic. I would submit it's a hospital; it doesn't fall in between. But if it does fall in between, then I think it falls under what Mr. Apicella said earlier on, and that is it's Section 28-37 of your Ordinance that says, a use that doesn't fall into one of your defined terms is allowed, but it's only allowed with a conditional use permit. And we're right back where we were because the Board and the Planning Commission reserve to themselves the authority to take a look at those, make sure that the impacts are mitigated, made sure that it's the appropriate location. This may... a freestanding emergency department does have a role and it might be a good use in this location. But that's not the question before you all tonight. The question before you all is, is this a hospital or a medical clinic or something in between? We submit it's a hospital and the licensure is the main reason why, but the substance of it is both. And I think your Zoning Administrator made the right call; she's entitled under 15.2-2309 to a presumption of correctness. And they have to overcome that with a preponderance of evidence. I see my time is just about up; in fact, it's counting the other direction. So, I'll wrap up. But we appreciate the time and attention you're devoting to this. Your questions reflect that you've done your homework and it's impressive. So, I'd be happy to answer any questions you might have.

Mr. Apicella: Questions? Dr. Larson.

Dr. Larson: Yes sir. I'd like to ask you the same question I asked the other gentleman. If you cut the cord of this FSED facility to the Spotsylvania Hospital, it's now its own entity and we're going to put it on that spot. Would it need a license?

Mr. McGranahan: And Mr. Larson, honestly I don't know the answer to that. I'm like Mr. Leming; I'm a land use attorney, I'm not an attorney that specializes in the regulation, the state regulation of medical facilities. I... but I will, because I'm a lawyer, say something. I find it hard to believe that two private individuals could say we're going to open an emergency department and just do it without any state regulatory oversight whatsoever -- personally. But that's... don't take that as a legal opinion that they couldn't do it in theory. But I do understand from my client, and maybe some of them can speak directly to your question, it doesn't happen. I mean, none have been sighted in Virginia. They are affiliated, and I guess what I would say for purposes of your decision, is the proposed use that the Zoning Administrator reviewed and analyzed is affiliated with a hospital. It's not two private individuals that are coming in and proposing it. It is a facility and it is licensed by the State of Virginia as part of the Spotsylvania Regional Medical Center. So this one that's in front of you, and this appellant, is not two private citizens saying we'd like to do this.

Mr. Apicella: Ms. Brown?

***Board of Zoning Appeals Minutes
March 28, 2017***

Ms. Brown: Thank you. I do have the letter; we received a copy of that. I was just curious why we got the letter. Did you just happen to see our public notice and wanted to help us out or did someone ask you to (inaudible)?

Mr. McGranahan: No. As I said, I represent Mary Washington Healthcare. They operate Stafford Hospital. They are very interested in the word I'll use, but they're very focused on this decision. They were focused on what the Zoning Administrator was going to rule. They are participating in the COPN process. And they want to know the answer. When they contacted me, I read the ordinance definitions. They described what this use was and I said well, it's a hospital. I think it's a hospital. And that's before the Zoning Administrator had rendered her decision.

Ms. Brown: Well, I guess I don't know what the interest is. Is this a competition issue or... I'm trying to figure out what the interest is on behalf of Mary Washington.

Mr. McGranahan: I would say that it's two... I would say that it's two things. I mean, certainly they are concerned with impacts on the viability of their medical facilities that are licensed by the state. Just like Spotsylvania's are licensed by the state. So, there is that interest; competition, need, service is where you're going. But I also think that for purposes of just the integrity of how zoning ordinances regulate medical uses, we feel very strongly that this is a department of a hospital under a hospital license. And, therefore, we feel the Zoning Administrator is absolutely correct. And whatever, if you should affirm that, that would obviously apply to Mary Washington Healthcare as well.

Ms. Brown: Getting back again to why you wrote us. So, on behalf of Mary Washington, and I have to ask, I'm sorry, did anybody from Stafford solicit your opinion from the County?

Mr. McGranahan: No. No one solicited it. But I did have conversations with the Zoning Administrator; but I initiated that, not the Zoning Administrator.

Ms. Brown: Okay, thank you.

Mr. Apicella: Ms. Bertoldi?

Ms. Bertoldi: Yeah, just to go back to the definition of hospital, and I know your argument saying a facility licensed in accordance with the Code of Virginia, but it doesn't say a facility or entity associated with a facility in accordance to the Code. So, to me it sounds like you're reading in to the definition of a hospital that a facility has to be all... either it's including it even though it is a freestanding building -- and we all know that. And even though it's associated under the umbrella of the hospital, it's still its own entity. So, the hospital definition is a facility, not a facility or entity associated with a facility, has to be licensed. So, I think that that's where, you know, there is a difference and you're familiar with the Dillon Rule that we are, you know, can only look at the definitions and we cannot read, you know, anything into what we want to read. And so I just want to know what your response is to that because there is a difference. I mean, there is a certain level of nuance associated with this. And this is a very difficult case on that because we really have to take every word very, you know, carefully. So, I just want to know what your response is to that.

Mr. McGranahan: Sure. This is a facility and it's clearly freestanding, I agree with that. But we don't think that it's just affiliated with an entity that's licensed. The license for Spotsylvania Regional Medical Center applies to the hospital in Spotsylvania and to this department of the hospital that would be in Stafford County. And I think Mr. Apicella's form, which I didn't realize until I heard some of the questions this evening, but the form for the annual renewals of the hospital license, you have to note and

***Board of Zoning Appeals Minutes
March 28, 2017***

reflect that you a freestanding department in an offsite location. The Health Department will know it, they'll regulate it. The patients of the freestanding emergency department will be patients of Spotsylvania Regional Medical Center. So, we don't think there's, while they're physically located in separate locations, it's more than just they're affiliated with an entity that's licensed. It is licensed. It's part of the license for the bigger hospital, the main campus if you will.

Ms. Bertoldi: Okay. But I think, you know, and maybe some of my BZA fellow members can correct me if I'm wrong, but I believe when we were asking questions earlier, the question was raised about if they needed to go to a hospital facility where they needed more intense care, could they choose, assuming that they were able to choose. And the answer was yes. Am I correct on that? So, I think that it's presumptive to say that they are a patient of their hospital, and I think that that, you know, is another nuance.

Mr. Apicella: I'm not sure I'm going to agree with that because I asked the question about who would they be billed by, and they said Stafford... I'm sorry, Spotsylvania Medical Center.

Ms. Bertoldi: Right, for their treatment at their freestanding ER.

Mr. Apicella: Right.

Ms. Bertoldi: But I'm saying, if they had to go to a different facility, they can go to any facility that they wanted to. He was saying that they would be a patient of... if they had to go someplace else, that they would be a patient of the hospital.

Mr. McGranahan: No, I should clarify that. Because what I mean was, if they are brought by ambulance to this freestanding emergency department and they receive some treatment, that treatment that's being provided to them is being provided by Spotsylvania Regional...

Ms. Bertoldi: They would be billed by that.

Mr. McGranahan: ... Medical Center, and they'd be billed by that. But...

Ms. Bertoldi: Because that's not what it sounded like you said.

Mr. McGranahan: I know, and I apologize. But if they obviously were transported from there to a different, then they no longer would be a patient of the hospital.

Ms. Bertoldi: Because that's not what it sounded like. Okay, that's fine.

Mr. McGranahan: I'm sorry, I didn't mean to mislead you.

Ms. Bertoldi: No, that's why I wanted to clarify.

Mr. Apicella: Mrs. Stefl?

Mrs. Stefl: And jumping on that, it is typically when a patient does need to be transported to another hospital, it is coordinated through the ER; it's an ER to ER transport even though, like my husband was going to be admitted to UVA from Stafford Hospital, but it had to go from the ER to UVA Medical Center ER and he had to be admitted through the particular and so we received two different bills. We were billed by Stafford and we were billed by UVA for that service. But, I guess I also wanted to ask

***Board of Zoning Appeals Minutes
March 28, 2017***

you a question on Mary Washington operates their own freestanding down in Spotsylvania though, correct?

Mr. McGranahan: Correct.

Mrs. Stefl: And you treat that particular location, that Lee Hill location as a, just like they're going to treat this freestanding, a separate department or another department of the Mary Washington system, correct?

Mr. McGranahan: It's a department of the Mary Washington Hospital.

Mrs. Stefl: Okay, so, I guess, is your concern that, and to sound brutt here, but they're honing in on your territory? Is this a concern of yours or that you didn't do it first? Is that some there?

Mr. McGranahan: I don't know exactly how to answer that because it's really based on need and perceptions of need. I thought where you were going with the question was that would we...

Mrs. Stefl: Well, you're already in Spotsy. So, I mean, you're kind of like down in their zone and they're kind of coming up to your zone.

Mr. McGranahan: Right.

Mrs. Stefl: I'm not a lawyer, I'm, you know, a budget person. So...

Mr. McGranahan: But let me answer this because it's a good question, it's a fair question. I'm not here saying that you all need to make a decision that... about competition and who belongs where. And like I said a few minutes ago, they have picked a location, they're proposing it; if they go through the CUP process and the Board of Supervisors approve it and they get the certificate of need for the CT imaging, then they can do it here. And that's not a question in front of you all tonight. And we're not looking for you to say you cannot do a freestanding emergency department in Stafford. We're not asking you to do that, we can't; it's not in front of you. What we're saying is that your ordinance requires them to go through the CUP process. And then issues like ambulance traffic and other land use issues can be reviewed. But we're not saying prevent them from coming here.

Mrs. Stefl: Okay, alright. Thank you very much for the clarification.

Mr. Apicella: Ms. Brown, did you have something else?

Ms. Brown: Yeah, just a clarification. You were just referring to the application form for licensure, and you mentioned the box, you know, was checked addition of freestanding facilities. But you added addition of freestanding facilities, offsite facilities. That's not on the form.

Mrs. Stefl: (Inaudible) not his form.

Ms. Brown: No, I know but... and I wanted to say that it does not say offsite facility.

Mr. McGranahan: Okay.

Ms. Brown: That was something you added. So I just wanted to clarify that.

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. McGranahan: And I apologize for that. I don't have the form; as I said, I learned about that from the questions.

Ms. Brown: Yeah, it just says addition to freestanding facilities.

Mr. McGranahan: That's fine.

Ms. Brown: That was just... thank you.

Mr. Apicella: This is the license. Spotsylvania Medical Center General License Number H1934. So, from what I heard you say that if and when this freestanding emergency department goes into operation, they would fall under this license, or whatever the next series of numbers might be.

Mr. McGranahan: Right. Correct. That will be their license because they are a department of that facility.

Mr. Apicella: And, as I read their regulations for hospitals, 12VAC5-410, any hospital has to publicly post their license. So, would it not logically conclude to a reasonable person that they would have to post this license in their Stafford FSED?

Mr. McGranahan: I certainly want to agree with you, but I don't know... I just don't know legally if they are required. But you just read a regulation that would suggest that and I... when that question came up earlier, I thought well certainly they have to post a license. Again, it's a medical facility and it's an emergency room.

Mr. Apicella: You may not be prepared to answer this right here and now, and I'm going to reserve the right to bring you up if we have any more questions, but from your vantage point, are there any other statutory or regulatory framework material governing this matter that we ought to take into consideration? Again, I'm not going to hold you to it right this (inaudible).

Mr. McGranahan: I understand, and I haven't seen the binder.

Mr. Apicella: I mean, we've got nice binders.

Mr. McGranahan: Yeah, and it sounds like that most of the regulations if not all of them that are relevant are there. I do, in the interest of time we don't have the time, but looking at the different definitions and a lot of the exchange that you had earlier with the applicant, I would have different responses to some of those questions. But I think you have the relevant code sections and regulations in front of you. I'll give it some more thought, but I'm not aware... nothing comes to mind. I mean, the one thing that hadn't been mentioned except for by you was this idea that if, in fact, that it's not a hospital or a medical clinic, then it's a CUP process, you know, that section in your Zoning Ordinance I wanted to mention. But, I think that's it. Again, we think it's a hospital because it's licensed for two reasons, two primary reasons; one, because it's under the license of the hospital and on the main campus, and two, because as Ms. Bertoldi said, it does everything that a hospital ER does.

Mr. Apicella: Thank you.

Mr. McGranahan: Thank you very much.

Mr. Apicella: Okay, anyone else like to come forward?

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Fines: Hi, my name is Robert Fines. I'm an emergency physician; I've worked at Mary Washington Hospital for the past 12 years. I also work at Stafford Hospital and the Mary Washington freestanding emergency department, and I'm the Operational Medical Director for Stafford County Fire and Rescue. And I just wanted to bring a few things to your attention. Since I work at the freestanding emergency department for Mary Washington, you know, I know what goes on in a freestanding emergency department and I understand how it's different from a clinic. And I can tell you that when they bill a patient, like a Medicare patient for example, and they send the paperwork to CMS, they use the hospital ID number. So the freestanding for Mary Washington uses the Mary Washington Hospital hospital ID number when they submit those bills. And when I transfer a patient from let's say Stafford Hospital to Mary Washington Hospital, I have to fill out a form called an EMTALA form and... but when I'm at the freestanding emergency department, the Mary Washington freestanding, I don't have to fill out the EMTALA form because we're already at Mary Washington Hospital. We're not changing facilities, we're still in the same facility. And actually it's not even a transfer; we don't transfer from the Mary Washington freestanding to Mary Washington. We admit them. The same as if we were in the emergency room at Mary Washington. We call the same hospitalist who's going to be the attending physician for the patient, tell him about the patient, he accepts the patient, and they go directly to a room. And then we put in the admission orders in the computer system the same as we would if we were in the Mary Washington freestanding. So, I would say that... I mean, a freestanding emergency department is not a hospital, but Mary Washington Hospital emergency department is not a hospital. But it's certainly part of a hospital and the freestanding emergency department at Lee's Hill is part of Mary Washington Hospital. And so I think that would be analogous to this situation. I guess I can take any questions you might have.

Mr. Apicella: Questions? Ms. Brown?

Ms. Brown: I was trying to write them all down but he finished a little quick. Did you just say that the freestanding emergency department that you have at Mary Washington is not a hospital?

Mr. Fines: It's part of the hospital.

Ms. Brown: Okay.

Mr. Fines: So, just like the emergency department... the Mary Washington Hospital emergency department is not a hospital. It's part of a hospital. And the freestanding emergency department at Lee's Hill is not a hospital, it's part of a hospital.

Ms. Brown: So, your contention that it's not a hospital but part of a hospital.

Mr. Fines: Right.

Ms. Brown: Okay. And your... the form you were talking about, the EMTALA form -- what if your patient was at the freestanding emergency department in Mary Washington and did not want to be transferred over to the other one, would you have to fill out the form then?

Mr. Fines: If I were going to transfer them to a different facility with a different hospital ID number, then yes. So, if I were to transfer that patient to Stafford Hospital or to Spotsy Regional or to VCU, then I would fill out the EMTALA form. But if I'm sending them to Mary Washington, then it's... we're still in the same...

Ms. Brown: So, it's only in-house if they...

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Fines: ... emergency department.

Ms. Brown: ... request to continue to stay in-house. They can certainly go to another hospital. So, then their stay is not part of the hospital, right?

Mr. Fines: Could you say that again? You lost me.

Ms. Brown: Okay. If they're in the Mary Washington FSED and they do not choose to go to continue their care, if they need to be admitted to the hospital, they choose to go to Spotsylvania Regional, you have to fill out a separate form and they are no longer part of that Mary Washington Healthcare System, right?

Mr. Fines: Right. Once they left our facility... I would have to fill out the EMTALA form and then once they left our facility, then they wouldn't be within our health system any more.

Ms. Brown: Okay. Who pays for the ride to the other facility?

Mr. Fines: If the patient were being transferred from our freestanding to say VCU or Spotsy Regional, then the patient's insurance would be billed for the transfer. But if we're sending the patient from the Mary Washington freestanding to Mary Washington Hospital, my understanding is that those patients don't get charged; that we have an agreement that Mary Washington covers that through our contract with LifeCare. And it's my understanding that we can't bill for an intra-facility ambulance transfer, because we're already in Mary Washington Hospital. So we can't bill an ambulance transport from hospital A to hospital A.

Ms. Brown: And I got you were an ER doctor and also for Stafford Fire and Rescue. What was your name? I'm sorry.

Mr. Fines: Oh, Robert Fines, F-i-n-e-s.

Ms. Brown: Okay, thank you. That was all.

Mr. Apicella: Other questions? Okay. So, presumably Mary Washington Hospital has a license just like this, right?

Mr. Fines: Yes.

Mr. Apicella: And you mentioned that there's a freestanding emergency department both at the Mary Washington campus, which is in Fredericksburg, right?

Mr. Fines: No, we have an emergency department at Mary Washington Hospital...

Mr. Apicella: That's what I'm saying.

Mr. Fines: ... yeah, but it's not...

Mr. Apicella: But I thought you said there was a freestanding emergency department?

Mr. Fines: We have a freestanding emergency department at Lee's Hill.

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Apicella: Okay. Maybe that's what you meant. I thought I heard you say there was a... clinic.

Mr. Fines: No, we have one freestanding and it's at Lee's Hill.

Mr. Apicella: Okay. So, that emergency department at Lee's Hill, that's in Spotsylvania; two different jurisdictions, right? Fredericksburg, Mary Washington Hospital Center. Lee's Hill, part of the Mary Washington Health System, right, that operates an FSED in a different locality, right?

Mr. Fines: Yes.

Mr. Apicella: To your knowledge, do they fall under the license? That FSED at Lee's Hill, do they fall under the license that's provided to Mary Washington Healthcare?

Mr. Fines: That's my understanding. I mean, we've had the Virginia Department of Health down in the freestanding inspecting us and that's my understanding. But I'm not really a legal person, so...

Mr. Apicella: I understand. And you might be able to check back with your folks to (inaudible).

Mr. Fines: I do know that we use the... the freestanding uses the same hospital ID number as Mary Washington and that it's considered the same facility even though it's geographically separated.

Mr. Apicella: Have you seen the license posted anywhere at the freestanding emergency department?

Mr. Fines: It's probably in the waiting room over by the Coke machine, but I'm not sure. I don't go out to the waiting room much.

Mrs. Stefl: (Inaudible - microphone not on).

Mr. Apicella: Okay. I appreciate it sir. Anything else? Thank you.

Mr. Fines: Thank you.

Mr. Apicella: Would anyone else like to come forward?

Ms. Yablonski: Hi, my name is Cathy Yablonski. I'm also the Administrator of Stafford Hospital. When constructing a freestanding emergency department, which is an extension of a hospital, it's typically follow... you follow the Facility Guidelines Institute, which is FGI standards, for the construction of hospitals and outpatient facilities. FGI is an independent not for profit organization dedicated to developing guidance for the planning, design, and construction of hospitals, outpatient facilities, residential healthcare, and support facilities. FGI partners with numerous other organizations to help develop the guidelines and other practical evidence informed publications. The FGI guidelines are used by state and federal agencies as a standard to evaluate the minimum requirements for construction for inpatient and outpatient health facilities. When evaluating the FGI standards for freestanding emergency centers and medical clinic space physician offices, there are a number of distinct differences in functional design of the entrances, reception, triage areas, treatment rooms, infection control, and isolation administrative space and security. Freestanding EDs are required to have clear signage for ambulance traffic. Medical clinics do not. Freestanding ED designs of reception and triage areas must ensure that access control be maintained at all times. Triage must have oxygen, vacuum, and medical air station outlets to the same standards as it would be in a hospital. Medical clinics may or may not have been built in medical gases; in many cases they use these as portables.

***Board of Zoning Appeals Minutes
March 28, 2017***

Freestanding EDs are required to have a communication center that allows for real time communication with emergency medical providers. Medical clinics do not have this requirement. Freestanding ED treatment rooms must have doorways that are wide enough to accommodate stretchers because many times emergency room patients are not ambulatory. ED rooms are larger to accommodate diagnostic monitoring, equipment, the intravenous pumps that administer medication and blood. Medical clinic rooms are much smaller in size because they do not accommodate such equipment. Freestanding ED will have much more sophisticated diagnostic imaging equipment which clearly distinguishes them from a medical clinic. Lastly, emergency centers must provide decontamination and isolation space for infection control. Medical clinics do not. Any emergency center, freestanding or not, must be prepared to respond to disasters whether manmade or natural. There are many other differences that these are some of the important points to consider. A freestanding ED is an extension of a hospital. Thank you.

Mr. Apicella: Thank you. Any questions? Thank you very much.

Ms. Yablonski: Thank you.

Ms. Burns: Hi, good evening, my name is Sandy Burns. I'm part of the leadership team with the Regulatory Affairs and Risk Management Department at Mary Washington Healthcare. I'm hoping this evening to be able to share with you what our freestanding emergency department at Lee's Hill, what that site looks like in its relationship to Mary Washington Hospital. So, hopefully, you can gain a greater understanding of a freestanding emergency department's connection to a larger hospital. And I also wanted to start by clarifying a question I believe that you had earlier about Stafford Hospital and the emergency department at Stafford Hospital, because, as you're aware, Mary Washington Healthcare owns and operates both Mary Washington Hospital and Stafford Hospital. So, at Stafford Hospital, the question that was posed was in regards to is it a department of Stafford Hospital, is it under the hospital's license. The answer is yes. It is under Stafford Hospital's license. It does not have separate license because, as we've already established here tonight, the freestanding ED falls under the hospital's main license. And also, I would like to add that prior to opening a freestanding ED... prior to opening our freestanding ED at Lee's Hill... we were required to undergo an inspection by the Virginia Department of Health Office of Licensure and Certification, as well as other agencies such as the Board of Pharmacy. These inspections would not otherwise be required of a medical clinic or a physicians' office. So, the Emergency and Outpatient Center at Lee's Hill, which is our freestanding emergency department, is included under Mary Washington Hospital's license. It does not have its own license because it is part of Mary Washington Hospital's main license; it could not operate without that. When we undergo a Virginia Department of Health state licensure survey, both the main campus emergency department, as well as the Lee's Hill location, are both included in that survey. The same holds true for any centers for Medicaid and Medicare services; a CMS inspection, they are required to visit both sites because they see it as an extension of the main ED. It is a department of Mary Washington Hospital. Also, when contracting with commercial insurers, rates for both emergency service locations are negotiated together. When patients are treated for the same condition at either of the sites, the main campus ED or the ED at Lee's Hill, patients are charged the same rate for an emergency department visit; there is no difference. Because Lee's Hill emergency services is considered a department of Mary Washington Hospital, they can legally share the same staff, and they may share staff during the same shift. When you are looking at a different facility, you may not do that under CMS requirements. In Virginia, hospitals cannot operate without being licensed. So, therefore, if Mary Washington Hospital were to lose its license to operate the freestanding emergency department at Lee's Hill would therefore also lose its license to operate because it's under the same license. So, according to Spotsylvania Regional Medical Center's Certificate of Public Need application on page 3 of 28, it states that SRMC will have 100% ownership of the proposed FSED and would therefore be included in SRMC's hospital license. So, if SRMC were to lose their hospital license for some reason, then the proposed FSED on

***Board of Zoning Appeals Minutes
March 28, 2017***

Route 17 would also cease to operate. Mary Washington Hospital, in closing, agrees with the Stafford County Zoning Administrator's determination that the proposed FSED does not meet the Stafford County Zoning Ordinance for medical clinic because it cannot operate without being included in SRMC's hospital license. Thank you.

Mr. Apicella: Thank you. Questions? Ms. Bertoldi?

Ms. Bertoldi: Yeah. Wouldn't there be a requirement of an inspection with their Certificate of Public Need, not just with the license?

Ms. Burns: I'm sorry, I'm not sure I understand your question.

Ms. Bertoldi: Well, there was a... we had long discussions about a difference between a Certificate of Public Need and a license, and that they are mutually exclusive, they can't overlap but you can have one or the other. And a medical clinic can, because of the CT scans, will need a Certificate of Public Service, correct? Or Need, Certificate of Public Need.

Ms. Burns: Correct, (inaudible).

Ms. Bertoldi: Wouldn't there be a requirement to have an inspection if you were required to have a Certificate for Public Need?

Ms. Burns: Not necessarily.

Ms. Bertoldi: Well, that's not really answering my question, because you said that you made a definitive statement that your freestanding ER is required to have an inspection and they would not be required to have an inspection if they didn't need a license. But, it would seem that if you were required to have a Certificate of Public Need, which requires another, you know, heightened level of... because you're having a CT in this particular instance, you would also need an inspection. So I think the answer is really a yes or not, not a not necessarily. Or maybe you can elaborate on what not necessarily means.

Ms. Burns: When... and I don't know, perhaps you want to...

Ms. Bertoldi: You understand my question though, right?

Ms. Burns: I'm still a little confused by your question, to be honest with you.

Ms. Bertoldi: Well, no, but you made the conclusion that, you know, you would not have an inspection if you didn't need a license. But, if there wasn't a license... it must need a license if you're going to have an inspection and since Mary Washington's freestanding had an inspection therefore it requires a license. And what I'm saying is, is that a Certificate for Public Need I'm asking would that require also or would they just fill out a form, stamp it and hand it to you? I mean, obviously there's going to be some follow-up which would be by virtue of inspection. So, that's what I'm asking.

Ms. Burns: Right. The distinction that I was trying to make was that the freestanding emergency department, as we're talking about tonight, would require an inspection by the Virginia Department of Health Office of Licensure and Certification, as well as other inspections such as the Virginia Board of Pharmacy inspection because of the nature of the business they will be conducting. A physicians' office would not necessarily need that. I wasn't attempting to draw a conclusion between a COPN and a

***Board of Zoning Appeals Minutes
March 28, 2017***

license; I was trying to say the type of service that you're being licensed for would require those additional inspections.

Ms. Bertoldi: I guess I'm just saying that just because your freestanding facility had an inspection, that's not necessarily because it needs a license. It could be... I mean, do you have a Certificate of Public Need for your ER, your freestanding ER?

Ms. Breen: If I may...

Mr. Apicella: Can you just tell us your name and address.

Ms. Breen: My name is Elizabeth Breen. I'm Healthcare Regulatory Counsel to Mary Washington Healthcare. I'm with Hunton and Williams. To answer your question, does the Certificate of Public Need review process involve an onsite inspection, the answer is no. There is no onsite inspection associated with the Certificate of Public Need.

Mr. Apicella: Can you explain the difference between a COPN which I think is part of the approval process to create a facility versus a license which is an ongoing thing that let's continue on for as long as the facility is in operation.

Ms. Breen: Sure. We are in agreement with Mr. Leming and Mr. Stallings that the Certificate of Public Need review process is separate from the facility licensure process in Virginia. They're both under the umbrella of the Virginia Department of Health, but they are separate statutes, separate regulatory regimes. The Spotsylvania Regional Medical Center freestanding emergency department is going through the Certificate of Public Need review process because it is seeking approval to put a CT unit at the contemplated freestanding emergency department. That CT COPN review is separate and apart from whether the freestanding emergency department is part of Spotsylvania Regional Medical Center. Our position is, and I don't think you'll hear them dispute this, that the proposed freestanding emergency department will in fact be part of the hospital. The distinction that Mr. Leming is drawing is that the freestanding emergency department will not receive its own separate license; that's true, but that's because it will be operated under the hospital license. There's no need for a separate license because it will not... well, physically, at a separate location, from a licensure standpoint it's all part of the same hospital facility.

Mr. Apicella: And the same will be true if they operated ten different FSEDs in the regional area. They'd all be part of that one master license. They wouldn't each get their own separate license.

Ms. Breen: Correct. They would operate pursuant to whatever hospital license they were associated with. So, each (inaudible) operates freestanding emergency departments in other areas of the state, those freestanding emergency departments, just like any other freestanding emergency department in the state would be operated pursuant to whatever hospital license that the freestanding emergency department was associated with.

Mr. Apicella: I'm going to give you a chance to come up and speak as well, but do you have any other questions? Do you have any other questions? I'm going to ask you the same question that I asked before. Is this posted, something like this posted at the Lee's Hill Center?

Ms. Burns: To my knowledge no it's not. And the rationale for that is because it's a department of Mary Washington Hospital, just like you could walk into one of our physical medicine and rehabilitation clinics, or you could walk into our heart failure clinic and you would not find a copy of that license

***Board of Zoning Appeals Minutes
March 28, 2017***

posted. Because the requirement is for it to be posted at the hospital. So, it's posted in the main hospital facility. I will tell you, however, part of my role, and one of the largest parts of my role, is that when we have surveyors or inspectors come in from various state agencies, federal agencies, or crediting bodies, I'm one of the people who is literally joined at the hip with these individuals for the entire time that they are with us at our facility. I also assist them with all of their reviews while they're there and filling out all of the paperwork that's required of us. They do not see any difference between our emergency department on our main campus and our emergency department at Lee's Hill. They see them as one in the same. It's an extension of the larger emergency department and that's how it's treated.

Mr. Apicella: Do you know, how do they track, how does VDH track the facilities that are associated with a master license? Could you go to VDH and say, can you tell me the three entities that are associated with Spotsyl... not Spotsyl, Mary Washington Healthcare Center?

Ms. Burns: Sure. So, once a year annually, I think this was brought up earlier as well, we're required to renew our license with the Virginia Department of Health Office of Licensure and Certification, the OLC. As part of that document, on there we are listing what the services are that we provide.

Mr. Apicella: Right. I got the services part but I'm talking about the facility. So, in theory, if I went to the Virginia Department of Health and I asked them what facilities are connected to this license, obviously they would tell me the master... the main campus of Mary Washington Hospital Center. Would they also tell me, oh, they also have a facility at Lee's Hill?

Ms. Burns: Yes, they can tell you that because they know, associated with our license, that we have a freestanding emergency department at Lee's Hill.

Mr. Apicella: Thank you. Okay, next person to speak.

Ms. Skinner: Good evening. My name is Christina Skinner. I am the EMS Coordinator for Mary Washington Healthcare and serve that healthcare system. My background also includes 30 years of EMS experience in this region, serving in various administrative capacities. You have tonight asked several questions with regards to EMS which is why I felt the need to come forward and hopefully be able to answer some of those as well. EMS transport in this region is based on protocol and medical direction. And as you met, Dr. Fines is the current medical director for Stafford County Fire and EMS. And those transports, under the Virginia EMS Rules and Regulations, which those licensed EMS agencies follow, do require that the patients be transported to a hospital or licensed medical facility. With that, those types of facilities would be required to have proper communications so that they can talk to the ambulance crew as they're coming in with their patient so that that ambulance crew can also have the ability to speak to a physician for online medical control. All of these things are outlined in the Virginia EMS Rules and Regulations, and those destinations. So, as you heard tonight, they do expect that they will see patients coming to that freestanding emergency department by ambulance. And so I would ask that you consider the impact that that will have as you're considering this from a zoning perspective with regards to the increased volume of ambulance traffic 24/7 coming in and out of that freestanding emergency department in that area, as well as consideration, which you mentioned the potential for the use of air medical. Air medical in Virginia is also a licensed EMS agency and follow the same EMS Rules and Regulations by Virginia and that could be a consideration. We have had to use air medical at our own freestanding emergency department in Spotsylvania County. So you need to consider the impact of what those regulations would include; making sure that they have a safe landing zone, where would that helicopter land, how would they then transfer the patient and fly them to whatever facility they need to be transferred to from that perspective. And you also need to consider that not just by ambulance crews, but also those walk-in patients, because if this is advertised as a

***Board of Zoning Appeals Minutes
March 28, 2017***

freestanding emergency department those acute type patients or injuries are what you would expect that they would, you know, that they would typically go there as an emergency department. I think I tried to hit most of your questions that I heard you ask in regards to EMS, but happy to answer any other questions beyond what I did just provide if you have any.

Dr. Ackermann: Thank you. Do you have any statistics on what the proportion or how many people come by ambulance and how many people walk into emergency facilities?

Ms. Skinner: Are you referring to Mary Washington Healthcare since that's where I work?

Dr. Ackermann: Sure. Well, I mean, or in general would be good, too, but Mary Washington. Do you have an idea?

Ms. Skinner: For Mary Washington Healthcare from the emergency crews, so the ambulance, our emergency departments see about 22,000 patients. And of that, it's a very small amount that currently is transported to our freestanding emergency department. It would be less than 500. And again, part of that is going to be based on protocol and medical direction. Obviously that is located in Spotsylvania County and they have a different Medical Director for that locality and agency, just as Dr. Fines serves for Stafford. So, it is obviously our main emergency department obviously sees a much higher volume than our freestanding ED, but they are considered the same. Just as many of the others spoke, in Virginia EMS providers are required to fill out an emergency patient care report and they have to list what facility they transported that patient to. And just like Dr. Fines shared, when they do the EMTALA or when they transfer, it is the exact same for EMS. When they transport a patient to our freestanding ED, it is Mary Washington Hospital Emergency Department's number that they list on that EMS patient care report that is then reported to the State of Virginia. So, they are considered the same entity, just different locations. But they are part of that same emergency department for Mary Washington.

Mr. Apicella: So, I've got a couple of questions for you. How is an emergency department different from an Urgent Care Center? From an EMS standpoint.

Ms. Skinner: Oh, it's very. Well, several things come to my mind. First of all, it would be based on the acuity of the types of patients that you are going to see in an emergency department versus in a medical care center or Urgent Care Center. Someone spoke earlier; EMS, we're usually taking the patient from the Urgent Care to the emergency department. That very frequently happens in this region.

Mr. Apicella: So, you mentioned the word acuity and I was going to ask you about it. How do you define acuity? Or acute care?

Ms. Skinner: Well, I can tell you from the Virginia EMS Rules and Regulations that acute is defined as a medical condition having a rapid onset and a short duration. So, for EMS, in the field, that's how we would define acute and then make those determinations on the proper destination for our patients.

Mr. Apicella: And I may not have heard you correctly, but I'm just going to try to seek clarification. I think you mentioned under EMS rules that in order for EMS services to deliver a patient to a facility, that facility must be licensed. So, if the Stafford FSED is not licensed independently or as part of a master hospital, then you wouldn't deliver patients there -- or under the rules patients could not be delivered there.

***Board of Zoning Appeals Minutes
March 28, 2017***

Ms. Skinner: Yes, that would fall under the authority of the Operational Medical Director, which is outlined in those same rules and regulations. And so, if that facility was not licensed, their Operational Medical Director has the authority to say you will not transport patients there to that facility.

Mr. Apicella: So, again, the bottom line is, an FSED has to have a license in some way, shape, or form...

Ms. Skinner: Yes.

Mr. Apicella: ... either as its own entity or under another hospital.

Ms. Skinner: Yes, yes. And obviously I work very closely with the Virginia Department of Health Office of EMS and one of my colleagues there, the Manager of the Regulation and Compliance Department did share with me that a freestanding emergency department should be licensed. And, again, as the others have shared, that it typically that license comes from the primary hospital.

Mr. Apicella: Any questions? Ms. Brown?

Ms. Brown: You just said the direction, the medical director has the decision making authority...

Ms. Skinner: The authority.

Ms. Brown: ... to take it to what you determine as an unlicensed or licensed facility.

Ms. Skinner: Yes.

Ms. Brown: So, they could go. So maybe it's not required that they have to be licensed then because they could go.

Ms. Skinner: Yes. The Medical Director could say yes, you could transport to that freestanding ED if it was not licensed. That would fall under the authority of their Operational Medical Director.

Ms. Brown: Okay, thank you.

Mr. Apicella: Anyone else? Thank you. Anyone else like to come forward?

Ms. Breen: I just will make one point of clarification again. My name is Elizabeth Breen. I am Healthcare Regulatory Counsel to Mary Washington Healthcare and I'm with Hunton and Williams. I just wanted to make one clarifying point about whether EMS could make a decision to take a patient by ambulance to a freestanding emergency department that was not licensed. I think as a technical matter, the answer to that question, as my colleague noted, is yes. But as a practical matter, I think that is very, very unlikely. As Mr. Stallings noted, all of the freestanding emergency departments that he's aware of in Virginia, and this holds true for me as well, are operated pursuant to a hospital that is licensed in the Commonwealth. That is very important because in order to participate in Medicare and Medicaid, particularly Medicare, facilities would have to be licensed as hospitals. That's important to EMS providers because facilities that participate in Medicare have to comply with the Emergency Medical Treatment and Active Labor Act and (inaudible). You've heard it mentioned a few times tonight. That means that any emergency department that's participating in Medicare has to provide assessment and stabilization to patients who show up at their door. That would not be true of an unlicensed freestanding emergency department that does not participate in Medicare and Medicaid. They could take the position

***Board of Zoning Appeals Minutes
March 28, 2017***

that they're not going to treat a patient. So, while I don't know and can't offer you insight as to specifically what an EMS Director would decide, I think that they would likely be very hesitant to send ambulances to a facility that doesn't have to comply with EMTALA, recognizing that that facility could turn a patient away. And as we've all agreed in the room tonight, there are no facilities like that in Virginia; they're common in Texas. But in Virginia...

Ms. Brown: But that still doesn't say it has to be licensed.

Ms. Breen: Correct, but I think as a practical matter, you would be very unlikely to see that in the Commonwealth. I'd be happy to answer any other questions that anyone has.

Mr. Apicella: Any questions? Okay, so I'm going to ask you the same question I asked earlier and you don't necessarily have to give it to me right now. But is there any other statutory or regulatory information that you think would be helpful for us to know as we deliberate on this matter? We've got a binder from the application. I know you're not prepared to give us something like that, but we've mentioned a couple of state code sections and a couple of Virginia Administrative Code sections. I don't know if there's anything else that we need to know about that might be helpful.

Ms. Breen: If something that immediately comes to mind, I heard references to the materials included in the binder. I haven't clearly had an opportunity to take a look at those materials. But there's nothing immediately that comes to mind. But I will give it some additional thought.

Mr. Apicella: Okay.

Ms. Bertoldi: And Steven and I would actually broaden that to case law, case law that has interpreted the statutes, the state statutes. You know, you're not going to probably find our ordinances, but state statutes that have interpreted how to deal with freestanding emergency rooms and how other courts have dealt with it I think would be, from both sides, I think would be very helpful if that is out there, because it might be persuasive, it might not be binding but it will definitely be persuasive and helpful.

Ms. Breen: Sure. I'm not aware of anything off the top of my head, but I would be more than happy to look into that. Thank you.

Mr. Apicella: Is there anyone else who would like to comment in opposition to what's been before? Okay, Mr. Leming, do you have any response to what you've heard?

Mr. Leming: Thank you Mr. Chairman and members of the BZA. It's been a long night. I'll be brief. It's the Ordinance, it's the Ordinance, it's the Ordinance. Ultimately, that's what you have to decide. And we have an Ordinance that could be a lot clearer. Both sides would like to read some language into this Ordinance. We probably would like it to say a facility requiring a new license in accordance with the Code of Virginia. Mary Washington would like it to say a facility operating in accordance with a licensed hospital, or in association with a hospital. Or even the general legal language pursuant to a hospital; pursuant to a license received by a hospital. But that's not what the Ordinance says. And maybe it'll change after this episode so there is more clarity. But what we have is an Ordinance that simply says a facility licensed in accordance with the Code of Virginia. Now, the facility I contend in this case is the freestanding emergency department. That is the facility. Licensed, past tense, means has an official license. This facility, in our view, does not generate the need for, will not receive a license. There is a hospital license; nobody disputes that. But the exercise here has to do with the interpretation of this Ordinance section and whether or not this is a facility licensed in accordance with. As I indicated from the outset, and I stand by this position, there will not be an application for a license. If there is an

Board of Zoning Appeals Minutes
March 28, 2017

update, we alert the Virginia Department of Health about the facility, but we don't obtain a license. If you look at the form that you've been visiting, the boxes on that form are many; license renewal. That's not the one that's relevant to this inquiry. It's not a license. Now, perhaps the two most important things that we heard during the public hearing were Dr. Fines saying that their freestanding emergency department is not a hospital. This is not a hospital. And I guess it's back to well is it part of a hospital? Does it operate in association with a hospital? And back to the same quandary that we have looking at the Ordinance; a facility licensed in accordance with. A facility. I don't think ultimately that helps us any. Although I think it was not insignificant, the concession that it's not a hospital. It's not. You know, that's the definition, that's the way it's being treated here. And I don't know how significant this posting of a license is, but it's not posted we've come to learn in the Mary Washington freestanding emergency department. Now, all of that, and most of the discussion while interesting and I think very helpful as far as background and what the state procedures are, what it comes back to is the Ordinance. Now, without being redundant, I think you understand what we're saying about the Ordinance. And we're bound by the language, the strict language of the Ordinance, and you can't read anything into it. Now, beyond that we have the issue of well, if not this, then what? And there's been much less discussion about the definition of clinic. And some discussion about room, group of rooms used for a medical, dental, or psychiatric practice, now, offering medical services, including in-house diagnostic, testing, facilities, medical counseling and so forth. But not including overnight stay or treatment. Now, on balance, that is a much, much closer definition to what is occurring here. Now the term practice, what I would suggest, and I've tried while we were sitting there, tried to put together some parallel language. You know, what this really is, using that definition, there's a group of rooms used for the practice of emergency medicine. Emergency medicine in a practice. Remember, there are specific emergency doctors assigned to this facility offering medical services on an outpatient basis, including... and again, I'm going back to the definition... including, this is including, we don't have to do all of these things that are listed there, including in-house diagnostic testing but not including overnight stay or treatment. That's what this is. Certainly overwhelmingly this fits the definition, fits what it is that is being proposed here much more than the definition of hospital. Now, beyond that, obviously there's a competition... there is competition between these healthcare facilities. In my view the area needs as much healthcare as it can get. There is a state process in place though to look at issues like is one facility unduly damaging the ability of another facility to operate? That's what the Certificate of Public Need is all about. And if you look through Tab C, there's an incredible number of factors that are considered here to be sure everything is properly balanced. So, both of these... both of these facilities, both of these hospital groups have submitted an application for a Certificate of Public Need for a CT scanner. That's the only thing that's going on with the state as far as the proposed freestanding emergency department and the one that Stafford Hospital is proposing. That's the only thing going on with the state. So, we're asking that you overturn the Zoning Administrator's determination and granted it is complicate and it would be better if we had clearer language. And I suspect that the Zoning Administrator feels like she erred on the side of caution, go to the bigger definition that requires more review. But in this circumstance it simply doesn't fit. It simply doesn't fit that definition that we have to work with here. So, we're asking that you overturn the determination of the Zoning Administrator and find that what is proposed here meets the definition of medical clinic under the Stafford Ordinance. And for purposes of your finding, while all the rest of this is very helpful background, that's ultimately the decision. Is it a hospital or is it a medical clinic or something else under Stafford County's Ordinance. And I think you know our position. So, thank you very much for staying so late tonight. This is an unusual hearing in my experience here and we appreciate your patience in giving everyone the opportunity to say what they had to say. Tom, is there anything else that...? Okay. Alright, thank you all.

Mr. Apicella: It is a complicated issue and before you sit down I'm going to ask my colleagues if they have any additional questions for you. Dr. Larson.

***Board of Zoning Appeals Minutes
March 28, 2017***

Dr. Larson: Yes, I have a question. Mr. Leming, did you bring one of the administrators with you from the Spotsylvania Medical Center?

Mr. Leming: Yes, yes sir.

Dr. Larson: Could I ask you a question sir?

Mr. Leming: Yes, we have the head guy here. It's Mr. McKnight.

Dr. Larson: Okay, I just want to understand how the Spotsylvania Medical Center is organized. Does it have a Board of Directors?

Mr. McKnight: We do.

Dr. Larson: Does it have officers?

Mr. McKnight: We do.

Dr. Larson: What level of management is below officers?

Mr. McKnight: Directors.

Dr. Larson: Directors of what?

Mr. McKnight: Each department.

Dr. Larson: And could you describe the departments for me please?

Mr. McKnight: Certainly, certainly. So, the department of surgery, medical med surge, PCU which is progressive care, emergency room, accounting, supply chain, IT, so forth.

Dr. Larson: Okay, so would the freestanding emergency department be at that level?

Mr. McKnight: Yet to be determined. It would either have its own or it would fold under another director.

Dr. Larson: Okay, but it would be part of your staff meetings for example.

Mr. McKnight: That's correct.

Dr. Larson: Thank you.

Mr. Apicella: Other questions? Dr. Ackermann?

Dr. Ackermann: Mr. Leming, you said that the state was involved only in the issue of the COPN, but on the application for hospital licensure which goes through the state, Spotsylvania Hospital would have to indicate that there was an additional freestanding facility.

Mr. Leming: Probably; there's been nothing submitted at this point.

***Board of Zoning Appeals Minutes
March 28, 2017***

Dr. Ackermann: No, but the state would be involved at that point.

Mr. Leming: Possibly at the time of renewal that that box would be checked depending on what the status of the freestanding emergency department would be.

Dr. Ackermann: Well, at some point, if there is a freestanding emergency department, the box is checked and the state would be involved.

Mr. Leming: Well, we would advise the state... if you look at the letter that comes with the license, basically the letter says let us know about any changes. The certificate, if you look at that (inaudible) the number of beds. But, you're correct that at some point yes, on that form, we would not check for this facility an application for license or renewal. We would check the box for freestanding... or for... yeah, for freestanding facility.

Dr. Ackermann: Thank you.

Mr. Apicella: And I've got a similar question. Again, back to this form...

Mr. Leming: Did you want to add something?

Mr. Stallings: If I may, I definitely don't want to prolong this any longer and thank you all for your patience. But I would like to point out that the email from the licensure office behind Tab G indicates that when the updated information is provided, the Office of Licensure and Certification will retain the updated information in its file so it has complete information about the services offered by Spotsylvania Regional, but will not issue a new hospital license or it won't issue a license of any type to the freestanding emergency department. So it's for information purposes.

Dr. Ackermann: Yeah, that's what...

Mr. Apicella: I get that point.

Dr. Ackermann: Okay. That's okay, I'm done.

Mr. Apicella: But if you didn't provide them that information, if you did not provide them updated information about this FSED in Stafford County on this form at whatever appropriate time it's supposed to be submitted, would you be in violation of their requirements and what this form requires?

Mr. Stallings: I don't believe there's an actual regulation that requires that. But that's certainly the practice, and I will say my practice as a healthcare attorney is to follow the wishes of the department. But I don't believe there's a specific regulation that says you have to provide the updates. But as mentioned (inaudible)...

Mr. Apicella: Right, but the form itself... I mean, why would they have a form if you're not supposed to provide updated information? So again, would you be able to operate this FSED if you did not provide them... and I'm talking about the specific set of circumstances, not some hypothetically where private people are opening up an FSED. I'm talking about this case where Staff... Spotsylvania -- I kind of want to keep saying Stafford and Spotsylvania in the same sentence -- but the Spotsylvania Medical Center creates this FSED in Stafford County and it does not in some way, shape or form advise the state that it's operating this facility, would it be I guess in non-compliance with rules, regulations, procedures, whatever that the VDH Office of Licensing and Certification requires?

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Stallings: I don't believe so because I don't believe there's a specific regulation that says what's in the cover letter which says please let us know.

Mr. Apicella: So, you don't have to tell them about it? That's what you're saying.

Mr. Stallings: What I'm saying is I'm not aware of a specific regulation that says you have to provide that. There certainly might be a regulation but I haven't looked at it that says you should fill out all their forms, something like that. But I don't believe there's a...

Mr. Apicella: So, again, I'm going to ask the bottom line question; you can operate this facility without telling them that there's an affiliation with the Spotsylvania Medical Center.

Mr. Stallings: I haven't researched that but I'll say I don't think that failure to complete the form (inaudible).

Mr. Apicella: Well, forget about the form. Let's just say advising them, form or not, in some way, shape, or form, letting them know that you're going to be operating this facility in Stafford County and it's connection to Spotsylvania Medical Center; if you do not tell them that, you can continue operating and they wouldn't... you know, you couldn't operate in Stafford County without a Certificate of Occupancy, right. So presumably you have to have something to be able to continue operating. If the state found out you were, you know, opened up this business and didn't tell them about it, I would think they'd have an issue with it. But I guess (inaudible).

Mr. Stallings: I have not researched that but I will tell you I am not aware of a regulation that says you have to provide this updated information. What we typically do... again, part of the reason I haven't researched that is if the state sends you a cover a letter that says please update us this, and you can tell from the email correspondence I work with these folks a lot. And so if I know this is what they want, we do it. That's a little different from saying I know there's a regulation out there that requires it.

Mr. Apicella: You're hanging on the word regulation and I'm trying to... let's get away from the word regulation. It can be broad. Is there some notification that you must provide under any set of circumstances to the state to let them know that you're going to be operating this facility or have added this facility as part of the Spotsylvania Medical Center? And what I'm hearing you say is no. Is that what you're saying?

Mr. Stallings: I'm reluctant to say no because I haven't researched it. I can't think of a statute or regulation that says you have to provide this information. I haven't looked at it because I know the state requests this in their cover letter. And so our approach is if they ask for it, we'll provide it and we haven't looked behind to say, well what if we don't provide it.

Dr. Ackermann: Yeah, but at the end of the form there's an affidavit that someone says I hereby swear or affirm the information contained in this application is true and correct. So, if it's not true, then...

Mr. Stallings: And I think that's the basis why they want the update.

Dr. Ackermann: Yeah, right, and so...

Mr. Stallings: Exactly. I agree with that. I think that's the whole...

***Board of Zoning Appeals Minutes
March 28, 2017***

Dr. Ackermann: (Inaudible) regulation that requires it but whoever signs this form swears or affirms that the information is correct.

Mr. Stallings: Yeah, certainly correct at the time it's submitted. I can't remember if there's language that says and I promise to update it.

Mr. Apicella: Well, it says any changes affecting the accuracy of the information contained herein must be reported in writing immediately to the VDH Office of Licensure and Certification.

Mr. Stallings: And that's absolutely our practice.

Ms. Bertoldi: I was just going to piggyback on your question and say, you know, I know this is a renewal form and you guys keeps saying this is a renewal form and you'll eventually have to tell them, but is there a requirement to let them know about the freestanding emergency room even before you are required to renew?

Mr. Stallings: Yes. Because the renewal is annual.

Ms. Bertoldi: Right. So once you have this up and even before you have to renew you have to say hi, we have this freestanding. You are required to do that.

Mr. Stallings: (Inaudible) the form that I passed along is an example of the three boxes that would be checked. So let's assume you renew January 1 to December 31st. So let's assume the freestanding emergency department opens on July 1st. So on July 1st or before that, sometime around then, we would send that in. Right, because they've requested... please... if anything that you've put in your annual inpatient hospital license renewal changes, let us know.

Ms. Bertoldi: So that letter obligates you to kind of update them currently throughout the year if there's changes to be made, is that what you're...?

Mr. Stallings: (Inaudible) asks for that.

Ms. Bertoldi: Right, but it's asking you to do that. It doesn't just once a year say hey, has anything changed? They actually want to know all the way throughout the year if there's been any material changes, correct? Okay.

Mr. Apicella: Okay, one more question. Dana?

Ms. Brown: Okay, well it's a 3-parter but I'll do my best. It's for the CFO, if you don't mind. Real quick -- will your facility be sharing staff with the ER department at Spotsylvania Hospital or will they have a designated staff for the FSED?

Mr. McKnight: We would probably have primary staff at both, but we would cross-train back and forth so they could go to either department.

Ms. Brown: So they would... okay. Will you have a helipad?

Mr. McKnight: No.

Ms. Brown: Okay. And the last one is, whose liability insurance policy is this on?

Board of Zoning Appeals Minutes
March 28, 2017

Mr. McKnight: It would be under ours, and we are under an HCI which under HCA liability.

Ms. Brown: So, it's under Spotsylvania Regional. Okay, that's it.

Mr. McKnight: Sorry, HCA, Hospital Corporation of America. So we are part of HCA which is a corporation that has about 160 hospitals across the country. And so we are owned, wholly owned by HCA. So there's an umbrella policy that would cover us.

Ms. Brown: So you're owned by HCA, not Spotsylvania Hospital?

Mr. McKnight: Spotsylvania Medical Center, Inc. is a subsidiary of HCA, Hospital Corporation of America.

Ms. Brown: And where would the FSED fall under, under the subsidiary or under HCA?

Mr. McKnight: It would fall under Spotsylvania Medical Center.

Ms. Brown: Okay. Thank you.

Mr. Apicella: Okay, thank you. I'm not going to close the public hearing on this matter, but I am going to bring it back to the Board for further discussion. Ms. Brown?

Ms. Brown: If you'll indulge me. We got a lot of information tonight, especially from Mr. Leming, that has a lot of regulation in it that I would like to review because I am not an expert on this. And I'd also like to make some of my own phone calls, and I really need to review this before I can make a good decision. I would move that we defer this till next month to give us an opportunity to go over all the material that we were given tonight.

Mr. Gibbons: Second.

Mr. Apicella: Okay, there's a motion for deferral that's been seconded. Any further comment? Okay, I would just add that to the extent that the parties in the room have any additional information they want to provide in the (inaudible) period, please feel free to do so. And if we have any other questions or information that we seek, we should present them to staff as soon as we can and certainly meet any deadline requirements to be able to share that with the parties.

Ms. Brown: Yeah. I just want to make sure we're not doing any communications, ex parte communications by that. I have questions for staff so I'd rather ask it tonight while we're all in front of each other.

Mr. Apicella: I don't think we're precluded from asking questions. We're precluded from getting answers to those questions.

Ms. Brown: Well, but I'd like to get the answers and so I'd like to ask them in front of both parties so I can have the answers.

Mr. Apicella: But we're deferring so you have more to ask?

Ms. Brown: Yeah, I want... yeah, from staff, just for... when I deliberate and look at all this and balance what they said. I just have... if you'll just indulge me just a... it's a quicky.

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Apicella: Do we have a sense of how long that might be Dana?

Ms. Brown: Yeah, less than 40 seconds.

Mr. Apicella: So, why don't we do that before... I'd rather take care of that discussion before we take a motion to defer because that kind of closes the item out and we move onto the next order of business.

Ms. Brown: Well, I want to... I want to... since we cannot get answers back for ex parte communications, I want the answers before we leave tonight. So, we have to do that in front of...

Mr. Apicella: I understand. I'm just saying I'm going to hold off on taking a vote on the motion if you have questions for staff. So go ahead and ask your questions.

Ms. Brown: Okay. Urgent Care Centers in Stafford; how are they classified? Medical clinic, medical office, hospital? Like Patient First, how is that classified?

Mrs. Blackburn: We'll have to research it. I don't know off the top of my head.

Ms. Brown: That's it.

Mr. Apicella: Okay. Okay, there's a motion to defer to the next meeting. All those in favor of the motion signify by saying aye.

Dr. Ackermann: Aye.

Ms. Bertoldi: Aye.

Ms. Brown: Aye.

Dr. Larson: Aye.

Mr. Gibbons: Aye.

Mr. Apicella: Aye. All opposed? The motion carries 7-0. Mr. Gibbons?

Mr. Gibbons: Mr. Chairman, it's very important that we get minutes of this meeting, like at least a week before the...

Mr. Apicella: I agree that would be very helpful. Is that possible Stacie? I know it's a big lift but there's a lot of discussion here and it'd be hard to walk into this next meeting without. Even if it's a summary version. Okay. Alright, thank you very much. Next item? I'm going to turn the gavel back over to the real Chairman. Mr. Grimes?

UNFINISHED BUSINESS

3. SE17-02/17151614 - Matthew Gioia - Requests a Special Exception per Stafford County Code Section 28-35, Table 3.1, A-1, Agricultural, to allow ammunition loading, reloading and gunsmithing as a Rural Home Business on Tax Map Parcel No. 18U-1-15. The property is zoned A-1, Agricultural, and located at 44 Magnolia Drive, Magnolia Woods Subdivision. **(History: Deferred on February 28, 2017 to March 28, 2017)**

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Grimes: Alright, well Board, thank you for your patience with this. We have one Unfinished Business item on here but I think we have an update.

Mrs. Musante: We do. That application has been withdrawn.

Mr. Gibbons: Mr. Chairman...

Mr. Grimes: Yes sir.

Mr. Gibbons: I beg to differ... I mean, I love you to death. The withdrawal is because they asked them to withdraw. He didn't do it on his own because they found he qualified, right?

Mrs. Musante: Correct.

Mr. Gibbons: Okay, so it's a little easier saying...

Mrs. Musante: I was trying to make it easy and not go into this long discussion, but I guess that's where we're headed. The County has changed their position on how we look at FFLs for Home Businesses in the A-1 zoning district. So, all A-1 zoned properties, if they are applying for an FFL, will go straight to me and will not come through you all.

Mr. Grimes: I think that's fantastic. It's a step in the right direction. I hope they take the next few that need to be made, but the A-1 is one...

Mr. Apicella: (Inaudible).

Mrs. Musante: Only in the A-1 zoning district right now.

Mrs. Blackburn: From the discussion that Ms. Brown brought up, I think it was last month, we re-reviewed the definitions within the Code and did agree with her that it did not fall into a Rural Home Business in the A-1. And in the A-1, a Home Business is allowed by-right. So they will only be subject to the regulations as set forth by the ATF which will be somewhat different than what you all have imposed on people, particularly when you talk about the... and we can get that information to you concerning securing of the guns. A safe is an option, it is not a requirement. So, if there's some... there's just some different things. But they will... a Home Business is still requiring a Special Exception in the residential zones and they will still come before you all if they want to deal with the ATF licenses out of their home.

Ms. Bertoldi: So, he's still going through the process.

Mrs. Musante: Yes.

Ms. Bertoldi: But just through you and not through us.

Mrs. Musante: Correct.

Mr. Grimes: It no longer requires a Special Exception.

Mrs. Musante: Correct.

***Board of Zoning Appeals Minutes
March 28, 2017***

Mr. Grimes: That's fantastic. I think it's a great move in the right direction and hopefully they'll see the light and head that way with several other zoning districts.

Ms. Brown: So, staff decided that or the Supervisors did? I'm just... Staff decided this or the Supervisors did?

Mrs. Blackburn: No, staff decided it. We read the definitions for your inquiries.

Ms. Brown: Is that because of the retail sales wasn't mentioned and all that? Or no?

Mrs. Blackburn: No, it was more that there weren't any trades.

Ms. Brown: Weren't any what?

Mrs. Blackburn: They talked more about the manufacturing. And when you brought up the manufacturing, it was... we looked at it closer and realized that what they were doing was not falling into the definition of Rural Home Business.

Ms. Brown: Okay, so I'm confused. So, if manufacturing wasn't falling into the definition, and he was manufacturing, how was he still proceeding?

Mrs. Blackburn: Well, when we talk about the Home Business, it's an occupation, profession, business, or trade, with the exception of retail sales, carried on by the occupant of a dwelling unit as a secondary use which does not generate an increase in vehicular trips beyond that normally associated with residential use and complies with the following performance standards. And we have the different performance standards. And the Home Business Rural is a non-agricultural business and, as you pointed out, intended for general office, professional office, personal service, contracting, or construction which may include outside storage or storage in an accessory building or buildings of materials necessary to conduct the business. And then it went on to list all of those regulations. And in reading that, it is not a non-agricultural business intended for general office, professional office, personal service, contracting, or construction. So that's why we're not going to require the...

Ms. Brown: Okay, I must just be because it's late because I'm thinking just the opposite of what you're saying. It's not one of those things, we agreed, right?

Mrs. Blackburn: Right.

Mr. Grimes: Right, therefore it's not under home occupation.

Mrs. Blackburn: No, no, no, no, no... it's not under Rural Home Business. It is a Home Business. You have a Home Occupation, a Home Business, and a Rural Home Business.

Ms. Brown: Right.

Mrs. Blackburn: Home Business is a right... it allowed by-right in an A-1 zone. Home Business is allowed by Special Exception in the residential zones.

Ms. Brown: And the manufacturing portion of that?

Mrs. Blackburn: Well, the manufacturing portion of that is a play on words, because manufacturing or

Board of Zoning Appeals Minutes
March 28, 2017

trade as we call a trade can be jewelry making; that's manufacturing. And that has always been put under the trade type of definitions. So that is what we decided, and I'm going to be putting a memo out for it.

Mr. Apicella: Can we get a copy of it?

Mrs. Blackburn: Yes you will.

Mr. Grimes: Alright, so Zoning Administrator's Report.

ZONING ADMINISTRATOR'S REPORT

Mrs. Blackburn: I have nothing at this time.

Mr. Grimes: That's fantastic. Adoption of minutes? I don't have any changes noted.

ADOPTION OF MINUTES

January 24, 2017

Mr. Apicella: Mr. Chairman, I have a couple of changes.

Mr. Grimes: Yes.

Mr. Apicella: And I think this is an important one to get it right. On page 5 of 56 and it's my fault for being inaudible, but I believe I know what I said. Under... again, on page 5 of 56, line 224, replace "inaudible" with "Zoning Ordinance." On page 18, line 854, again replacing "inaudible" with "application." And on page 23 of 56, line 1086, change the word "flipping" to "flippant." That's it Mr. Chairman.

Mr. Grimes: Any other changes to the minutes?

Mrs. Stefl: Yes. On page 1, (inaudible - microphone not on), Goodall not Duvall.

Mr. Apicella: Robert Duvall doesn't live that far away... Leesburg.

Mrs. Stefl: I know, I know.

Dr. Larson: I have one Mr. Chairman.

Mr. Grimes: Yes.

Dr. Larson: On line 1347, page 28 of 56, second to the last sentence, and therefore it not being called out in the conditional use section means that they didn't intend to call it out, that when they said motor vehicle sales they did not intend to restrict it to motor vehicle sales. That makes no sense. What should be there before the last motor vehicle sales is "retail" motor vehicle sales.

Mrs. Musante: Can you tell us where you were because I missed it completely. Which page?

***Board of Zoning Appeals Minutes
March 28, 2017***

Dr. Larson: Page 28 of 56, line 1347, sorry. So line 1347 where it says “to motor vehicle sales” it should be “to retail motor vehicle sales” otherwise the sentence just doesn’t make any sense. And that’s the point I was trying to make. That’s all I had.

Mr. Grimes: Any other changes? Do we have a motion to approve the meeting minutes from January 24, 2017 as amended, all say aye... or a motion first, sorry.

Mr. Apicella: So moved.

Mr. Grimes: Second?

Dr. Larson: Second.

Mr. Grimes: All in favor to approve the meeting minutes of January 24, 2017 as amended say aye.

Dr. Ackermann: Aye.

Mr. Apicella: Aye.

Ms. Bertoldi: Aye.

Dr. Larson: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye. All those opposed? None opposed?

Ms. Brown: I’m going to abstain... I’m going to abstain because I wasn’t here.

Mr. Grimes: Thank you. Any other business?

OTHER BUSINESS

Ms. Brown: Question about Dr. Chandler? We talked about our training?

Mr. Grimes: We have free training tomorrow but you didn’t sign up for it?

Ms. Brown: No, not that.

Mr. Grimes: Oh.

Ms. Brown: The talking about... we’re contracting him to come down and talk to Special Exceptions and that stuff. We agreed to do that last meeting. When is that happening before we lose our funding?

Mrs. Musante: I’m sorry, I can’t hear a thing you’re saying.

Ms. Brown: Okay. Last meeting we found out we had funds to pay Dr. Chandler to come talk to us I think for 4 hours, and we were going to talk about Special Exceptions and various things. When is that happening? We’ve been talking about this for months.

Board of Zoning Appeals Minutes
March 28, 2017

Mrs. Musante: We have... sorry... but I put that on hold because of the free training tomorrow. I thought more members of the Board were going to take advantage of that. I have been in correspondence with him and he can do a half day, full day, or Saturday training.

Ms. Brown: Right. I thought we agreed we'd do a Saturday. The training tomorrow is not going to be about the Special Exceptions and stuff, that was why it wasn't that critical to me. I was going to go just to refresh on the Variances, but we wanted specific things to Stafford. So I am not happy that we've held back and I want to get that going. We've been talking about this since November and the training tomorrow was nothing like what he was going to give us.

Mr. Grimes: As Secretary, why don't you poll the Board and find out some dates that the Board's available or get some dates from Mr. Chandler that he's available and then poll the Board to figure out when you want to schedule that. And you could...

Ms. Brown: Yeah, I thought we agreed Saturdays.

Mr. Grimes: Why don't you spearhead that.

Ms. Brown: And didn't you tell us when he was available last time?

Mrs. Musante: I did not.

Ms. Brown: Okay. I don't have the minutes so I can't look at that. Did we all agree that it was going to be a Saturday...

Mrs. Musante: Yes.

Ms. Brown: ... was better if we could?

Ms. Bertoldi: Yeah, we said Saturday if we could.

Ms. Brown: Were we looking for a...

Ms. Bertoldi: But we'd make sure we were available whenever we needed.

Ms. Brown: Were we looking for like an 8 to 12? A 12 to 4? Something through lunch?

Ms. Bertoldi: I would personally like more of a morning in 8 to noon.

Mr. Grimes: I think it's going to be dictated by what Mr. Chandler has available.

Ms. Bertoldi: Right, but I'm saying a morning...

Ms. Brown: Is your preference?

Ms. Bertoldi: ... is my preference.

Ms. Brown: Does anybody have anything...

Ms. Bertoldi: I'll be here whenever I have to be.

***Board of Zoning Appeals Minutes
March 28, 2017***

Ms. Brown: ... in April that they can do on a Saturday? Is there any Saturday that pops up?

Mr. Apicella: I'm not here from April 9th to the 16th I think.

Dr. Ackermann: And I'm not here from the 16th through the 24th.

Mrs. Stefl: I can't do the Saturday before Easter or that Saturday following.

Mr. Grimes: Again, I think it would be a lot easier on you if you get some available dates from Mr. Chandler first and then you can poll the Board to see when everybody's available.

Mr. Apicella: But it sounds like we're into May.

Mr. Grimes: Yes.

Ms. Bertoldi: Yeah, because I can't do the 8th because I'm already in Richmond.

Mr. Grimes: Spring break is probably killing everybody's schedule. Alright, do I have a motion to adjourn? Second, got it. All to say aye. Thank you all very much.

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 10:47 p.m.