

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
August 28, 2018

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) of Tuesday, August 28, 2018, was called to order with the determination of a quorum at 7:09 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, Robert Gibbons, Danny Kim, Heather Stefl

MEMBERS ABSENT: Dean Larson

STAFF PRESENT: Susan Blackburn, Melody Musante, Stacie Stinnette, Jeff Harvey

DETERMINATION OF QUORUM

Mr. Grimes: Before we get started, I'll remind everybody up here on the dais to turn on your microphones when you speak, since it's been a few months. Good evening ladies and gentlemen. Welcome to the August 28, 2018, 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. Hearing of Appeals will be conducted in two parts. The first will be a review of jurisdiction and standings, the second will be hearing the merits of the case, if required after review of jurisdiction and standing. Hear and decide upon requests of Variance from the Zoning Ordinance when a literal enforcement of the Ordinance would result in unnecessary hardship to the owners of a property; and hear and decide on requests for Special Exceptions where the Zoning Ordinance allows for Special Exceptions. The Board consists of seven regular members and two 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 members voting for the first case, and six members voting for the second case. The members present and voting tonight, including alternates who will be voting, are Mr. Apicella, Ms. Brown, Mr. Kim, Mrs. Stefl, Dr. Ackermann, Mr. Gibbons, and Ms. Bertoldi, and myself, Robert Grimes. Alternate members of the BZA will also be seated at the dais tonight during the hearing of the cases. They will be hearing the case only and will not ask questions or participate in discussions or vote on any cases tonight unless otherwise directed by the Chair. County staff is represented tonight by Ms. Susan Blackburn, the Zoning Administrator, Ms. Musante, the Deputy Zoning Manager [Deputy Zoning Administrator], and Ms. Stinnette, the 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 and/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 better clarify or understand the case. The Chair will then ask for any member of the public who wishes to speak in support of the application to come forward and speak. There shall be a 3 minute time limit for each individual speaker, and a 5 minute time limit for a speaker who represents a group. After hearing from those in favor of the application, the Chair will ask for any member of the public who wishes to speak in opposition to the application to come forward and speak. After all public comments have been received the applicant shall have 3 minutes to respond. We ask that each speaker present their views directly to the Board, and not to the applicant or other members of the public. We require the applicant speakers, presenters and audience to act with a decorum and respect appropriate of courtroom setting. After the applicant's final response, the Chair shall close the public hearing. After

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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, ten 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 applicant should be aware that we have seven voting members present, and you must have four affirmative votes to approve an application. The applicant may also withdraw his or her application at any time prior to a vote to approve or deny the application provided that the applicant has not withdrawn a substantially similar application within the previous 12 months. Any person, or persons, who do not agree with the decision of the Board, shall have 30 days to petition the Stafford County Circuit Court to review our decision. Also, be aware that the Board will not hear any denied application for a Variance or Special Exception that is substantially the same request for one year from the date of our decision. I'll now ask anyone with a cell phone or other electronic device to please silence it. Thank you. It is the custom of this Board to require that any person who wishes to speak before this Board shall be administered an oath. Therefore, I ask that anyone who wishes to speak tonight to stand and raise your right hand. Please stand. Do you hereby swear or affirm that all testimony before this Board shall be nothing but the truth?

Members of the audience: Yes sir.

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

Ms. 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 cases to be heard before this Board tonight?

DECLARATIONS OF DISQUALIFICATION

Ms. Brown: Mr. Chairman, I would like to.

Mr. Grimes: Yes, Ms. Brown.

Ms. Brown: I have two declarations I'd like to make. For our first hearing, I just want to state that I had visited the 5-Twelve store on Route 610 two to three times in August just to observe the layout on the ground. Most recently was this evening, about 6:15 on the way over here, and I spoke to no one while I was there. And my second declaration is I will be recusing myself and probably leaving the building for case number A18-03/18152403. I'm acquainted with several of the parties involved and out of an abundance of caution and transparency, I will be recusing myself. Thank you.

Mr. Grimes: Thank you. Ms. Bertoldi?

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Ms. Bertoldi: Yes, with respect to case number 2, I'm also going to be recusing myself. The reason being, I am the Chairwoman of the Stafford County Republican Committee and the applicant is an active member of that committee. And just to avoid the appearance of impropriety and abundance of caution, I'm also going to recuse myself.

Mr. Grimes: Thank you very much. Any other declarations?

Mr. Apicella: Mr. Chairman, I also am on the same organization, same club, the Stafford County Republican Committee. I read the state code, the conflict of interest rules and regulations and some case law, and I do not believe that I have a conflict of interest or the situation creates any impropriety.

Mr. Grimes: Thank you. Yes?

Mrs. Stefl: I also echo what Mr. Apicella has to say, and I, too, am an active member of the Stafford County Republican Committee, which the applicant is also a member. I have no personal or have had any type of conversation with him in regards to this case.

Mr. Grimes: Great, thank you very much. Anyone else? Great, thank you. I'll now have the secretary read the first case.

PUBLIC HEARINGS

1. A18-02/18152372 – Borna Khatchi - Per Stafford County Code, Section 28-349, "Appeals to board generally," the applicant is appealing a notice of violation dated May 15, 2018, regarding proffered conditions on Tax Map Parcel No. 19A-1-42. The property is zoned B-2, Urban Commercial.

Ms. Musante: Case A18-02/18152372 - Borna Khatchi - Per Stafford County Code, Section 28-349, "Appeals to board generally," the applicant is appealing a notice of violation dated May 15, 2018, regarding proffered conditions on Tax Map Parcel No. 19A-1-42. The property is zoned B-2, Urban Commercial. You have the application; owner's consent form; a copy of the violation notice dated May 15, 2018; copy of Stafford County Code Section 28-349; Planning Commission and Board minutes; rezoning application; approved construction plan dated November 21, 1991; lighting plan drawn by Deputy Hamilton dated June 19, 2018; copy of Stafford County Code Section 28-87; buffer requirements; copy of the 1978 zoning map; copy of a deed; copy of death certificates; copy of tax record; copy of public notice; and pre-application checklist. The property was reclassified in 1992 from B-1, Convenience Commercial to B-2, Urban Commercial by adoption of Ordinance O92-47(R) with proffered conditions. This zoning reclassification allowed for the placement of fuel tanks on the property. In 2018, the applicant wished to expand the number of fuel pumps and submitted an application for a conditional use permit, which is what is required by the current zoning ordinance. The Planning Commission conducted a public hearing on March 28, 2018, and voted to forward the application to the Board of Zoning Appeals [*Supervisors*] with the recommendation of approval. During the public hearing process, it was brought to the attention of the staff that the site was not in compliance with the proffered conditions. A site visit was conducted on April 11, 2018, to investigate the status of compliance with the zoning ordinance and proffered conditions. Staff documented non-compliance with the following proffered conditions:

Buffering:

1. A board-on-board fence, seven (7) feet in height shall be set internal to the rear property line.

The fence was not seven feet tall and was not set along the entire rear property line.

Aesthetics/Architecture:

3. All dumpster pad sites shall be screened by solid wood board-on-board fencing or brick walls six (6) feet to seven (7) feet in height with a gate and located as unobtrusively as reasonably possible.

The dumpster enclosure was made of chain linked fencing.

Lighting:

2. All lighting to serve parking areas and travelways on the property shall be directed downward and inward away from adjacent uses and public roads not to exceed twenty (20) feet in height.

The security lighting did not comply with this proffer. It needs to be redirected downward and inward away from the adjacent residential uses and the public right-of-way.

Signs:

1. The site shall be limited to one free-standing general advertisement sign and applicable façade signs.

There is more than one free-standing sign on the property.

Staff met with Borna Khatchi (son of owner) at the site on May 7, 2018, to discuss the proffered conditions and the non-compliance issues. The applicant was made aware of the thirty day deadline for compliance and if the compliance was met within that time frame the violation would be abated and no further action would be taken. The notice of violation was sent on May 15, 2018, and signed for on May 18, 2018. Since that time, the applicant has contracted with Mr. Michael Kalish, attorney with Walsh, Colucci, Lubeley and Walsh, P. C., to handle this case. Mr. Kalish filed the appeal of the notice of violation on June 14, 2018, as a matter of legal practice to provide time to abate the violations. The dumpster enclosure has been surrounded by a board-on-board fence 6 feet in height as of June 10, 2018, resulting in the abatement of that violation. Signs have been removed as of June 11, 2018, resulting in the abatement of that item of the notice of violation. The applicant contracted with a licensed electrician to re-direct the lights downward and inward. According to email correspondence received by the County, this was done on June 11, 2018. The zoning technician and the CPTED officer conducted a site visit the evening of June 19, 2018, and found the lights to be brighter than permitted by code and not turned downward or inward enough to eliminate glare onto other properties or onto the public right-of-way. The applicant was notified of this on and of that date. No changes have been made to the angle of the lights. Consequently, the lights are still not in compliance with the proffer. The applicant is appealing the following violation as part of the notice of violation issued on May 15, 2018:

Buffering:

3. A board-on-board fence, seven (7) feet in height shall be set internal to the rear property line.

The fence is not seven feet tall and is not set along the entire rear property line.

As stated, the applicant has added a board-on-board fence to the enclosure of the dumpster and has removed all the signs that were not permitted on the property, therefore those items included in the notices of violation have been abated. The angle of the lamps on the light poles and the location and height of the fence are still outstanding violations. The applicant states the fence was intended to be a

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buffer between the proposed shopping plaza and the adjacent neighbors and not to be constructed along the entire length of the rear property line. The fence ends where the development ends and there is a vegetative buffer along the property line where there is no development. The applicant does not believe the intent of the Planning staff or the Board of Supervisors at the time of the rezoning was to require the fence be extended where there was existing vegetation and undeveloped land. After reading the minutes available for O92-47(R) for both the Planning Commission and the Board of Supervisors, the fence was not mentioned and therefore the intent was not made part of the public record. The site plan is part of the public record and it shows a buffer along the property line that is not adjacent to Garrisonville Road or Patton Drive with a note that states the buffer shall be 10 feet wide where possible and contain a 7-foot tall board-on-board fence. This site plan was submitted and approved prior to the approval of the rezoning. The site plan was adopted in 1990 and Ordinance O92-47(R) was adopted in June, 1992. The proffered condition #3 of Ordinance O92-47(R) verbally reinforces the site plan by stating the fence shall be set internal to the rear property line. There are no provisions for the fence to be a different length than that of the rear property line. Since the applicant was notified of the findings of the CPTED officer concerning the lights, staff has not received any correspondence indicating their position on the findings. The positions of the lights are still considered in violation of the proffered condition. In conclusion, the content of these documents was the reason for issuing a notice of violation for non-compliance with these proffered conditions. Staff reviewed the rezoning case, the minutes of both the Planning Commission and the Board of Supervisors, and the approved site plan. The site plan shows a buffer with a fence along the property lines that are not adjacent to Garrisonville Road and Patton Drive (which includes the rear property line) and the proffered condition #3 of O92-47(R) under Buffering states: "the fence shall be along the rear property line." Staff did not find any discussion concerning the intent of proffers as the applicant stated. The positions of the lights are not stated as part of this appeal, but staff is not aware of any action that would abate this portion of the notice of violation. Therefore, based on the information provided, staff feels the notice of violation was issued correctly. And just for the record, Mr. Michael Kalish from Walsh, Lubeley, is in the audience and he's going to be representing Mr. Khatchi, and there is an owner's consent form, attachment number 2, page of 1 in your file.

Mr. Grimes: Thank you very much. Do we have any questions for staff?

Ms. Brown: I do.

Mr. Grimes: Yes.

Ms. Brown: As I was going through the package, I noticed that on Attachment 6, page 8 and 28 were the same documents except for the description of the buffer was different. And they look to be dated the same date, same resolution, and I was confused about that. And I wanted to know... the one on page 28 matches the site plan. But page 8 does not. And it was under the description of the buffer area. I couldn't figure out why I had so many copies of the resolution and that's why I noticed it.

Mr. Grimes: Which attachment are you referring to again Ms. Brown?

Ms. Brown: Attachment 6, page 8 of 31 and page 28 of 31, up in the upper right-hand corner. It does look like page 28 of 31, the buffer description matches exactly what's on the site plan. But, I just wanted to ask about that.

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Ms. Musante: When we make copies of these applications, which this was a request for this application to be as an attachment, there could be duplicate copies. It doesn't necessarily mean that they are different pages; it's because of the way the package was printed. So, I don't go through...

Ms. Brown: Yeah, it's not the pages that are different, it's the description of the buffering and what's required for buffering. Um, page 8 of 31 says, under buffering, condition 1 is a board-on-board fence 7 feet in height shall be set internal to the rear property line. Um, the other way, page 28 of 31, under buffering, says number 1 is a buffer yard shall be provided to the adjacent residences consisting of a board-on-board fence 7 feet in height set internal to a single row of white pines planted 10 feet on center or other vegetation as determined by the Zoning Administrator. And again, that's the one that matches the site plan.

Mr. Apicella: Mr. Chairman, I'm certainly no expert on this, but I would venture a guess, for better or worse, the one that actually has the yes votes on it would be the one that was the official final version. This could be a, you know, a preliminary resolution that never got approved. I don't know. I don't know what the history is, but I would say that the one that has the yes votes is...

Ms. Musante: That would be correct.

Ms. Brown: I don't see the one... which one has the... I didn't see any of them have votes.

Mr. Apicella: So, if you go to Attachment 1, page 12 of 22...

Ms. Brown: Okay, Attachment 1, okay...

Mr. Apicella: Mr. Gibbons, maybe you can remember. *[Laughter]*

Ms. Brown: Okay, because that does not match the site plan.

Mr. Apicella: Right, but the site plan could be more descriptive than what's in the resolution. A resolution is very generic, very high level; it's not going to go... potentially may not go into a lot of details. Whereas, a site plan could be very detailed.

Ms. Brown: Right. I just would assume that the resolutions would match. And they do, just not the one that has the yes votes. Okay, so we think it's just an extra copy then? A draft perhaps?

Ms. Musante: It could be. Like I said, when we got the request to put the entire packet in the application, I don't go through and pick out what shouldn't be there. It's not my decision to decide what should be in the packet and what's not. I just Xerox the entire thing.

Ms. Brown: Okay.

Ms. Musante: So, and that's how it comes in. You're going to get proposed and there could be some words in here that say proposed. But you got the entire rezoning application.

Ms. Brown: Okay. Um, and the other thing was I wanted to ask staff about was in the appeal, I read that the applicant referred to... didn't want to change the 7-foot fence... put one up because he had to put an 8-foot fence up for the CUP. What is the status of the CUP? Last I could find online was that the Planning Commission met I think it was June 13th about that. And also, I wanted to mention, too, when

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you read the introduction, you said that the Planning Commission referred it to the Zoning Appeals for approval and I think you probably meant the Board of Supervisors since we don't approve CUPs. Just for the record, just to make sure that's corrected. When you were reading the introduction, I believe you said that the Planning Commission referred it to the Board of Zoning Appeals for approval. I think you probably meant the Board of Supervisors. I just wanted to make the record correct on that. So, do we know what the status is of the CUP? For the expansion?

Ms. Blackburn: To my knowledge, it's been deferred to the next Planning Commission meeting?

Ms. Brown: So, it didn't go to the Board? I think the Planning Commission voted to send it...

Ms. Blackburn: I mean to the Board meeting...

Ms. Brown: ... to the Board?

Ms. Blackburn: I'm sorry. It has not been acted upon yet until hearing the results of this meeting.

Ms. Brown: Okay. That was all I had right now, thank you.

Mr. Grimes: Thank you. Other questions for staff?

Ms. Bertoldi: Mr. Chairman, I have a couple questions if that's alright.

Mr. Grimes: Yes.

Ms. Bertoldi: Just to the extent that you guys may or may not know the questions to my... or answers to my questions, um, did Stafford County ever visit the property at any point between 1992 and April 11, 2018, to check compliance with the proffers?

Ms. Blackburn: Not to my knowledge.

Ms. Bertoldi: Okay. And, to your knowledge, did the decedent ever come before either the Planning Commission or the Board of Supervisors before or between the original application and the CUP in 2018 asking for approval of any other applications, that you're aware of?

Ms. Blackburn: Not that I know of, no.

Ms. Bertoldi: Okay. I just have two more short questions. And, with respect to the design and construction standards, there was a copy from 2005 in our packet, what were the... was there any design and construction standards back in 1992? Or... with the definitions, or was there something else that was used back then?

Ms. Blackburn: Are you referring to the Landscaping, Screening, and Buffering Standards? Or the design...

Ms. Bertoldi: Yeah, well, there's a document in our... the document is called Design and Construction Standards and it's dated 2005 and it has a whole set of definitions in the back.

Ms. Blackburn: Yes. There was information and regulations within the Zoning Ordinance prior to that.

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Ms. Bertoldi: Do you know whether or not the definitions that were in the 2005 version of the Design and Construction Standards were similar in 1992?

Ms. Blackburn: Yes, they were somewhat similar.

Ms. Bertoldi: Okay. And my last question is, is there any record of any conversations between the decedent and Stafford County after he was made aware on 4/11 of 2018 of the violations to the proffers? His response basically to the violations?

Ms. Blackburn: From April 11th?

Ms. Bertoldi: Correct. I mean, other than what's in the record, was there any like...

Ms. Blackburn: No, to my knowledge...

Ms. Bertoldi: ... any conversations or any response to...?

Ms. Blackburn: No, to my knowledge, no; it's all been documented.

Ms. Bertoldi: Okay, great. I just wanted to make that clear. Thank you.

Mr. Grimes: Any other questions for staff?

Dr. Ackermann: I have a question. So, who is the owner of the property? Of course, you have the owner and then son of owner on the applicant we have Borna Khatchi as the owner. Is that clear that Borna Khatchi is the owner?

Ms. Musante: The tax records show Nicholas and Rosie Khatchi, Trustees. Nicholas and Rosie both are deceased. There is a deed in your packet that does have Mr. Borna Khatchi's name on it with the property.

Dr. Ackermann: So he's the owner?

Ms. Musante: Correct.

Dr. Ackermann: Thank you.

Mr. Apicella: Mr. Chairman?

Mr. Grimes: Yes.

Mr. Apicella: A couple of questions. So, just to clarify, although there were four issues of non-compliance, two of those have been corrected and they're not at issue tonight; the ones associated with signs and the dumpster pad.

Ms. Musante: The dumpster pad has been corrected. When the inspector went out today, you'll see in the sign package that I gave you the pictures that you had for a hand-out, somebody, which is probably not at fault of the owner, has stuck up a temporary sign that talks about dance. It's this one here. That could potentially be a violation.

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Mr. Apicella: Okay, I appreciate that but people put up... some people choose to put their signs on other people's property without permission so.

Ms. Musante: They do, that's correct. Other than that, those two have been abated; the signage and the dumpster enclosure.

Mr. Apicella: Okay, thank you. You mentioned in the staff report the site plan that was approved in 1990. I'm looking at Attachment 1, page 18 of 22, which I think is... well, it's called construction plan here, but this was submitted by the applicant or somebody on behalf of the application presumably? The site plan? The construction plan?

Ms. Blackburn: Yes sir.

Mr. Apicella: And I believe this copy that I have in front of me, this was actually provided by the applicant, given where it is in the package. So now I'm looking at page 19 of 22 and you mentioned a note, which is pretty hard to read. Is there any chance I can get you to read it again? Even on this large copy.

Ms. Musante: Are you talking about the comment that says, area to be buffered?

Mr. Apicella: Yes.

Ms. Musante: Area to be buffered shall be 10 feet in width wherever possible, with a 7-foot tall board-on-board fence and a staggered row of white pines, 10 feet on center, or types of vegetation determined by the Zoning Administrator.

Mr. Apicella: So, it's fence and trees, right? It's not either/or?

Ms. Musante: That's what it says, correct.

Mr. Apicella: Okay. And it's got a little, I'll call it a figure next to it for lack of a better term. Is that sort of correct?

Ms. Musante: Yes.

Mr. Apicella: It's a note with a figure associated with it. So, as I look at that figure as it is displayed on the site plan, it goes from one end of the property, all across the back, and then loops around on the side. Is that your interpretation as well?

Ms. Musante: That's correct.

Mr. Apicella: So, based on this note, what would you consider to be their self-identified requirement associated with the fence in the site plan?

Ms. Blackburn: It would be to follow along the property lines where the shading is indicated on the site plan.

Mr. Apicella: So, not just across the back, but also along the side.

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

Mr. Apicella: And again, this is their site plan that they submitted and got approved.

Ms. Blackburn: Yes.

Mr. Apicella: So, even though the proffers may not be specific, the site plan definitely has relevance in terms of what they've committed to.

Ms. Blackburn: It is a tool that is used to try to get the entire picture if there is no limiting language in a proffer...

Mr. Apicella: Right, but a site plan is basically this is how we're going to develop the property...

Ms. Blackburn: Yes.

Mr. Apicella: ... and if they wanted to change the site plan, they'd have to come back and do an alternate site plan. What would be the process?

Ms. Blackburn: You would come in and do a revision to your site plan.

Mr. Apicella: And, to your knowledge, was there a revision to the site plan?

Ms. Blackburn: Not to my knowledge, no.

Mr. Apicella: Okay. And there've been no other site plans aside from the one associated with the reclassification that they just submitted.

Ms. Blackburn: Not to my knowledge, no.

Mr. Apicella: Can you help me understand, and it sort of goes to Ms. Bertoldi's question about standards, how standards are applied 20, 30 years into the future. So, there was a certain set of lighting standards in place back when this property was approved for its use back in the early '90s, and now potentially there are different standards. I believe there are different standards today. So, when you have a commercial development, is a property owner held to the standards that were in place back when the property was initially approved or the standards that are in place today? And specifically, I'm asking about the lighting standards.

Ms. Blackburn: Well, in this particular case, the proffered conditions with the rezoning did discuss how the lights were to be addressed. They needed to be turned inward and they needed to not reflect onto adjacent properties. And they needed to be no more than 20 feet tall. They did not get into lumens or foot-candles or any of that detail.

Mr. Apicella: And that's where my question lies. Somewhere in the package it talks to, and I'm going to use my own term here, that the lighting itself is too powerful. So, it's too powerful based on the standards today or the standards that were in place when this property was initially developed? And again, which standards would they be held to?

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Ms. Blackburn: To my knowledge, there were no lighting standards with the Zoning Ordinance back then, as far as foot-candles go. We have currently lighting standards within the Zoning Ordinance, and it should be Attachment number 9 in your packet, and it does address if you're replacing new lights and things like this, what standards you need to be set to. It is my understanding that these... several of these poles were replaced... I can't tell, it was in a building permit... put in in the end of 2017 or at least applied for at the end of 2017. We did not receive any lighting plan. In fact, zoning did not even see the permit. So, that being said, that... the lighting levels are very bright according to Officer Hamilton's readings of them, and he is our CPTED Officer and this is part of what he does. In this particular case, we only dealt with the... what the proffer was requiring at this point in time; if we could get the lights turned downward and turned inward, we would get that part taken care of. And then, initially that was that. And then when Officer Hamilton went out and did find that a couple of the lighting levels did exceed the standards of today, that was going to also be addressed once we got this, which is usually only replacing a bulb. It is not a big deal as far as...

Mr. Apicella: So, no violation has been issued with respect to the...

Ms. Blackburn: We have issued a violation for that, no.

Mr. Apicella: Okay.

Mr. Grimes: Just for clarification -- sorry to jump in -- can you, for the rest of us that may not know what CPTED stands for?

Ms. Blackburn: Officer Hamilton may get... I get that confused.

Officer Hamilton: Crime Prevention Through Environmental Design.

Mr. Grimes: Could you repeat that one more time?

Officer Hamilton: Crime Prevention Through Environmental Design.

Mr. Grimes: Got it! Thank you very much.

Mr. Apicella: May I... since he's standing, I apologize. Sir, do you mind if I ask you, so you went out there and you checked the lighting and, from your vantage point or from whatever testing that you did, it exceeds the County's current requirements. Can you tell us what the current requirement is and how much it is exceeded by? Just so we get it out there.

Officer Hamilton: For a use like that, I believe the minimum was 1 foot-candle (inaudible - not at podium).

Ms. Musante: Mr. Hamilton, do you mind coming up to the podium please? Thank you.

Officer Hamilton: I also have a little drawing I made that evening when I made the measurements. Ms. Blackburn, am I correct as far as the use, the standard's minimum 1, max 3?

Ms. Blackburn: It's an average of 3 now.

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Officer Hamilton: Okay. There's five light poles that are on the property, three of which two are on one end, one is on the other end that have multiple fixtures. Below the fixture on the northeastern side, closest to the private property behind, directly below the fixture I got 22... between 22 and 23 foot-candle measurements. And it's supposed to be 3 minimum maintained. The one closest to the road has two fixtures; my measurements below that was 25 foot-candles, which also casts some lighting onto the roadway as well. The two that are on the front of the building itself measure between 12 and 13; they were the least. But in my estimation, they weren't focusing any light to where it would light trespass or provide glare to any of the other properties. The one on the northeastern side has three, and that one was between 17 and 18, but they were spread wider apart to cover more area. Just explaining how I check it out when I go, because I waited till it was dark, it was after 9:30 that evening when we checked it out, I was going westbound on Route 610 and I passed the Shelton Shop, the 7-Eleven, and the shopping center, and there's virtually no lighting after that. As you go about 200 yards and you go around a little bit of bend, another 300 yards the Patterson Plaza is on the left-hand side. Immediately there's glare on the left-hand side of the road. Looking around, I may not be speaking for everyone, but a lot of people who are seasoned, at night when you get a real bright light and then you go to a darker light, it takes a while for your eyes to adjust. So, I consider that an issue, a glare issue. In addition to that, I drove behind the shopping center into the private property, the residential area, and I noticed that the light pole on the northeastern side actually shone through some of the trees as you're driving down the street. You can see it because the lighting is focused at an angle like this, as opposed to this. If you drive down 610 and you check some of the newer projects that are built there, like the Walmart and the Sheetz and the others, if you go take a look all the LED fixtures -- which I like because it's new technology and they're very efficient -- are focused like this. The lighting is real good underneath and it doesn't spread light where it doesn't need to go, so there's no light trespass or glare. My personal opinion is, they can solve this very easily, very inexpensively, by taking the light fixtures and just making them horizontal. That makes it like a cut-off fixture where the light goes down and not out. Does that make sense?

Mr. Kim: Yeah, it does.

Ms. Blackburn: Mr. Chairman, I have one correction to make and we did make this change. It is an average of 5 foot-candles, not 3, in a parking lot.

Officer Hamilton: It's still pretty high. But as a law enforcement officer, I like lighting because it prevents crime. But we have to be careful not to be so obtrusive that we put lighting in private areas, and that's what we're trying to avoid and that's why we recommend the cut-off fixtures so the lights go down and not out or up.

Mr. Apicella: So, do you have a standard tool that you use to check the...?

Officer Hamilton: It's a light meter.

Mr. Apicella: Okay. And, as far as you know, there was nothing wrong with the light meter when you went out there.

Officer Hamilton: No.

Mr. Apicella: Okay. And you're kind of the County's... this is what you do or this is part of what you do, the County's expert on...

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Officer Hamilton: I suppose I should give you my background. I'm in my 44th year in law enforcement. Over 25 of those years I've just specifically been involved in crime prevention related issues, primarily lighting issues, neighborhoods that have crime problems and whatever and what kind of issues that I can recommend CPTED wise by trimming trees, trimming bushes, putting more lighting, cutting off access. Anything that might lower the call for service rate for us to respond to.

Mr. Apicella: Sir... if I may, Mr. Chairman... thank you for your long service. We appreciate it.

Ms. Brown: Yes, I wanted to thank you as well.

Mr. Grimes: I have one follow-up. You created a diagram with your light meter. You went ahead and went down the back service road, measured light along there as well?

Officer Hamilton: There was lighting, wall packs, and from my recollection some of the lenses were brown and old, which didn't shed that much light. And there was a couple that had been replaced. But I took a basic measurement and it was 1.5 foot-candles back there. But I literally had to back myself up against the wooden fence because I couldn't go any further. There's a concrete drain that goes behind that fence so I couldn't get any farther than that.

Mr. Grimes: So, it was 1.5 at the property line?

Officer Hamilton: Correct.

Mr. Grimes: Plus or minus 10 feet to the property line?

Officer Hamilton: Correct.

Mr. Grimes: Okay. Thank you. Any other questions for Mr. or Officer Hamilton?

Mr. Apicella: Two more questions, quick questions. In the appeal, there was a statement that the applicant was told that the fence needed to be... to touch the ground. Is that... where... I'm just trying... is that based on standards? Where does that requirement come from? First of all, is that something staff brought up with the applicant and, secondly, if it was, where is that requirement identified?

Ms. Blackburn: Staff did discuss it with the applicant and it was coming from just standard fence procedures. When people put fences up, they put it from the ground, from the grade, up to the 7 feet. And we were not... the fence itself, the fence sections themselves are 6 feet tall. And there was no differentiation saying it had to measure at the height of, you know, 7 feet; it could be off the ground. And it was just taking it from... stating it from standard fence practice.

Mr. Apicella: Are there standards today? Do we have a fence standard that says if they were to replace their fence today, it would need to touch the ground?

Ms. Blackburn: No, we do not have a standard in the Zoning Ordinance. We refer to a business standard.

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Mr. Apicella: Okay. One of the other points that was raised, it's kind of a multi-point question here, can the fence be higher than 7 feet? So, the minimum... so it says the fence needs to be 7 feet. Can it be 7½ feet? Can it be 8 feet?

Ms. Musante: I'm going to read you what it says about fencing, just for the record. Fences, walls, and hedges shall not exceed 8 feet in height with any side or rear yard, nor 4 feet in height with any front yard or within that portion of the side yard in front of the front setback line. The use of barbed wire, razor wire, or any other similar contraband shall not be allowed in commercial districts except when incorporated into a fence at a height of not less than 7 feet from the nearest adjacent grade and located on arms which do not protrude onto or over any adjoining property.

Mr. Apicella: What about the grade part?

Ms. Musante: The use of barbed wire, razor wire, or any other similar contraband shall not be allowed in industrial districts except when incorporated into a fence at a height of not less than 7 feet from the nearest adjacent grade. And that's talking about industrial districts.

Mr. Apicella: Okay. So, the site plan says 7 feet, the proffer says 7 feet, but they would not be in violation of either if they went from 7 feet to 8 feet based on what you just cited.

Ms. Musante: Correct.

Mr. Apicella: Okay. And, the other... last question, with regard to I think there was a request that if the BZA sustained the Zoning Administrator's determination or violation, that we grant some additional time to correct the matter. So, the requirement is based on a proffer and the site plan, right? Do we even have the authority to provide some grace period? I mean, I know we set conditions and we can, for special exceptions and we can extend time frames or, you know, talk about when the starting point is, but this is a proffer, this is a legislative action that was approved by the Board of Supervisors. I'm just trying to understand if we even have the authority to provide some kind of grace period.

Ms. Blackburn: We would have to look into seeing time limits and probably review within the code if you could ask for another deferral before making a decision. And I am not sure...

Mr. Apicella: But that sounds more like an administrative matter within your purview. I'm just asking about the BZA; do we have the authority to...?

Ms. Blackburn: I do not know.

Mr. Apicella: Okay, thank you.

Mr. Grimes: Yes Ms. Brown.

Ms. Brown: I just have one more question for staff. In the new pictures you gave us tonight about the additional sign that popped up over there, to my knowledge there's no dance studio over there. I was just there tonight. I mean, I could be wrong but... would this be something because it's not part of them, it could be just a stray sign got popped up, that would be handled through our sign ordinance where we would call the number on the sign and find that company?

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Ms. Blackburn: Ms. Brown, there was discussion about that sign and there was discussion of whether or not it was in the right-of-way. And, if it is in the right-of-way, it will be handled through our sign removal program.

Ms. Brown: Great, thank you.

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

Dr. Ackermann: Do we need to establish standing before we go the public hearing, open the public hearing? Or is that...?

Mr. Grimes: Yes, you are correct. I apologize.

Dr. Ackermann: Thank you. I would like to move that the applicant does have standing to appeal this, as he's the owner of the property.

Mr. Grimes: Ms. Bertoldi, I think you had a question relating to that?

Ms. Bertoldi: Yes. Actually, maybe the attorney can stand up and maybe answer some questions for me. I just want this for clarification. And I am referring specifically to Attachment 12, which we've briefly talked about the deed and the... it's the cover sheet also for the deed that transfers the title from the individual names of Nicholas and Rosie Khatchi to the trust.

Mr. Kashil: May I approach?

Ms. Bertoldi: Yes, absolutely. So... and I want to extend my condolences, I'm sure on behalf of the whole Board, to your client because that is a terrible thing to be not only lose one parent, but both of them so close together. And I do extend my condolences for that. My question though is specifically with respect to the trust. We don't have a copy of the trust; we only have a copy of the deed that transfers into the trust. So, here's my multi-point question: one, who is actually the Trustee of the estate, and secondly, where is the... what is the status on the administration of the estate? Because if your client is named individually, is he now... has the deed been transferred from the trust to him, named individually? If not, I think that the name of the applicant should be whoever the Trustee is.

Mr. Kalish: I think my client's in the best position to actually answer...

Ms. Bertoldi: Okay, great.

Mr. Kalish: ... questions related to the administration of the trust.

Ms. Bertoldi: Okay, great; yes, that's fine.

Mr. Khatchi: As far as the trust... hi, how is everybody? It has been transferred to me. I haven't, as far as getting in touch with my trust attorney and all that, we haven't gone to formally having hold the documents and everything...

Ms. Bertoldi: But formally it hasn't been recorded You are not in the... you are going to be, you are the beneficiary of what's now an irrevocable trust, that you're going to become the owner of it, right?

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Mr. Khatchi: The way it went in order was my father, my mother, me; we're all in the trust. So, all the properties are in that trust.

Ms. Bertoldi: Right. But right now it's still actually... technically the property is sitting in the trust, correct?

Mr. Khatchi: Yes it is.

Ms. Bertoldi: Okay. Are you the Trustee of the estate?

Mr. Khatchi: Yes ma'am.

Ms. Bertoldi: Okay, so technically, if maybe there... I'm not sure of the correct procedure here, if maybe there could be a request for a friendly amendment that on the application, that would be your name, As Trustee of the Estate of, and then whatever the proper name of the trust is, would be actually the proper applicant. Because you, individually, actually are not the owner. The trust is the owner until there is of record a transfer from the trust to you individually. Counsel, do you understand what I'm saying?

Mr. Kalish: I do and I don't have a problem with it. I would like to note that the appeal is actually in the name of Nicholas Khatchi, who is the decedent most recently. So, while Mr. Borna Khatchi absolutely has the right to make an appearance on behalf of himself as the beneficiary of the trust and the administrator of that trust. The actual appeal was as filed in the name of Nicholas Khatchi.

Ms. Bertoldi: Correct, but now he is deceased, so it would then... it would be the Trustee of the estate would then be representing the individual who was the decedent.

Mr. Kalish: Yes, which in this case is one in the same, so I'm not sure how that affects frankly trust law in Virginia, but Mr. Khatchi has been in this capacity as both the ability to certainly represent (inaudible) the trust.

Ms. Bertoldi: Well, sure, but I'm just saying a friendly amendment to add to the... and I'm not saying we're not hearing the case, I'm saying that as the Trustee, that is his roll is as Trustee, not as the... it's different to be an owner as opposed to the Trustee even though you are ultimately going to be owning the property.

Mr. Kalish: Fair enough; agreed.

Ms. Bertoldi: Okay. So, I mean, is there maybe like a request for a friendly amendment just to add him as " , as Trustee of the application?" Is that proper?

Mr. Kalish: I would so move if this Board would entertain it.

Dr. Ackermann: I think we've done something like that when there weren't proper signatures on an application, and we had someone sign it while they were here. I mean, it's not quite the same thing but there was a minor modification made at the hearing, and I think that's appropriate to do.

Ms. Bertoldi: And I think that it is appropriate because since this is an appeal and I think that, you know, we need to be correct on who the actual applicant is.

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Dr. Ackermann: Exactly.

Mr. Grimes: Does the staff have any issue with making that amendment here tonight?

Ms. Musante: I do not have any issues.

Mr. Grimes: From my perspective, I have no issue with it. Does any other Board member take exception to the amendment? Great, thank you. Okay, so, any other questions in reference to standing?

Dr. Ackermann: So, should we vote on it?

Mr. Grimes: I think we should. I think that would be appropriate.

Dr. Ackermann: I'd like to move that we vote that there is proper standing for this appeal.

Ms. Bertoldi: As amended?

Dr. Ackermann: As amended.

Ms. Bertoldi: I'll second.

Mr. Grimes: We have a motion to proceed based on the application demonstrating standing, all those in favor say aye.

Dr. Ackermann: Aye.

Mr. Apicella: Aye.

Ms. Bertoldi: Aye.

Ms. Brown: Aye.

Mr. Kim: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye. Those opposed say nay. Alright, we move forward with this case. So we can now open the public hearing for this case. Now will the applicant or his or her representative come down and present your case.

Mr. Kalish: Thank you Mr. Chairman. And my name is Michael Kalish, K-A-L-I-S-H; I think there's a type in the application... in the staff report that may reflect a mispronunciation of my name. But I am Michael Kalish. I'm an attorney with the law firm of Walsh, Colucci, Lubeley & Walsh, and I am here on behalf of the applicant who is the owner and agent of... the owner of 1075 Garrisonville Road, Tax Map 19A-1-42. And as staff has already set forth, this property was subject to a proffer from... dating back to 1992 when the property was rezoned so as to allow for its current use, which is both a commercial center and a fuel service station. The use has continued and has been effect since 1992. Those were proffered conditions that were submitted with that rezoning back in 1992 that have not changed since that date 26 years ago. I have on the PowerPoint slide before you all an overview from

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the County graphic system that shows the property from above as it currently sits today. Now as the staff has already set forth, there were four violations. And I'd like, if you would please, to turn to your staff report and Attachment 1, page 11 of 22. This is the notice of violation that was received by Nicholas Khatchi dated May the 15th, 2018. And, as you can see, there's sort of a general reference to the proffer condition on the notice of violation face followed by multiple pages of the Stafford County ordinance and the proffer condition from 1992 that were highlighted by Joseph Valotta, the Zoning Technician and Department of Planning and Zoning agent to actually submit it or issued the notice of violation. Those highlighted portions of the zoning... excuse me, of the proffer are on page 13 of 22, buffering, and on page 14 of 22, highlighting the aesthetics and architecture and the lighting portion, as well as the signs there. So this was the notice of violation that was issued to the property owner on May the 15th, 2018. The County has I believe assented to the fact that with respect to the dumpster pad not being fenced off, that has been abated, as well as I believe we've cleared up any sign issues relating to the property as that being also an abated condition, leaving two conditions that were noted by the Zoning Administrator's agent as being violative of these proffered conditions dating from 1992. The first, if I may address, is the lighting condition. And with respect to lighting, that proffer language specifically succinctly states, and as highlighted in the notice of violation under Lighting, paragraph 2, all lighting to serve parking areas and travelways on the property shall be directed downward and inward, away from adjacent uses and public roads, not to exceed 20 feet in height. I don't believe there's any dispute that the lighting structures are 20-foot in height or less. But the reason that we're here today is because the only violation notice provided to my client has to do with, as highlighted, lighting to serve parking areas and travelways on the property shall be directed downward and inward. Well, all the lighting structures on this property have always been pointed downward and inward. And you can see that from the staff report pictures on Attachment... well, excuse me, the actual staff report, page 6 of 8, showing the lighting structures themselves and the lights pointing downwards and inwards into the property. There was no discussion in the notice of violation related to luminaires or candlepower or any violation of any standard that may be noted from the 1992 proffer condition, which is the condition that this property is subject to; not post 1992 lighting requirements to the extent that they may apply to structures today. Again, the only violation noted by staff and subject to this violation is do the actual (inaudible) point down and in, and I don't believe that there's any dispute that they do. Mr. Khatchi did retain an electrician to point them further down and in to hopefully address any concerns of the County that we were aware of at the time. But those were the conditions set forth in the proper... in the proffer, excuse me, and those were the conditions that we sought to address. Seriously, just pointing down and in the lighting structures, and that's what has been done. And we would submit that the violation noted by the Zoning Administrator's agent to the extent that there was ever a violation submitted... excuse me, properly noted has been abated. The second remaining violation has to do with the fence. So, the proffer language again, I would point your direction under Buffering on page 13 of 22 of Attachment 1; a board on board fence, 7 feet in height, shall be set internal to the rear property line. Well, there is a board on board fence that is 7 feet tall internal to the rear property line. And, as you can see from the pictures, which I believe come directly from the County staff on page 4... excuse me, 5 of 8 of their staff report, there's a tape measure of the board that indicates that it's 7 feet tall. That is the condition that this property was subjected to; that is the condition that was meant and has been met all the way since 1992. There was correspondence between my office and staff dated May the 9th of 2008... I'm sorry, excuse me. There was correspondence between Mr. Valotta and someone at keedah@aol.com where there's mention of "the fence must touch the ground and extend across the entire rear property line. Those are, of course, not conditions that will be found in the actual proffer, nor anywhere else frankly, but the fence, as you can see, is a board on board fence that is 7 feet tall. With respect to the extent of the actual fence, you notice that the buffering condition on the actual site plan, which I have on the screen before you, shows the buffering condition going all the way along the rear property line and then turning and going along the side lot... side line of the property. That is the vegetation condition as

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set forth in the site plan. And we know this because you can actually tell where the fence is supposed to be on this slide. Most site plans indicate where a fence is going to be by a line that is separated by an X every, you know, so forth, and you can see that... I'm sorry... and you can see that in the yellow portion of this slide that there is a line with an X and that line is to indicate a fence, and that line does stop on this site plan at the rear end of where the construction on this property is supposed to be. And we know that that is supposed to represent a board on board fence, because if you look at where the dumpster pad is on this site plan page, you can see those same line-X-line-X which is supposed to represent the board on board fence that is supposed to go around the dumpster site on the same site. So we would submit that...

Mr. Apicella: I'm going to stop you there. I don't see the X's you're referring to.

Mr. Kalish: They're difficult to see. And which slide are you referring to?

Mr. Apicella: Well, this is the slide that you're saying, the slide that's in front of us.

Mr. Kalish: That's correct. If you look at that... The approved construction plan is found at Attachment 7.

Mr. Grimes: The construction plan is Attachment 7?

Mr. Kalish: Yes, on the staff report. And we're looking at the... not the cover page, not the first, second, the third... In your package it's Attachment 7, page 4 of 5. It's difficult to see, but you can, if you're seasoned like I am and you squint your eyes real good, you can see the line separate by the X that runs along the rear property line, which is supposed to represent the fence. And you can even, if you look real close, see on the neighboring property line, the same line indication marking a barbed wire fence on the property to the southeast. I notice that my 10 minutes are just about up.

Mr. Apicella: So, I'm just going to ask you again, for clarification, if the X means a certain thing, where on this construction plan does it say X means fence?

Mr. Kalish: Sadly, there is no legend that speaks to what that line is specifically intended to mark. I would suggest that that line is the fence, has always been represented to be the fence. And, to your question sir, I think you very astutely noted that the buffering... that the buffer line that goes from the rear all the way to the side does just that. It is a buffer line for the vegetation purpose which does go from the rear all the way around to the side. And I would point you to a picture in Attachment 1, page 9 of 22, which just shows the undeveloped portion of this lot as you're looking at it... as you're looking to the rear property line. It does show all of that vegetation which would have to be actually removed if we were to go forward and be required to put a fence along that property line.

Mr. Apicella: Again, where are you referring to?

Mr. Kalish: I'm talking about Attachment 1 on the staff report, page 9 of 22.

Mr. Apicella: Can you make your point again? Because I'm not following.

Mr. Kalish: Sure. That shows the vegetation that goes along the rear line and then curves along the side yard there, which shows that there is the active vegetative buffer that continues along where the fence does stop. And I guess I would just point out that if we were required to put in that fence line, all of that

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vegetative buffer, which we all love, would have to be removed in order to install that fencing from that point forward. And again, I would note that my 10 minutes are up so I would be happy to entertain any questions that the Board may have. But, in conclusion, again I would note that we're here today because of the violations that were noted by the County, which are a 7-foot board on board fence, which we have, and that goes along the property line which we suggest that this site plan represents a vested right related to where items on this construction plan are supposed to go, representing the fence not going all the way down the rear property line and then further where the vegetative buffer is, and then showing lighting that is supposed to go down and in with no further requirements. And I believe staff did note that there's nothing in any violation related to lighting standards that this applicant could possibly been made aware of.

Mr. Grimes: This set of drawings is noted as a construction?

Mr. Kalish: It's labeled approved construction plan dated November the 21st, 1991, in the staff report.

Mr. Grimes: Right, and I see that it includes 5 sheets. And where the fence shows up, which I would not expect it to show up, happens to be on the drainage and erosion sediment control plan. It's not on the actual construction part, but unfortunately, the construction part's for layout, water, sanitary sewer connections.

Mr. Kalish: It is a unique set of plans.

Mr. Grimes: And there's no detailing of the fence defined anywhere other than the dumpster enclosure, correct?

Mr. Kalish: Well, I would pause it that the detail of the fence is on page 4 of 5, again, being that...

Mr. Grimes: No, the actual detail of how the fence is to be built.

Mr. Kalish: That's correct.

Mr. Grimes: Because you have an elevation of it as it goes around the dumpster.

Mr. Kalish: And speaking of elevation, I would like to address the staff's position that the fence has to touch the ground. At one point this fence did touch the ground; 24 years of erosion had sort of, you know, made dirt wash away from underneath the fence. But the fence has existed as 7 feet tall in its current location for the past 24 years. It has been repaired, boards have been added, but the fence itself has remained in status for 24 years.

Mr. Grimes: Are there questions for the applicant? Yes, Ms. Brown.

Ms. Brown: You had requested a deferment from us from July until now for a time extension to work on some of the violations. We granted you that extra time. What progress was made between July and now?

Mr. Kalish: Well, the dumpster pad was surrounded by board on board fence which absolutely is required by the zoning proffers, absolutely. The signs have been taken down, which I believe you noted in your previous remarks. We did attempt to meet a more downward and inward location of the lights, but no luminaries, no candlelight requirements were noted in the violation so none were sought to be

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addressed by the electrician who was hired to perform that work. With respect to the fence, we simply disagree that that is a violation that... well, there is a violation.

Ms. Brown: Okay. So, are you maintaining then that, I'm looking at the site plan, Attachment 1, page 19 of 22, the one that has the footnote about the buffer zone and the 7-foot fence, and it's got a little legend next to it, the solid looking rectangle, which to me matches the solid rectangle going around the property line and on the right side. So you're saying you don't think that's what that means?

Mr. Kalish: I'm sorry ma'am, which legend are you referring to?

Ms. Brown: Page 19 of 22 on the site plan. And it's the one that has the description of the buffer area.

Mr. Kalish: That's correct, yes.

Ms. Brown: The legend next to it is like a shaded rectangle, which to me matches the shaded portion along the rear of the property and up the right side. So you don't think those two correlate?

Mr. Kalish: I believe that is the vegetative buffer of 10-foot that is required, as noted in the proffers.

Ms. Brown: And it... and it says, with the 7-foot board on board fence. With a 7-foot board on board fence.

Mr. Kalish: Area to be buffered shall be a 10-foot inch... 10-foot width wherever possible. So, again, there's a...

Ms. Brown: With a 7-foot board on board fence.

Mr. Kalish: Correct. With a 7-foot board on board fence and a staggered row... But again, that will be the site plan and we weren't here on our violation of the site plan. We're here on a violation of the proffers, which the proffer, I don't believe, requires 7-foot all the way along the entirety of the property line. I don't think it specifically says that in the proffer. At best it's ambiguous.

Ms. Brown: Okay, I'll save my question next for staff.

Mr. Apicella: Yeah, I'm not sure that I necessarily agree that we're restricted to purely what's in the notice of violation as it's stated. I think our responsibility is to make sure that the requirements of the County are met. So, if in our view... I'm not saying they are or they're not, but if in our view we decide that they haven't been met, you know, just because you're trying to narrow the scope I don't think that necessarily bounds us to narrowing the scope. So, if we think that the fence is, you know, should only be 20 feet or 50 feet or 100 feet, I think that's within our purview to make that determination. I'm just making that as a comment. I appreciate that you may feel differently, but I don't think just because it's stated and the proffers are copied does not restrict us to just the proffer notation in the package that was provided as part of the notice of violation. That's just a point I'd like to make. So, when... I appreciate what you're trying to achieve here... when I read that note, it doesn't say or. And I made that point when the staff made that comment about this notation. It says... it doesn't say or, it says and. It says fence and vegetation; it doesn't say fence or vegetation. And I appreciate, you know, the next page that you've shown us, but in the absence of some kind of notation, I have no idea what that X means. I mean, somebody else could come in and say the X means, you know, put trees there. I just don't know what it means because it's not stated. What I do see is a diagram that shows me... a notation with a

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diagram and a diagram showing from one end to the other end of what I think this requirement is. Because it says, this is what we're going to do, and the County didn't say to do that, you guys decided. When I say you guys, the applicant submitted a site plan, got it approved, and this is what they say they're going to do. So, again, that's just more of a comment. You can disagree if you'd like. So, if you could go back a couple pages to where the light poles are.

Mr. Kalish: Are you referring to my actual PowerPoint presentation?

Mr. Apicella: Yes. Again, I appreciate what you're trying to say here. And I'm going to give you a different example. So, you're saying this is downward, okay. Would then this be downward? Would this be downward? I mean, I'm just trying to understand where you're going with trying to define what downward means. Is it only not downward if it's up at a 90° angle facing straight out?

Mr. Kalish: Well, respectfully, this is on the County and the proffer to clarify that definition. And to the extent that there's any ambiguity, I think that ambiguity should fall in favor of my client. But, to answer your question, yeah, that's downward; it's not upward.

Mr. Apicella: So, anything to this point would be downward?

Mr. Kalish: That's what she says.

Mr. Apicella: Okay. Do you read the rest of the sentence though? All lighting to serve parking areas and travelways on the property shall be directed downward and inward, away from adjacent uses and public roads. So, if they're facing this way, how are they not impacting adjacent uses?

Mr. Kalish: They are pointed away from...

Mr. Apicella: Oh, I understand your point that you believe they're facing downward, but there's still more to the requirement, which is that they're not impacting other uses. So, the other uses would actually be people driving around the gas station, right? People trying to get around; that's potentially a use. The people who are neighbors to that property; those are adjacent uses. So, if you're a neighbor and a light is sitting there like that, you don't think that's impacting the folks who are living close by?

Mr. Kalish: And I can actually answer that question directly.

Mr. Apicella: Okay.

Mr. Kalish: Because there was a community meeting related to this CUP that is currently under consideration by the... was under consideration by the Planning Commission, and will be under consideration by the Board of Supervisors. And my client can speak directly to the events of that community meeting. There was a neighbor that did complain. Since the electrician went out there and directed the lighting more downward and inward, he's been mollified I understand. And so, to answer your question as it relates to the specific neighbors and adjacent property owners, there are no known complaints related to the location of this lighting or its effect on the adjacent property owners. So, I think that... to the extent that that is an actual not just theoretical concern, I think that is a status.

Mr. Apicella: Again, I appreciate where you're coming. And, respectfully, just because one person... I'm on the Planning Commission and I voted for the CUP. But just because one person complained and no longer has an issue does not necessarily mean that the second part of this requirement is being met,

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again, just because no one's complaining. It either is met or it's not met, from my vantage point. So, we don't know if somebody else has a problem with it; they just might not have complained. But a logical person might see the situation differently if the light is facing this way into their bedroom, even if they haven't complained.

Mr. Kalish: True, but that is not the standard of the proffered condition that is being... suggested as being violated. The standard is, does it point away from adjacent uses and public roads. We believe that standard has been met.

Mr. Kim: I just have a quick question. So, the officer that went out and did the meters...

Mr. Grimes: Officer Hamilton.

Mr. Kim: ... Officer Hamilton, I'm sorry sir, went out and did the light meters, I'm a little confused on the whole lighting issue. I thought we determined with the Officer's determination of actually driving at nighttime, not pictures when it's not nighttime, yeah, determined when we're actually... I mean, you know, when the lighting was positioned correctly or if it was affecting nearby streets, right? So, I guess I'm just a little confused why we're going on with... I mean, if these were like night pictures and actually shown where they were illuminating, then I would be like okay, cool. But the only thing that I'm going off is Officer Hamilton here, or Sheriff Hamilton, and that's where I'm kind of confused is you guys might disagree or you might disagree with the County, but I'm going to... Do you understand?

Mr. Kalish: I understand. I think, respectfully, as good as a job as he's done as measuring the light and reporting to this Board what he has found, his findings are completely irrelevant to the question, which is a proffer condition of do the lights point down and inward towards the property. There's been no requirement, no notice of violation, that any luminaries, candlelight measurements, or lighting standards other than downward and inward as presented in the notice of violation as we presented.

Mr. Kim: Oh, okay, so I get it.

Mr. Kalish: Not only that, but the proffered conditions that these lights are actually subject to are those 1992 conditions, not whatever changes in conditions have occurred in the County ordinance since then.

Mr. Kim: So, I'm reading your PowerPoint here, it says, from adjacent uses and public road not to exceed 20 feet in height. But it says, all lighting to serve parking areas and travelways on the property shall be directed downwards and inwards away from adjacent uses and public roads. So, if Officer Hamilton was coming on 610, which is a public road, and notices the light, I mean, then wouldn't that... I mean, are you arguing that the violation didn't state that it was pointed on public streets? I mean, I'm sorry, I'm kind of lost. Because I'm reading that through what your PowerPoint and through what Officer Hamilton said, that it actually is in violation. But are you arguing that that wasn't the written violation that your client got?

Mr. Kalish: That's correct.

Mr. Kim: Ah, okay. Well, I don't know how we want to do that but. But I'm going off the PowerPoint, what Officer Hamilton said, but then the County... okay.

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Mr. Grimes: We can discuss the merits of that, I mean, the reality is if you can see these light fixtures from the properties behind the plaza, you're seeing the fixture. So it's not facing completely downward or inward.

Mr. Kalish: But you would... I'm sorry, I didn't mean to interrupt. May I address that?

Mr. Grimes: Sure.

Mr. Kalish: Even if the light were to point completely down, you would still see light emanating from the fixture (inaudible).

Mr. Grimes: Based on the angle of these fixtures, you're going to see the face of the fixture from those properties behind the plaza.

Mr. Kalish: Well, but that's not the requirement of the proffered condition.

Mr. Grimes: Well that demonstrates, in my opinion, that they're not pointing away from the adjacent uses, which is the residential zone. I have less concern about the actual public street next to it than I do the residences behind it. But, we'll leave that there. You definitely have your opinion and I respect that. Mrs. Stefl, you had a question?

Mrs. Stefl: No, I think Mr. Kim and I were on the same wavelength here because I'm struggling from either staff or Deputy Hamilton and yourself. I would love to have seen actual nighttime pictures here to truly get a grasp on, you know, visual because all I see are... these are kind of dusk... I mean, none of these are even on, so that's all. I was just struggling. If staff or the Deputy has by chance these photos but obviously not or else it would have been provided to us I guess in the staff report.

Mr. Grimes: Ms. Bertoldi?

Ms. Bertoldi: Yes, I'd actually like to return to the fencing part of this application. On the page 9 of 22 of your Attachment 1, the picture that shows the vegetation and then the fence where the dumpster is...

Mr. Kalish: I'm sorry, which page?

Ms. Bertoldi: Page 9 of 22 on the Attachment 1.

Mr. Kalish: On Attachment 1.

Ms. Bertoldi: The one that we've been discussing. Are there residences behind that vegetation where the grass is?

Mr. Kalish: Yes.

Ms. Bertoldi: The residences go all the way, right? All the way back along the whole entire property line, correct?

Mr. Kalish: Yes. You can see that on this slide here.

Ms. Bertoldi: Okay. So, if you can go to Attachment 6, page 22 of 31... Attachment 6, yes.

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Mr. Kalish: Yes.

Ms. Bertoldi: Okay, 22 of 31, this is the May 1, 1992, application of the original applicant, correct, with the proffers that were set forth by the applicant. Is that correct? Because it has the owner's signature on page 23, so, of 26. Those are the commercial proffers that are being suggested, correct?

Mr. Kalish: Correct.

Ms. Bertoldi: Okay. So, on page 22 of 31, under buffering, number 1 it says the buffering yard shall be provided to the adjacent residences consisting of a board on board fence, 7 feet in height, set to the internal row. And it does go on to talk about vegetation. But, to me, that says that in the original application that the intent of the original applicant, which was accepted by signature in 1992 by the Board of Supervisors was to actually put a board on board fence, 7-foot, along the entire back of the property. So, I guess my question to you is, how is this ambiguous to, you know, to go past the four corners of the document and isn't that the intent of both the applicant and the Board of Supervisors?

Mr. Kalish: Well, I can only say that I'm addressing the actual proffer that was adopted by the Board of Supervisors, which is Attachment 1, page 12 through I believe 15 of 22.

Ms. Bertoldi: Right.

Mr. Kalish: And there is some... there is a slight modification from that portion of the original commercial proffer that you identified.

Ms. Bertoldi: Well, and when you look at that though, I mean, I'm not really all convinced we even to get to looking at the intent, but if we want to look at the intent and when you state under your justification that the intent of the fence was to buffer the proposed plaza from neighbors, and that the further that the intent was, you know, was not to go along the whole back of the property, I mean, I think that's not what the original application even says. I mean, the intent, you know, let's say that's true. If there are residences behind where the vegetation is and the original application says we're going to put a fence all the way... all the way adjacent to the residences, I think that that is clear that there's supposed to be a fence. So I guess I'm just asking for clarification, because if there was a confusion, you know, by the original owner of where the fencing is supposed to be, I mean, to me that seems pretty clear right here what the intent was.

Mr. Kalish: Unfortunately, I can't speak to what happened in 1992. But I can address the violation that was identified by staff highlighted in their notice of violation as being a board on board fence, 7 feet in height, shall be set internal to the rear line. It doesn't say all the way along the rear line, um, and the fence does mask any development along the entirety of the current fence line. There is further buffering by vegetation that goes all the way along the line into the other side, the side yard, and I believe that was a requirement and that's what...

Ms. Bertoldi: Okay, and we'll get to that in a second but as an attorney looking at this, I'm asking you as an attorney, a buffer yard shall be provided to the adjacent residences consisting of a board on board fence 7 feet in height set to a single row. And then it goes on of white pines planted. Looking at that, I mean, what do you think that that means? I mean, when it says adjacent residences with a board on board fence. I mean, I don't think you need to be there in 1992 negotiating this in order to actually be able to understand what that says. I mean, to me it sounds like there should have been a fence where there are residences which is actually along the whole entire back property line.

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Mr. Kalish: Sure, but to the extent that that was actually removed from the actual proffer condition, I mean, I suppose you may be correct about what the original proffer submission stated.

Ms. Bertoldi: Right. But... because you wanted to go past the four corners of the document that was signed by the Board of Supervisors and going to intent, and where you were talking at one point where you said, you know, that the whole purpose was to provide just a general buffer between the neighbors, it doesn't say that anywhere. It actually specifically talks about a board on board fence. So, I'm just... I'm just if we're going to intent, to me that looks like the intent. But, speaking let's talk about the language. What is unclear about the internal rear of the property line? When you talk about the rear property line, I mean, that's pretty clear what a property line is, right? A line has a beginning and an end. So, what is unclear, and I'm asking you, I mean, what is unclear about seeing the rear property line?

Mr. Kalish: Well, it certainly again say the entirety of the rear property line.

Ms. Bertoldi: And it needs to say that?

Mr. Kalish: As to the development of the property, that it does extend to the limits of the development of the property certainly as it was intended to be built then and as it is today. So I would suggest in I believe a reasonable reading of this proffer is that there is a board on board fence that does mask and screen the entirety of the development.

Ms. Bertoldi: Right, but the buffering says a board on board fence 7 feet in height shall be set on the rear property line. My question though specifically is, is what is ambiguous? What could possibly be meant by rear property line other than the rear property line? Like, there's a line; you know, if it said portion of the property line, that would be... I would be picking up what you're selling, picking up what you're putting down, buying what you're selling. I mean, if it said a portion of, that would be ambiguous because then what portion would it be? But it doesn't say that; it says the rear property line. And a rear property line is a line and I think that that is defined by all of the diagrams of what that line is. So, I'm just curious on what exactly is ambiguous, because you don't even get to intent outside of the four corners of a document unless it is ambiguous, and you don't get to extrapolate that. Otherwise we would never have contracts. We would never have anything because you would just go on and talk about intent of what people meant but not, you know, what they put in. So, I guess that's my question. Like, what is literally ambiguous about a rear property line?

Mr. Kalish: I believe that this requirement specifically says there shall be a fence set internal to the rear property line. It didn't say along the rear property line. It doesn't say the entire width of the rear property line. It just says internal to, alright. So, to the extent that it is the County's position that internal to is equivalent to the entire length of, there's certainly a disconnect and an assumption that internal to means entire length.

Ms. Bertoldi: Well, the internal would be on the inside of the property line.

Mr. Kalish: That's correct.

Ms. Bertoldi: Not the length. The length and inside are different... different aspects.

Mr. Kalish: Sure, but there's no...

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Ms. Bertoldi: Let's look at the definition of the 2005, and I'd be curious, and you might disagree with staff's comment that in 1992 there were similar definitions as what was in 2005 in that... those guidelines, standards, the commercial standards. It's on... it's Attachment 10, page 44 of 48. And it defines buffer yard. And if you disagree about what a... it says the last sentence of a buffer yard is the minimum buffer which is generally uniform across the entire length of the common property line between lots on which uses are located that require a buffer yard. So, here it says that a buffer width is actually the entire length of a common property line. So, if you disagree that there was a similar definition where that was even just a standard that is I mean frankly common sense, which law recognizes common sense. You don't have to over-statute everything and every definition if you can't use common sense, I mean, law does recognize that. So, my question you know for you, I mean, it's a high standard. I mean, and you know that as an attorney to be able to take something that, you know, is actually not ambiguous and try to impose intent on it. So, I guess I'm just not convinced you know that what the ambiguous part is on this.

Mr. Kalish: Is that a question or is that...?

Ms. Bertoldi: I mean, if you'd like to further explain, if you have anything else to add.

Mr. Kalish: Only that I'm not sure that these standards, as to the definition of buffering yard, again, have any effect on the 1992 proffer buffering requirement.

Ms. Bertoldi: Well, just on the understanding of, you know, what a rear property line is I guess what you're saying is ambiguous. As a side question, do you happen to know, and maybe your client may be better asked this, if whether or not the original applicant asked for clarification on what that meant back then in 1992?

Mr. Khatchi: From what I understand, we were just required to put the fence up where the construction stopped. That was it. If we were told to keep going, we would have done that. This is where it's been, like that for 26 years. We haven't had any problems. Nobody's ever complained to us. Nobody from the County has ever said this in the 26 years or whatever it's been that way. So that's what the impression we were, that we weren't in any violation at all. If we were, we would have taken care of it years ago. I mean, this is something that, you know, if was something in the rules we would have done that.

Ms. Bertoldi: To your knowledge, has Stafford County ever come out between 1992 and your current CUP application to check on the proffers, to... did they give any okay's or did they ever come out?

Mr. Khatchi: Never. The only time they've come out is to inspect the environmental pond to make sure we were in compliance with that. They do that every year and that's it. So it's not like nobody's been out there but we've never been told hey, this is wrong, this is wrong, this is wrong.

Ms. Bertoldi: Or anytime right after, you know, to ensure that the proffers were actually put in place per the Board of Supervisors resolution?

Mr. Khatchi: This is the first I'm hearing about these proffers actually, in all honesty. This is where we're at.

Ms. Bertoldi: I understand. Alright, thank you.

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

Mr. Grimes: Yes.

Ms. Brown: Is it your opinion then because you've not received a violation prior to this that you were in compliance?

Mr. Khatchi: I felt we were, yes.

Ms. Brown: Okay. Because, I mean, if I'm driving down I95 at 80 miles an hour, just because I don't get caught doesn't mean I'm not breaking the rules. So, could it be that maybe nobody noticed that you were not in compliance?

Mr. Khatchi: It could be. But it was never brought to my attention that I was not in compliance.

Ms. Brown: Okay.

Mr. Khatchi: That's all I'm saying.

Ms. Brown: Thank you.

Mr. Grimes: Any other questions for the applicant? I have one follow-up with staff. Is there any inspection record of the site plan from 1990 that it was inspected and signed off? I assume there is.

Ms. Blackburn: Not to my knowledge.

Mr. Grimes: There's no final inspections and approvals of site plans?

Ms. Musante: I'm not quite sure what the requirements were back in 1992. Currently, we require as-builts and we do inspections. But we don't... our system, our Hansen system only goes back to 1997. We have no records prior to that.

Mr. Grimes: Okay, thank you.

Mr. Kalish: Thank you all very much for your time and attention.

Mr. Grimes: Thank you. Any member of the public who wishes to speak in support of this application please come forward.

Mr. Lumbra: My name is Larry Lumbra. I live right behind the shopping center. I've attended all of the Planning Commission meetings. I have some things to say that may be negative. My house is not sheltered by any of the shopping center. I'm right behind one, two, three light poles. It was mentioned that there was a community meeting. Mr. Kalish had made an attempt to lower the light angle to appease us. But, in the meantime, after the lights angles were adjusted, the leaves came out and that blocked any additional light that... and we tell him we're going to defer our opinion on whether or not this was sufficient until the leaves fell, because the leaves are blocking the light. Anyway, as far as coming down 610 going west, as you come around by the quarry, how many people drive down 610? As soon as you go around the quarry, boom! Right in your face; 10, 15 lights. It's not a hazard to me but maybe for someone who's a first responder who is going like hell it may be a problem. During the

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other meetings, I had a discussion with Mr. Geouge who's on the planning, whatever his position is, who indicated to me that the proper angle of the lights is horizontal period. If you drive down 610, this facility is probably the only one that does not have horizontal lights. I've got a minute left. I think I've said everything unless you want me to dance or sing. But anyway, this all started with the light issue when he changed from a yellow incandescent light to a very bright white LED. When the lights were the yellow incandescent, like they are in the back of the building, it was obtrusive but tolerable. Now they are the really bright, as the officer said, way exceeding the levels. I think all that needs to be done is a good will gesture by the owner. Turn the damn lights to a 90°, be done with it, don't argue with it anymore, just do it. Everybody will be satisfied, County and homeowner. Just... just make it... don't argue about it, just do it. Make it a good will gesture. The place will still be illuminated. Crime abatement will still exist. And everyone will be happy on this side of the table and on the homeowners' side of the table. That's all that needs to be done. A good will gesture, whether it's a requirement or not. Satisfy everybody; the people who have to drive down 610 and all of a sudden blinded by these lights. Just go out there and dim, make them horizontal and shit and get it over with. Alright, that's enough. Thank you.

Mr. Grimes: Thank you Mr. Lumbr. Is there anyone else from the public that wishes to speak in support of the applicant? Anybody who wishes to speak in opposition to the applicant? Hearing none, does the applicant wish to respond or have any additional information?

Mr. Kalish: The lighting was changed to an LED which, as everyone knows I think is common knowledge, is more energy efficient and I believe that is the wave of the future with respect to the replacement of all lights, certainly commercial lights. I would be happy to do a foxtrot or a Charleston if it would appease the Board as well if they would like to see dancing out of any speaker before it.

Mr. Grimes: Thank you very much. Yes, sorry. Here's a follow-up for you.

Ms. Bertoldi: Just a quick question. Is there any issues or any reason why the applicant would not just put them down at a 90° angle? Is there some particular reason why there is a fight so to speak on not making them 90°?

Mr. Kalish: I don't know that I would call it a fight, but it certainly... I know that the opinion of members may be that simply pointing it down makes things better. I would suggest that it actually makes it point more towards the road, certainly on those lights that are pointing away from the road. Um, and there certainly was a gesture of good will in hiring the electrician to do... point them most efficiently towards the internal portion of the property and light those areas that need to be serviced by light. You know, I know what the current County standards may be today, again, brought to our attention prior to the actual electrician going out there could do this. I think that might answer your questions.

Ms. Bertoldi: I mean, it does in a way. It does, I mean, I guess what I'm hearing is is that is there a concern by the applicant that it's not going to illuminate part of the business that may otherwise be in the dark and exposed to some sort of, you know, potential crime? I mean, is there... because, I mean, we hear testimony from not only the homeowner but also from Deputy Hamilton who is like they need to go down further and I understand that's your position. But is there a reason why the applicant is not wanting to point them down further?

Mr. Kalish: I think Mr. Khatchi is the best person to answer this.

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Mr. Khatchi: It's not that I don't want to, they have been in that position for 26 years. We have never moved the position of those lights. So when the electricians, Tom Walls Electrical, who's done business in Stafford forever, there was no concern of him even saying hey, they have to be at a 90°. So he mounted them and put them in the same position that the original lights were. I was told by a lot of neighbors, Larry himself, that it was dark, there is dark. One day a breaker tripped and the whole parking lot went out. I had to come at 10:30 in the morning he calls me up and I'm coming at nighttime just to turn a breaker on because he was scared because when it's dark, it's dark. And so here I'm trying to appease everybody of to light the place up to kind of keep the kids from hanging around the back which is near his house, so we're trying to light the area, but then on the other end we're getting feedback that oh, now it's just too bright. I mean, it's not that I don't want to do this, I'm just... I just put them and the electrician in the position that they've always been.

Mr. Grimes: I thought they were pointed closer, more towards...

Mr. Khatchi: Well, they were. We brought them inward and downward more now, but before they were more out and all that. But since we had some complaints, we did bring them inward and downward more. And our tenants are kind of happy it's lit up because they have businesses, there's money in there, and so they're happy. And if you look at the center, maybe it's... I don't think it goes into the streets or anything. I think it looks good, I think it's lit enough. I don't think where it's really bothering anybody in back. And as far as the leaves, this was done in June, the adjustment. So May and June I think the leaves were already on the trees and everything and so. I mean, it's... I don't know, it's not that I don't want to do it, it's just we never thought it was an issue putting them at the same position we did but lower them. So we did try and you know help them out. The last meeting we had everybody seemed to be satisfied. This is news to me that I'm hearing today since the meeting we had, I think it was in June sometime, I haven't heard anything...

Ms. Brown: Mr. Chairman, can I ask a question before we wrap it up?

Ms. Bertoldi: Thank you very much.

Mr. Grimes: Ms. Brown.

Ms. Brown: Yes, I'm sorry. When did you put the LEDs in?

Mr. Khatchi: The construction, it was probably I would say March or April of this year.

Ms. Brown: Of this year?

Mr. Khatchi: Yes.

Ms. Brown: Of 2018?

Mr. Khatchi: Yes.

Ms. Brown: So you didn't have LEDs in 1992.

Mr. Khatchi: No, no. They were a 400 watt high pressure sodium bulbs.

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Ms. Brown: So, in other words, the LEDs, you would agree, are much brighter than the old ones. So, the angle of the old ones wouldn't have extended as much, but now you've changed what you had in there and put in a much brighter bulb.

Mr. Khatchi: Well, it's not... they're equivalent to the 400 watt, they're just... where high pressure sodium takes a while for them to get hot and they get brighter and brighter gradually, LEDs of course come on and they're instantly bright. There isn't that, I don't know if you're familiar with high pressure sodium. When they kick on, it's dim and then it slowly gets brighter and brighter and brighter.

Ms. Brown: I know fluorescents take forever and LEDs are like that because I have them installed in my house.

Mr. Khatchi: LEDs come on instantly, but as far as the power, it's the same, it's equivalent of a 400 watt high pressure sodium bulb that's always been there.

Ms. Brown: But it's a white light versus a yellow, so we don't know about the lumens and the...

Mr. Khatchi: That's the difference, yes.

Ms. Brown: Yes. So it could actually be brighter to the eye and so it might require more downward versus if you put the old lights back in.

Mr. Khatchi: Right.

Ms. Brown: Okay, thank you.

Mr. Grimes: Alright, any other follow-ups? In that case, we'll close the public hearing and bring the application back to the Board for discussion.

Ms. Brown: Okay, would you like me to start?

Mr. Grimes: Feel free.

Ms. Brown: Okay. Well, I went through the package. Like is said, I did go by there several times. One of the things that, you know, there seems to be a discrepancy about the fence touching the ground. There are some types of fences that do not touch the ground, you know. Those would be like your split rail fence, stuff like that. But a board on board fence, I looked extensively online at fence companies and all of them touch the ground. There is quite a bit of erosion which everybody seems to agree to. And, in the proffers, on page 3 of the proffers, number 3, one thing that was not highlighted by anybody but it says the maintenance of all fencing and vegetation of buffered areas shall be the responsibility of the property owners, heirs, or assigns. So I would argue that the fence has not been maintained to allow the erosion to do that. And it's high in some spots. I mean, animals could get under there, kids could get under there, and I would imagine that they would want to have it on the ground for trash blowing back through there into the yards. So I would argue that it has not been maintained properly. And, I don't know if anyone else wants to discuss it, but I'd like to make a motion to uphold what the County determination was.

Mr. Grimes: Well, I'm going to offer, because of my years in the business doing lighting design, there are ways to put the lights at a 90° angle. They sell shields for these particular types of fixtures that can

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be placed on the roadside side of that light fixture to prevent any light trespass out to the road. These fixtures can be lowered to a 90° angle. Depending on which fixture you pick or had the electrician pick, there's a specific type of distribution that works in this area; the type is type 3 or 4, depending on how you want the light to illuminate so that the light from that 20-foot pole would still get to the front of the shopping center, be flat to the horizon, and would not create light trespass on the streets and/or out beyond into the residents or adjacent properties. So, there are fixtures that are specifically designed for these plazas. You see them right down the street; they have them at Walmart, they have them at most of the major shopping centers. Those particular shopping centers put their light fixtures way in board, they don't have to do the shields. In this case, he's got his fixtures pretty close to the roadway, but it can be fixed. And it's a simple fix to address the issue of the light passing into the adjacent uses. That's my biggest concern. We can argue about whether what's down, what's up, but you've got to prevent light from going into the adjacent uses; that's the requirement. So, from that perspective, I think that the violation notice is spot on. The fence -- I have a little more trouble with that. The buffering extends in the undeveloped side of the property. The fence is along the back all the way along the developed part of the property. I walked the entire back of that side. Ms. Brown, I agree 100%; the fence is up off the ground, but to me it almost looks like somebody cut it off. But that doesn't matter. It's above the ground.

Ms. Brown: Well, I think they said it was erosion. I think the applicant did.

Mr. Grimes: And it could be. If it's been there for 24 years, absolutely. I agree with Ms. Bertoldi that the rear of the property line is the rear of the property line. Unfortunately, we don't have an inspection report from the County to determine if it was put in the way that it was shown, and I don't necessarily agree that that line that's on the sediment plan is a fence line. It could be sediment and erosion control, because that's what that plan is. You have a construction plan to put a fence in, it says fence. And it delineates the construction of the fence and an elevation of the fence. So, I'm having trouble with that. And then on top of that, you've included a new site plan called the existing site plan and it does not show the fence the way it's shown on that construction plan if we were to believe that that construction plan in that fence. It doesn't go out and wrap around the dumpsters, it just stops at the development side. So, I am definitely leaning in favor of rejecting the appeal just based on the documentation that we've received and the testimony that we've heard so far.

Dr. Ackermann: Mr. Chairman, so the question I have is, is it appropriate for us to apply today's zoning standards to this or to go with the proffer as it was done in 1992, which had different standards for it? And I understand that people are much more sensitive to light, and I am myself and would love to see all lighting completely down so we can cut down some of the light pollution, but I just have a question... I mean, for myself, you know, an issue, of can we... is it appropriate for us to apply these new standards, newer standards, to the property, to the proffer as we have here? I would also just like, the motion hasn't been seconded, I think it might be more appropriate to address each of the issues in the appeal since there's two violations that have not been abated. Thinking about this situation or thinking about future situations, maybe where there might be many issues; I don't know if we have to do it all at once. So, I... those are my feelings on it.

Mr. Grimes: Any other discussion?

Ms. Brown: Well, I agree with Ms. Bertoldi. When you talk about the rear property line, it's edge to edge. If I was selling a house and somebody called and asked me, you know, what's the measurement of your rear property line, I would go from edge to edge, not where my fence may or may not have started; it would be the complete property line as far as I'm concerned.

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Mr. Grimes: Any other discussion?

Ms. Bertoldi: One question I have is, I know this was brought up by the applicant, was that I think they said that if the CUP was granted, that would require an 8-foot fence. Is that correct and they think it's unfair to have to put a 7-foot fence and then an 8-foot fence? Is that... am I correct on that or am I confusing something there? Because if there is going to be a require... I mean, I truly believe that they need to have a fence all the way along the back. Now, if they are granted their CUP, then I think it would just be appropriate to let them put whatever fence at that time is with the CUP and I don't really know how to handle that. I think it would be unfair to require them to fix these issues or at least the fencing issue, the lighting issue is something different, in order to be approved for the CUP. Like, to me, that doesn't make sense. So I think that maybe some... I'm not real sure... some language saying that if the CUP is not granted then they have to extend the fence, the 7-foot along the property line. I don't even if we even have the ability or authority to do that. But that's one thing I am struggling with.

Mr. Apicella: Mr. Chairman, just on that one point, that's why I asked the question during discussion with staff whether or not they could actually go to 8 feet. I believe they said they could. Who knows what's going to happen with that CUP, you know, and when it's finally going to reach its final destination once it gets to the Board. I have some concern about the BZA meddling with a proffer such that we could give somebody some kind of grace period. I think that's outside our purview. If this were a special exception, I think it'd be a different story. And I appreciate the hardship that it might create for the applicant if we decide that they have to have a fence and it needs to be all along the property line and it's 7 feet tall and they wind up putting one up at 7 feet tall and then they have to fix it downstream. But that's outside I think our control. That being said, again, they could in fact build a fence that's 8 feet tall. Whatever we decide that length is, they have that ability now to do that based on what I heard staff say.

Ms. Brown: Well, it's my opinion that the current fence that's up there now is in violation because it doesn't touch the ground and not meeting the requirements. So, as part of the violation, I think they're going to have to fix the entire fence... which I think should go along the entire property line.

Mr. Grimes: If it truly is erosion that's created that gap under the fence, that can be fixed without moving the fence. Right? I mean, you could build up that ground around the fence to solve that issue.

Ms. Brown: Would that create a potential drainage issue? Would that be something they'd have to have a permit for, to move the dirt? Usually, when I have somebody dig in my yard a little, I have to get a permit. Um, would they... because if they came and brought a bunch of fill in there, because I did watch the Planning Commission meeting on the 13th of June and there was some problems with drainage back there. So, if they come in and add a bunch of fill, is that going to exacerbate the current drainage issues back there? Or maybe staff could tell me, would they need a permit to add some dirt?

Ms. Musante: That would depend and what we would probably do is just send out our E&S group and have them take a look at it and see what would be required.

Ms. Brown: Okay, because I don't want to make a problem worse.

Mr. Grimes: You're right. They may have to replace the whole fence or maybe it can be fixed by adding dirt. We don't know.

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Ms. Brown: And it's up to them if they want, like Mr. Apicella said, if they want to put up an 8-foot just in case, you know, they get it approved, which has nothing to do with us, we have no authority over that.

Mr. Grimes: Absolutely. Any other discussion? Does anyone care to make a motion?

Mr. Apicella: Just a point of order. A motion was made and it just hasn't been seconded yet, Mr. Chairman.

Ms. Bertoldi: I will second.

Mr. Grimes: Who made the motion?

Ms. Brown: I did.

Mr. Grimes: Ms. Brown, what was your motion? I'm sorry.

Ms. Brown: I'll just read... I'll reword it. I have a motion to reject the appeal and uphold the decision made by staff. I think that the fence needs to extend the entire property line, which goes from edge to edge. I think it needs to touch the ground. And as far as the lighting, the conditions have changed. They are using different light colors, which I think have changed the brightness since 1992, and I think that's going to require more of a downward thing and I agree they use cages, or whatever it is. I think they need to come into... they need to make some adjustments. They have made an adjustment; they have changed the kind of lighting that they've used, so I think that's going to require further adjustment of the actual angle due to the new lighting bulbs, the LEDs.

Mr. Grimes: Thank you. And we had a second?

Ms. Bertoldi: Yes, I second the motion. Just to add on what Ms. Brown said, I reject the applicant's argument that it is vague and that the intent was not to have a 7-foot fence all the way along the border line and that it is unclear on what that means. I think that it's clear within the four corners of the resolution signed by the Board of Supervisors in 1992 and, based upon the information that we have, I believe that the appeal should be denied.

Dr. Ackermann: Could I ask, for the purpose of the lighting, what's the rationale on that? The person who made the motion or seconded, or anybody.

Ms. Brown: The rationale being they have changed the kind and color and brightness, I think, of the lighting. They were using, you know, yellow amber colors and they're now using LEDs, which are brighter, and I do know that there is a conversion on a 40 watt bulb is an equivalent 40 LED but it is a whiter, brighter light. And I just think that because you're no longer using what you were using when you first put this in, since you've changed the kind of color and bulb, you're going to need to change the angle of the actual fixture or put a cage on because of the different kind of lighting that you're using.

Dr. Ackermann: So, if they use the same bulbs they would not have to readjust them or anything?

Ms. Brown: As long as it's pointed down. I'm looking at these pictures...

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Dr. Ackermann: I mean, you talk about them changing what they originally had because of the light bulb and, if they originally had something that is sort of leaning in let's say, but they had the original light bulbs, you'd be fine with that.

Ms. Brown: If it's leaning in. But right not it's not. I think that's just exacerbating the problem, the change of the light bulb. I think they were out of compliance before and I think that changing the light bulb has made them more out of compliance. That's my opinion.

Dr. Ackermann: So, it's your opinion they were out of compliance but we don't know that.

Ms. Brown: Well, looking at the pictures that staff provided of today, I don't know what page this is but it's the one, this one right here, the fixture on the end, on the far right, doesn't look like it's pointing down and inward. It looks like it's pointing kind of down and out to me. And I do... and I did, like I said, I did listen to some of the Planning Commission meeting and the people talking about driving by and the brightness on the road, so. I personally live down there. I drive by there several times a day. I don't usually drive at night; sometimes I do. It is bright, but I don't live behind it and I wouldn't want to. But I just feel, because they have changed the kind of light bulb they're using, it's going to require a more drastic change on the fixture, whether it be a cage or just pointing more down.

Ms. Bertoldi: And I seconded that also with respect to the lighting. I think this would address any question that you had, you know, to be grandfathered in it would be status quo. I mean, with that argument, if they change anything at all then, you know, generally law requires that you comply with the current ordinances. When you do change the light, I mean, like LEDs in cars on their light bulbs on cars, they literally blind me. They could be the exact same but they come through, they look like they have their high beams on. I literally cannot see. It literally... I can't take it and that's... LED is, I don't care if it's the same wattage, by personal experience there's a difference. When you change what you had at the time of what the ordinance was, I do not believe that you are any longer grandfathered in, and by that standard alone you cannot apply the 1992 standards of the lighting. And I do also listen to the Deputy Hamilton's testimony, someone with 22 years of experience in specifically dealing with lighting issues and his testimony weighs for me, has heavy weight for me with respect to my second of that part of the motion.

Mr. Grimes: Yes.

Mr. Kim: I, too, have... the lighting is, like, half of the... I'm sorry, like the lighting, I think the applicant can actually change and it wouldn't be an issue. But I think the fence... I'm struggling with a yea or nay vote right now on either upholding Ms. Blackburn's determination of violation or to say that... because it's a two-part thing for me. I agree with one, not the other. I agree with one, we should uphold, and the other we should let the applicant appeal.

Mr. Grimes: I don't have any problem with us splitting this since there's only two.

Mr. Kim: Yeah, that's my biggest issue, is just splitting them.

Mr. Grimes: And doing a motion on both. Do you motions apply to both items 1 and 2?

Ms. Brown: My motion applies to both, yes.

Mr. Grimes: Okay.

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Ms. Brown: So, I think we have to vote on that first and then...

Mr. Grimes: I think that might be appropriate if the Board agrees that we can vote on each one of these individually.

Ms. Brown: Don't we have to vote on my motion?

Mr. Apicella: Mr. Chairman, can we vote on the motion and if it fails then we can bifurcate the two items? Because, quite frankly, I support the motion. I agree with comments made by Ms. Brown and Ms. Bertoldi. I believe the code requires that the applicant prove that the notice of violation and the Zoning Administrator's determination was in error; I don't believe it was. I don't believe they've made a satisfactory case to change our minds. I believe that the lighting does not meet the requirements, either those that were in place when the proffer was approved. Even if you were to agree, and I don't, that downward and inward has some vagueness to it, and again, I don't believe it does. I think the common sense approach should prevail in this case. That it does not currently go in a direction that is away from adjacent uses and it needs to therefore be fixed so that it's not trespassing on neighbors and also those people who are just circulating around the parking lot itself. I also believe, contrary to the applicant's agent's comments that they're not required to go all the way across at least the backend of the... the entire backend of the property. In fact, I believe it should not only go across the backend but also along the side based on the diagram that's in the site plan. That's the only piece of factual information that's in front of me, irrespective of the next piece of information that he mentioned, the other attachment; that's an interpretation that's open to question. So, in the absence of some figure that shows me that that information on the original site plan is incorrect, I can only go by what's in front of me. So, Mr. Chairman, I support the motion to uphold the zoning determination in this matter.

Mr. Grimes: I think, Mr. Apicella, I think you're absolutely correct. We can vote on these together as one and see what the result is then. We can split it out after that if we have to. Everybody in agreement with that?

Ms. Brown: Yeah, I think we have to vote my motion first.

Mr. Grimes: Alright, so we have a motion made by Ms. Brown and seconded by Ms. Bertoldi to reject the applicant's appeal of the Zoning Administrator's notice of violation. All those in favor say aye.

Mr. Apicella: Aye.

Ms. Brown: Aye.

Ms. Bertoldi: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye. Can we get a count here, can we get hands? One, two, three, four, five... five. All those opposed say nay.

Mr. Kim: Nay.

Dr. Ackermann: Nay.

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Mr. Grimes: Two. Five - two, the motion carries. There is no reason to go back and split it up then. I'd like to call a... I'm sorry, Mr. Kalish, yes.

Mr. Kalish: (Inaudible) would affect any potential immediate motion for reconsideration, the applicant would be in favor of a condition of the use of a condition pending the result of the CUP, as mentioned by Board member Bertoldi.

Mr. Grimes: Unfortunately, I don't think we have the ability to do that in this case.

Mr. Kalish: Thank you very much for your time.

Mr. Grimes: Thank you. The Zoning Office will be in touch with you. I'd like to call a 5 minute recess while we swap out seats and take a break.

Recess from 9:17 p.m. - 9:24 p.m.

Mr. Grimes: Okay, ladies and gentlemen, let's jump back into this. If I could have the Secretary read the next case.

2. A18-03/18152403 – Everett Lovell c/o Roy Shannon, Esquire - Per Stafford County Code, Section 28-349, "Appeals to board generally," the applicant is appealing a Zoning Administrators determination dated June 1, 2018, regarding drive-throughs, restricted access entrances, and Transportation Impact Analysis (TIA) on Tax Map Parcel Nos. 39P-A, 39P-B, 39P-C, 39P-1, 39P-1A, 39R-A, 39R-B, 39R-C, 39R-1, 39R-2, 39R-3, 39R-4, 39R-5, 39R-6, 39R-7, 39R-8, 39R-9, and 39R-10. The property is zoned B-2, Urban Commercial.

Ms. Musante: Case A18-03/18152403, Everett Lovell in care of Roy Shannon, Esquire. Per Stafford County Code, Section 28-349, "Appeals to board generally," the applicant is appealing a Zoning Administrators determination dated June 1, 2018, regarding drive-throughs, restricted access entrances, and Transportation Impact Analysis (TIA) on Tax Map Parcel Nos. 39P-A, 39P-B, 39P-C, 39P-1, 39P-1A, 39R-A, 39R-B, 39R-C, 39R-1, 39R-2, 39R-3, 39R-4, 39R-5, 39R-6, 39R-7, 39R-8, 39R-9, and 39R-10. The property is zoned B-2, Urban Commercial. You have the application, the owner's consent form, copy of the determination letter dated June 1, 2018, statement of merit, Stafford Count Code Section 28-349, Stafford County Code Section 28-37, State Code 15.2-2311, State Code 15.2-2309, copy of the Planning Commission and Board packages, trip generation information, tax records for all properties owned by the applicant, definitions, public notice, pre-application check sheet and submittal letter. The applicant, Everett Lovell, submitted a request for a zoning determination on March 7, 2018, concerning the Tax Map Parcel Nos. 39P-A, 39P-B, 39P-C, 39P-1, 39P-1A, 39R-A, 39R-B, 39R-C, 39R-1, 39R-2, 39R-3, 39R-4, 39R-5, 39R-6, 39R-7, 39R-8, 39R-9, and 39R-10, known as the Property, and the zoning reclassification application RC17152031 and the conditional use permit application CUP17152030. Application RC17152031 requested to amend the proffered conditions on the Property, adopted pursuant to Ordinance O07-73, and the Board of Supervisors approved the request pursuant to Ordinance O17-45 at its meeting on December 19, 2017. In addition, the Board also approved Resolution R17-138 which approved Conditional Use Permit CUP17152030. The Property is zoned B-2, Urban Commercial, with proffers, and is subject to the conditions in Resolution R17-138, which were later amended by Resolution R18-175 approved by the Board on July 10, 2018. The zoning determination request consisted of 38 questions regarding how drive-through facilities and gated access developments were permitted in the B-2, Urban Commercial Zoning District, and how trip generation counts were utilized in the approval of this zoning request. The determination request also stated that

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the response should be based on the zoning ordinance as it existed on December 19, 2017, and if amendments have been approved since that time that would affect the determination to also provide a determination based on the those amendments. The questions submitted were researched in consultation with the County Attorney's office and the answers provided in a formal determination dated June 1, 2018. In the determination, it was stated that the determination is based on the current zoning ordinance regulations which are the valid ordinance document. The applicant is not the owner of the Property. A request has been made to the applicant's agent to supply information to substantiate that the applicant has standing to submit this appeal. Staff received the following statement via email on August 17, 2018: *With respect to your question below, Mr. Lovell's appeal arises from and concerns certain determinations made by the Zoning Administrator. On March 7, 2018, Mr. Lovell, by counsel, submitted a request for determination letter to the Zoning Administrator. On June 1, 2018, the Zoning Administrator provided her response. The Zoning Administrator's determination letter specifically stated that her determinations could be appealed to the BZA. As such, we believe Mr. Lovell has standing to appeal those determinations to the BZA.* The statement that Mr. Shannon is referring to is a form statement required by Virginia Code 15.2-2311(A) and is not an assertion by the staff that the applicant does or does not have standing to appeal. The applicant, Mr. Everett Lovell, is appealing the determinations of the questions listed below. Staff is providing a response to the appeal of each question or group of questions. Questions 1, 2, 9, 10, 11, 12, and 13: The determinations for these questions are being appealed because the applicant states that the responses of the zoning administrator were based on the zoning ordinance in affect at the time of the request and not at the time of the approval of the zoning reclassification for the Property, as requested. The zoning administrator is charged with administering and enforcing the zoning ordinance and rendering zoning determinations, as provided in the Virginia Code. The applicant's request is outside of the scope of the authority provided by the State Code. Question 3: May an applicant obtain approval for a "drive-through" in a B-2 district by obtaining a conditional use permit? Staff's response is *Yes*. The applicant states since the use was not permitted in the zoning district, the staff recommendation for approval was improper and the determination was wrong. The current zoning ordinance permits such a use with approval of a conditional use permit. Questions 4 and 5: Can the Planning Commission consider and recommend for approval a conditional use permit that allows for a "drive-through" at the Project site? Staff's answer, *Yes, per Ordinance O18-08*. Can the Board consider and approve a conditional use permit that allows a "drive-through" at the Project site? Staff's answer, *Yes, per Ordinance O18-08*. The applicant repeats the statement that at the time of the zoning reclassification request a "drive-through" was not permitted in the B-2 Zoning District. Therefore, staff's recommendation for the approval of the zoning reclassification application and the Board's approval of a "drive-through" was impermissible and the determination was wrong. As stated previously, the current zoning ordinance permits such a use with approval of a conditional use permit, pursuant to Ordinance O18-08. Questions 6, 7, and 8: May an applicant obtain approval for a "drive-through" in a B-2 district by "proffering" to construct and operate a "drive-through?" Staff's response, *No, the Board of Supervisors may accept such a proffer, but the acceptance of the proffer does not supersede the requirements of the Zoning Ordinance to permit such a use. Proffers are restriction on uses, not approvals of uses, and as such they do not serve to allow for uses which are not permitted by the Zoning Ordinance.* Can the Planning Commission consider and recommend for approval the acceptance of the Project applicant's "proffer" to construct and operate a "drive-through" in a B-2 district? Staff's response, *Yes, subject to the qualifications referred to above in the response to question 6*. Can the Board consider and approve the acceptance of the Project applicant's "proffer" to construct and operate a "drive-through" in a B-2 district? Staff's response, *Yes, subject to the qualifications referred to above in the response to question 6*. The applicant believes such a proffer is not a restriction on a use but one that proposes a new use and/or an unpermitted use in the B-2 district and should not be accepted by the Board. Therefore, the applicant challenges the zoning administrator's determination as wrong. To reiterate the position stated in zoning determination response, the Board of Supervisors may

choose to accept (and the Planning Commission may choose to recommend acceptance of) such a proffer as part of the approval of the reclassification, but the acceptance of a voluntary condition proffered by an applicant cannot supersede the requirements of the zoning ordinance nor does it serve to allow such a use which is not permitted by the zoning ordinance. Questions 15 and 16: Can the Planning Commission consider and recommend for approval the acceptance of the Project applicant's "proffer" to construct and operate a "drive-through" pharmacy at the Project site? Staff's response, *Yes, subject to the qualification referred to above in the response to question 6.* Can the Board consider and recommend for approval the acceptance of the Project applicant's "proffer" to construct and operate a "drive-through" pharmacy at the Project site? Staff's response, *Yes, subject to the qualification referred to above in the response to question 6.* The applicant restates his position of appeal from questions 6, 7, and 8 that the proffer proposes a new use and/or an unpermitted use in the B-2 zoning district, which should not have been accepted by the Board. Therefore, the zoning administrator's determination is incorrect. The change in these two questions is the addition of the word "pharmacy." Adding "pharmacy" is immaterial to the zoning administrator's determination and refers back to the response to questions 6, 7, and 8 above. Questions 20, 21, and 22: May an applicant "proffer" a use of its property that is not permitted under the Zoning Ordinance for that property? Staff's response, *Yes, subject to the qualification referred to above in the response to question 6.* Can the Planning Commission consider and recommend for approval the acceptance of an applicant's "proffer" to use its property in a manner that is not permitted under the Zoning Ordinance for that property? Staff's response, *Yes, subject to the qualification referred to above in the response to question 6.* Can the Board consider and recommend for approval the acceptance of an applicant's "proffer" to use its property in a manner that is not permitted under the Zoning Ordinance for that property? Staff's response, *Yes, subject to the qualification referred to above in the response to question 6.* The applicant believes that a reclassification applicant cannot proffer a use of its property that is not permitted under the zoning ordinance, nor can the Planning Commission recommend acceptance of or the Board accept such a proffer. By doing so, the applicant argues that the proffer is being used to circumvent the zoning ordinance. Therefore, the zoning administrator's determination is wrong. The determination for these three questions also defers to the response to question 6. Here, the applicant asks generally about uses versus specific uses as provided in questions 6, 7, 8, 15, and 16. That distinction is immaterial to the zoning administrator's determination and refers back to the response to questions 6, 7, and 8 above. Question No. 35 as initially requested and responded to: May an applicant rely upon an older completed TIA, if that TIA is based upon a proposed use at the Project site having a different Institute of Transportation Engineers (ITE) category of use, and now the Project, per the zoning applications, has a different ITE category of use with a higher trip generation rate? Staff's response, *Yes, if the use as proposed generates less traffic than [the] previously [approved] use.* Question No. 35 as submitted in the appeal: May an applicant rely upon an older complete TIA, if that TIA is based upon a proposed use at the Project site have a "Medical Office" use under the Institute of Transportation Engineers (ITE), and not the Project, per the zoning applicants, will consist of a "Medical Clinic" use, with a higher trip generation rate? In its appeal, the applicant submitted a revised question 35. The zoning administrator and staff are not in a position to respond to the amended question 35, as it has not been properly submitted to the zoning administrator for a determination. Therefore, the zoning administrator's response and this staff report will only respond to question 35 as originally submitted. The applicant contends that the rezoning must generate (1) less daily traffic and (2) no increase in the existing hourly traffic, when compared to the trip generation of uses allowed by-right under the current zoning of the property. A letter provided by Bagby, Foroughi and Goodpasture, PLLC in the reclassification application compares the vehicle trip ends (VTE) of the 2 uses that have been proposed for this property. The comparison shows that the proposed use of the Family Health Center –South will generate less traffic than the previous approved use of the East Campus Infrastructure Project. The standard cited by the applicant in his appeal of the zoning determination is not the standard applied by the County. As

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stated in the determination, if the use proposed generates less traffic than the previous approved use, the TIA may be relied upon. For the reasons stated above, the applicant is seeking the BZA to decide upon and/or overturn the zoning administrator's determination on questions 1, 2, 9, 10, 11, 12, 13, 3, 4, 5, 6, 7, 8, 15, 16, 20, 21, 22, and 35. For the reasons stated above, the zoning administrator's determination accurately responded to the applicant's determination request and the zoning administrator's determination should be upheld.

Mr. Grimes: Thank you. I know that was very long. Are there any questions for staff?

Dr. Ackermann: I have some.

Mr. Grimes: Yes, Dr. Ackermann.

Dr. Ackermann: So, let's see, page 3 of 8 in your response. You say the statement that Mr. Shannon is referring to is a form statement required by Virginia Code 15.2-2311(A) and is not an assertion by the staff that the applicant does or does not have standing to appeal. That's the motion at the end... that's the statement at the end of your letter back to him?

Ms. Blackburn: Yes sir.

Dr. Ackermann: That he may appeal that. You're saying this is not an assertion that he has standing to appeal. Let's see, in February we heard a case about the Confederate Battle Banner on 95. And if you... people did not appeal the determination that you made; I mean, they had a complaint made about it and you did not provide a written statement back to them. Is that right? I think it was an email they got back from the Zoning Commission?

Mr. Apicella: It was a phone call from the Planning Director.

Dr. Ackermann: A phone call. But if you had provided a written statement, it would have included that same information at the end, right?

Ms. Blackburn: Yes sir.

Dr. Ackermann: Okay, thank you very much. And I'm very naïve about all this. So, you made a zoning determination on a property, or on a plan for something to occur, right?

Ms. Blackburn: I made a zoning determination on the questions that were asked in the letter.

Dr. Ackermann: But they are appealing something that... some zoning determination that must have been made at some point, aren't they?

Ms. Blackburn: They were asking questions about drive-through facilities on a particular project. And they were also asking questions about a Transportation Impact Analysis. And they were asking... and just the reclassification of it.

Dr. Ackermann: And this was not their project or this person's project, this is another project that is going on someplace.

Ms. Blackburn: To my knowledge, that's true, yes.

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Dr. Ackermann: Thank you.

Mr. Grimes: I have a quick one. The project in question that these questions are asking about, that project is no longer moving forward?

Ms. Blackburn: That is my understanding.

Mr. Grimes: So, does that CUP then get withdrawn?

Ms. Blackburn: Not to my knowledge, no.

Mr. Grimes: Okay, so it stands and could be used by...

Ms. Blackburn: Yes sir.

Mr. Grimes: ... another company.

Ms. Blackburn: Yes sir.

Mr. Grimes: If they wanted to come build a similar facility.

Ms. Blackburn: Yes sir.

Mr. Grimes: Okay. That's all I have for you, thank you.

Mr. Apicella: Mr. Chairman, I apologize, I have several questions. First of all, I just want to clarify from the applicant's appeal that he's not taking issue with the responses related to restricted access entrances. That's no longer an issue, at least not one in the appeal.

Ms. Blackburn: Correct.

Mr. Apicella: Okay, I apologize, Melody. Could you please read the first sentence of State Code Section 15.2-211(A). I didn't say 2311?

Ms. Musante: 2311(A)?

Mr. Apicella: Yes.

Ms. Musante: An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the locality affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article, any ordinance adopted pursuant to this article, or any modification of zoning requirements pursuant to § 15.2-2286.

Mr. Apicella: Thank you. Can you... you went through a lot of parcel numbers. Can you tell us where the subject property is identified by the applicant in the March 7, 2018, request and in his June 29 appeal? Where is that property?

Ms. Musante: I'm sorry, I don't understand what you're asking me.

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Mr. Apicella: So, there's a subject property, okay. Where is that subject property?

Ms. Musante: It's over by the hospital.

Mr. Apicella: Okay, that's what I thought. I just wanted to be sure I got it. And who's the owner of that property?

Ms. Musante: That's Medicorp Properties, Inc.

Mr. Apicella: Okay. And they're the ones who operate Stafford Hospital Center, as well as Mary Washington Hospital?

Ms. Musante: Correct.

Mr. Apicella: And do we know where the applicant owns property in Stafford County?

Ms. Musante: He owns Tax Map Parcel 21-57B with an address of 3071 Jefferson Davis Highway; Tax Map Parcel 21-61 with an address of 3031 Jefferson Davis Highway; Tax Map Parcel 21-62 with an address of 3041 Jefferson Davis Highway; 49H-1-7 with an address of 22 Drummer's Cove.

Mr. Apicella: Okay, are any of those parcels in close proximity to the subject parcel?

Ms. Musante: They are not.

Mr. Apicella: To your knowledge, does the applicant own the subject project, any adjacent properties, or any nearby properties to the subject property?

Ms. Musante: To the best of my knowledge, no.

Mr. Apicella: And to your knowledge does the applicant have a direct economic interest in the subject property, any adjacent properties, or any nearby properties?

Ms. Musante: I do not know.

Mr. Apicella: Does he live in close proximity to the subject property?

Ms. Musante: I do not know.

Mr. Apicella: Can you help us understand, the applicant requested that the questions raised be answered based on the rules in place in December 2017, but the County responded based on the rules in place at the time of a response, which was June 1, 2018? I'm just trying to understand the logic trail there.

Ms. Blackburn: It is my job to interpret the Zoning Ordinance and it is to do it at a current ordinance, and anything outside of that is out of my scope of duties and power.

Mr. Apicella: Okay, thank you. Mr. Chairman, we have the Planning Director here and I'd like to ask that he be... we be able to ask him questions as part of the staff portion of the meeting, if that's okay.

Mr. Grimes: Yeah, that would be fine.

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Mr. Apicella: Mr. Harvey, can you tell us, are rezonings and CUPs legislative or administrative actions under the purview of the Board of Supervisors?

Mr. Harvey: Mr. Apicella, a rezoning and a conditional use permit is a legislative act on the behalf of the Board of Supervisors for the County.

Mr. Apicella: And that's not something that the Board of Zoning Appeals has purview over?

Mr. Harvey: That is correct.

Mr. Apicella: And if someone has an issue with the Board of Supervisors legislative zoning actions, would they normally take it to the BZA or to the Circuit Court?

Mr. Harvey: Mr. Apicella, my understanding of state law is that the aggrieved party would file an appeal within 30 days of the Boards' action.

Mr. Apicella: To the BZA or to the Circuit Court?

Mr. Harvey: To the Circuit Court.

Mr. Apicella: Mr. Chairman, and Mr. Harvey, I just ask for your patience, there was a lot of material in our book, very helpful, and it took me some time to piece it all together and to understand the timeline and the substantive issues. I drafted what I consider to be a timeline and other material information. I'd like to pass it out. And Mr. Harvey, I might ask you about some of these points, so if you could just kind of bear with me here. And if we could give one to the applicant as well, I'm sorry. So, again, there's two pages; there's a lot here and I apologize for just dropping it on everybody. What I would ask you to do is, as we're having a conversation, if you see anything that stands out at you that's incorrect or needs to be modified, please let me know. But I do have some questions relative to the timeline. So, back in October, the Stafford Planning Commission was considering a change to our County's ordinances to allow drive-throughs via a conditional use permit, and that was referred to the Planning Commission I want to say back in August, but it wasn't until October that they actually held a public hearing. My point here is, even prior to that point and while it was under consideration, I believe there's a section of the Code, Section 28-37, called Non-listed uses, have I captured it correctly that if a use is not specifically permitted in the Table of uses and standards, an application may be made by a property owner to the Administrator, which I think is you, for a conditional use permit? Is that a correct statement?

Mr. Harvey: Mr. Apicella, I'd defer to Ms. Blackburn for interpretation of the Code.

Mr. Apicella: I mean, I believe that excerpt is in our package so, unless I'm reading it incorrectly. Let me ask you a different... Have we had an applicant submit a CUP to Stafford County based on this section of the Code?

Mr. Harvey: Mr. Apicella, yes we have. Typically, it's for a use that's not listed in the Zoning Code.

Mr. Apicella: Okay. Which is what it says, basically. And then, in December, again the Planning Commission voted to recommend that that ordinance change be referred to the Board with a thumbs up basically. And then in December, the Stafford Board of Supervisors and the Planning Commission held a public hearing on RC17152031, a reclassification amending the proffers on Medicorp's property at

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Stafford Hospital Center to allow an outpatient clinic and, concurrently, a CUP to allow a hospital. And the reason for that CUP for a hospital, that's required... you have to have a CUP to operate a hospital. Is that correct? And I guess whoever's appropriate, either Mr. Harvey or Ms. Blackburn.

Ms. Blackburn: Yes sir, in a B-2 zoning.

Mr. Apicella: And so while there was a proffer amendment in that rezoning request submitted by the applicant, at that point in time a drive-through pharmacy was not included in the CUP request or approval. Is that correct Mr. Harvey?

Mr. Harvey: Mr. Apicella, I believe that the applicant proffered a drive-through facility with their proposed pharmacy for the clinic.

Mr. Apicella: Right, but they had not also submitted, as part of their CUP, to actually have that drive-through.

Mr. Harvey: Correct.

Mr. Apicella: And then in February, the Board approved Ordinance O18-08. That's the one that was referred to the Planning Commission and then subsequently referred back to the Board with a recommendation for approval. And that allowed for drive-throughs in the B-2 Zoning District, among other districts. Is that correct?

Mr. Harvey: Yes, Mr. Apicella, that extended the CUP requirement to anywhere in the County. Prior to that, it had been limited to the Highway Corridor Overlay Zoning categories.

Mr. Apicella: With the exception that, in theory, they could still use that non-listed uses potentially as a way to get a drive-through, is that a fair statement?

Mr. Harvey: Mr. Apicella, that's not my understanding.

Mr. Apicella: Okay.

Mr. Harvey: And I could let the Zoning Administrator clarify.

Ms. Blackburn: No, it was my understanding that, and in reading the code, that the Highway Corridor Overlay District allowed for drive-throughs with a conditional use permit therefore it was a stated use in that particular Overlay District. But when Ordinance O18-08 was approved, it did allow for it outside of the Overlay District.

Mr. Apicella: Okay. And then the applicant submitted their request for responses to 38 questions related to the subject property and the rezoning and CUP. That's not in dispute. And then you sent, Ms. Blackburn, your responses in June of, early June of 2018.

Ms. Blackburn: Yes sir.

Mr. Apicella: Okay. And the applicant then submitted their appeal on June 29, 2018.

Ms. Blackburn: Yes sir.

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Mr. Apicella: Mr. Harvey, this next question is for you. So, between December 20, 2017, and June 24, 2018, was there any active zoning application involving the subject property at Stafford Hospital Center East Campus before Stafford County?

Mr. Harvey: Mr. Apicella, it depends on what you're referring to a zoning application.

Mr. Apicella: Was there a rezoning or a CUP between those dates?

Mr. Harvey: No sir. We were in the process of reviewing a site plan for approval to build the proposed facility.

Mr. Apicella: The medical clinic.

Mr. Harvey: Correct.

Mr. Apicella: Okay. And then, in July of 2018, the Stafford Board of Supervisors and the Planning Commission held a joint public hearing to modify Medicorp's CUP at that point requesting to allow a drive-through pharmacy at Stafford Hospital Center. Is that correct?

Mr. Harvey: Yes sir.

Mr. Apicella: And it was noted, at least in the staff report to the Planning Commission and the Board of Supervisors, that the property owner needed County approval of the proposed modified CUP to operate such a drive-through. Is that correct?

Mr. Harvey: Yes sir.

Mr. Apicella: And then the Board, at that point in time, approved the CUP modification for a drive-through.

Mr. Harvey: Yes sir.

Mr. Apicella: That request that was made by Medicorp wasn't until June 25th, right?

Mr. Harvey: Yes.

Mr. Apicella: So that's the first point in time between December 20th and that date when the zoning application was in front of you, related to this parcel.

Mr. Harvey: Yes.

Mr. Apicella: Thank you, Mr. Harvey. That's it Mr. Chairman.

Mr. Grimes: Any other questions for staff? Hearing none.

Mr. Apicella: Mr. Chairman, I probably should have made clear that I would like, with your indulgence and the Board's approval, to include this timeline in the record for tonight's meeting.

Mr. Grimes: Yes.

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Mr. Apicella: Thank you.

Mr. Grimes: So now we're at the point of the hearing that we would need to discuss the standing of the applicant. I open it up for discussion.

Dr. Ackermann: Alright, Mr. Chairman...

Mr. Grimes: Yes.

Dr. Ackermann: I would think I would like to offer the applicant or the applicant's representative an explanation of what standing they may... do they have standing to make this appeal. I think it's appropriate to do that.

Mr. Grimes: That's fine. I can have them address that issue.

Mr. Apicella: Yeah, I would agree, Mr. Chairman, in fairness.

Mr. Grimes: Absolutely. Would the applicant like to come up and address this issue of standing that we are discussing at the moment?

Mr. Shannon: Yes. Roy Shannon for the applicant, with the law firm of Rich Rosenthal in Alexandria, Virginia. Thank you for your time this evening. And I do want to apologize because the Chairman did reach out to me on standing but, unfortunately, one of my attorneys was out on maternity leave -- actually that's a good thing -- and I was tied up in a trial. In terms of the standing, I think it's fairly straightforward that on the Zoning Administrator, her task is to, you know, make decisions, determinations, interpret the Zoning Ordinance. And if there's an appeal of that issue, it comes before this Board to strictly look at that issue. In fact, what's unique about the BZA is, where you have variances or a special exception or a special permit, depending on what BZA you're in front of, those are legislative in nature versus an appeal of the Zoning Administrator, which is more of a judicial nature. And the tasks of the Zoning Administrator are different depending on what they are. When you're doing the legislative act, they put together a packet, they write a staff report, and they have... make sure everything's there, and the Board's acting in a legislative capacity. When you appeal her decision, you're challenging her decision. And the only requirement, under both your zoning ordinances and most all ordinances here in Virginia, as well as the State Code, is to immediately forward the package to the BZA. Now, they provide a staff report but it's not to make sure you have all the pages and the check, you have to make sure the check is there. I think that's one thing the code requires is the money. But it is a here's the package and the Board reviews it. And what's interesting is that section of the BZA of the State Code, that's 15.2-2311(A), the case law... I don't think case law is appropriate to cite to the Board because the Board isn't a judge. I noticed that, and is this... well, it was just added to the packet... is the Board's position or is it just the one member's that this is part of the...

Mr. Apicella: Yeah, that's my summary of the timeline and the facts of information that I found in the staff package.

Mr. Shannon: Okay. So, it's not the Board's position, it's just one.

Mr. Apicella: Not yet.

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Mr. Shannon: Fair enough. So, part of the issue is, on the... again, I don't think case law is necessarily appropriate here and I could give an analysis of the case law of the aggrieved status when you go from the BZA to the Circuit Court. Because in that situation, any person aggrieved -- there could be someone here in the audience, if they feel like they're aggrieved they can challenge that. And that's under the case law. But I think what's more important is you can actually have a Zoning Director make a determination; there's a case on this where the Zoning Administrator made a determination in a public hearing and followed it by, and you can appeal that. And that was sufficient to go to the BZA and to be challenged; that verbal determination. So here, the ordinance actually provides... your ordinance provides a method for requesting determinations, and that is in Article 16, 28-295. The Department of Planning and Zoning shall develop an application form and procedure for all requests for a zoning determination. That's what we did.

Mr. Apicella: Mr. Chairman, can I ask, when you say there's case law, can you cite the case?

Mr. Shannon: I will be happy to submit it. It's the Lilly case, it's the oral determination.

Mr. Apicella: Right.

Mr. Shannon: And I can pull that up. Again, I think one of the issues is, and I appreciate...

Mr. Apicella: In that case was the property owner, the person who was aggrieved, the property owner, seeking some action?

Mr. Shannon: I don't know if it was the property owner or if it's one of the type of cases like the Friends of the Rappahannock who, you know, or like the Confederate flag situation where you had a civic group that came in. I think what's even more particular here is, we requested a determination and the Zoning Administrator provided us that determination that said here is your determination. Now, the Zoning Administrator had the ability to say I'm not going to give that, you know, that this isn't a proper determination. But she provided the determination and, at the bottom of it, it said you can appeal. And what's interesting is if you look at the Virginia Code section, this is 15.2-2311(A), the only requirement, because I noticed that this is... this is page 3 of 8 of the staff report, in the middle there after my email language, it said the statement that Mr. Shannon is referring to is a form statement required by Virginia Code 15.2-2311(A). It is not an assertion by staff that the applicant does or does not have standing to appeal. That's not true. If you look at the Zoning Ordinance... I'm sorry, the State Code 15.2-2311, the only requirement for that language is in a notice of violation or an order. So, if you look, it starts with the second full sentence, the notwithstanding any charter provision to the contrary, "any written notice of a zoning violation or a written order of the zoning administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of zoning violation or written order within the 30 days in accordance with this section, and that decision shall be final and unappealable if not appealed within 30 days." So the Code only requires that if it's a zoning violation or a zoning order. It doesn't mention anything about a zoning determination. So, as a citizen, when you appeal, you ask for a determination, you pay the money, you get the zoning determination, it's posted on the website, you get the response back and the Zoning Administrator says you can appeal this, that is absolutely standing to come here to challenge this. The application, the pers... is challenging the Zoning Administrator. And if the Zoning Administrator waives that, in litigation standing is a, um, one of the elements that can be, you can waive that. She said you can appeal this. We have a right to appeal this. And I understand, in terms of case law that discusses an appeal from here to the Circuit Court, but this is a citizen coming before an administrative board and it says that if there's a determination... and that's one of the requirements of this Board; 15.2-2309, you are to hear and decide appeals from any

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determination. This is a determination. The Zoning Administrator provided us a determination. We're appealing it. And I think that the case law speaks about a different standing. That is the standing of an aggrieved person from the BZA hearing to the Circuit Court. It is not a citizen from the Zoning Administrator to the BZA. And I think that that's one of the reasons why one of the things the Board is supposed to consider, and this is again in 15.2-2309(1), the Board's to consider any applicable ordinances, laws, and regulations when making its decision. So, the ordinance, obviously the Zoning Ordinance, the Zoning Director made an interpretation and I'm challenging that interpretation and you get to look at that. The laws, the State Code, and the regulations, if there's any additional... today was the lighting ordinance in the earlier application. But it doesn't say case law and it's not... I don't think it's meant to provide an analysis for case law because not every BZA member is a lawyer, which may be a good thing, in terms of applying the standards of what did the Zoning Administrator mean by looking into this ordinance and making the determination. But in order for us to move forward here, I think it's just very simple. We filed a request for determination. The Zoning Administrator gets to make those. She made them. We disagreed with them and we get to appeal it to the Board of Zoning Appeals. And again, if the... if the Board wants a bunch of case law and analysis on whether it's Virginia Supreme Court as well as Circuit Court cases, we can submit that brief. Then again, I apologize for not being able to get it in before today, but part of the reason is, you know, the hesitance is this isn't a case law proceeding. Quite honestly, when the staff gives its staff report, you know, I always reserve the right to add more information into it because I have no idea what the staff's position is. But it is, again, the BZA is acting in judicial nature, but it is not a court. In fact, when it goes from the... the BZA's supposed to give the Zoning Administrator deference, as the Circuit Court is supposed to give the BZA deference because they don't want to substitute their rulings or judgement for the people who are the experts. So, when the BZA is looking at this, it's really just supposed to be looking at it from the standpoint is, do you agree with the Zoning Administrator's decision. It's not an issue of standing. That's why I was a little concern that this timeline... I think it's, you know, with respect it's a little bit more than a timeline because it's citing case law. And I'm happy to rebut that and provide additional case law. I think most of those cases are all going to show the distinction between the BZA, appealing from the BZA to the Circuit Court versus appeal from the Zoning Administrator to the BZA. Because that first... that is really administrative. I had a point of order Mr. Chairman. In terms of, is the... who is voting on this this evening out of the five? I'm not sure... Mr. Gibbons, is he the alternate that's filling in?

Mr. Grimes: That is correct.

Mr. Shannon: So we get six.

Mr. Grimes: Six.

Mr. Shannon: Okay. And I have the ability to defer if it is one time? If there's not a full 7?

Mr. Apicella: Mr. Chairman, he has the ability to defer if the Board so chooses to allow it.

Mr. Shannon: Okay, I'm just checking.

Mr. Grimes: If you do not think that there are enough members present tonight that will enable you to receive a fair hearing, then you have the right to defer the hearing until another meeting. However, you may defer the hearing for this reason only once in any 12 month period. Deferral requests are granted at the sole discretion of the Board. So that's what we have... Are you asking to defer?

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Mr. Shannon: If the Board... to address some of these issues, you know, I'd be happy to respond to some of this case law if that's what the Board wants. I mean, if the Board wants to make its decision based on what the Code and the ordinance say, I mean, I think the last thing the ordinance, and that's probably what the Board is more familiar with, there's no definition of aggrieved in the ordinance. There should be; I mean, that way it would clear it up or make it a little bit easier. But maybe the legislative body doesn't want to put the Board of Zoning Appeals members in that position to have to determine whether or not someone's aggrieved, what's the pecuniary interest that's involved here. The proximity of the properties is just one of the factors. But I don't think that, in the ordinance, there's nothing that defines aggrieved. And unless the BZA is taking the position that its rulings are like case law, then its rulings would all have to be on the internet. And I don't think the formal findings of facts and inclusions are on the internet, and I think that's part of the risk of why we don't cite case law necessarily in these briefs. But again, if the Board wants a deferral to where I can address these issues, that's fine. If the Board's already made its decision regarding standing, we can move forward.

Mr. Grimes: Well, we appreciate your input on that. We'll continue our discussion here on the Board.

Mr. Apicella: Mr. Chairman, I have some questions.

Mr. Grimes: Yes.

Mr. Apicella: So, what I think I heard you say is that the Zoning Administrator's sentence alone, in her response letter, is all that's required under Virginia law to have an appeal heard by the BZA.

Mr. Shannon: Well, I would say the Zoning Ordinance, the State Code, in addition to the Zoning Administrator saying you have the right to an appeal absolutely gives us the standing at this level.

Mr. Apicella: Okay, so you said the State Code. So tell me where in the State Code it says that you have a right to appeal to the BZA. What code section?

Mr. Shannon: 15.2-2311(A).

Mr. Apicella: Okay. So I'm going to read that section to you.

Mr. Shannon: Okay.

Mr. Apicella: You agree that that... when it says Board it means Board of Zoning Appeals.

Mr. Shannon: That's correct.

Mr. Apicella: Okay. Sorry, the text is pretty small here so you're going to have to bear with me. It says: An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the locality affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article, any ordinance adopted pursuant to this article, or any modification of zoning requirements pursuant to § 15.2-2286. So, I thought I heard you say that the term aggrieved does not apply to the Board of Zoning Appeals in us determining whether or not an individual has standing. Is that what you're saying?

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Mr. Shannon: In terms of a person who is aggrieved, in terms of cited case law, the case law refers to aggrieved going from the BZA to the Circuit Court.

Mr. Apicella: Where are you finding that? Where is that coming from? Tell me what specific code section and/or case law supports your contention?

Mr. Shannon: And there's two... well let's start down at the beginning. We have a right to request a determination from the Zoning Administrator.

Mr. Apicella: I don't dispute that.

Mr. Shannon: Okay, so when we appeal to the... or when we ask the Zoning Administrator for a determination, she puts it up on the website, takes the money, and issues a determination. And that is her job is to issue these decisions, determinations, orders of violation. We're all in agreement of that. And under 15.2-2309, the BZA can hear and decide appeals from any determination.

Mr. Apicella: Right.

Mr. Shannon: Okay. And so, as a member, as a citizen, my client can appeal to the board, may be taken by any person aggrieved of a determination of the Zoning Administrator. Would you agree with that?

Mr. Apicella: Again, 2311 uses the term aggrieved. So, I'm just trying to find out where you think aggrieved means something different in terms of how the Board of Zoning Appeals deals with that term versus how the court deals with that term.

Mr. Shannon: Right. And I think that when the Board is evaluating the ordinances, regulations, and the laws, they must first look to the more specific. And the more specific is your Zoning Ordinance. That's what you're interpreting. Not her...

Mr. Apicella: So, you're saying the Virginia Supreme Court, okay, does not... Virginia Supreme Court decisions related to standing and whether a person is aggrieved such that they have met the threshold for standing does not apply to the BZA.

Mr. Shannon: When we're appealing her determination at this level, I do not think that is the case. Because it is clear from the Zoning Ordinance that there's no definition of aggrieved. How do you define, as a citizen, aggrieved?

Mr. Apicella: Again, the Supreme Court's helped us define aggrieved under Friends of the Rappahannock.

Mr. Shannon: Going from the BZA to the Circuit Court. At this level...

Mr. Apicella: So you saying that does not apply to the BZA?

Mr. Shannon: At this level...

Mr. Apicella: What about prior cases to the Friends of the Rappahannock?

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Mr. Shannon: I think we probably agree to disagree here, but I think when the Zoning Administrator tells a citizen you can appeal to this, that any issue of standing is completely waived at that point. At that point, I mean, she's saying you can appeal this, you can come before it, and then when we get here...

Mr. Apicella: Does the Board of Zoning Appeals work for the Zoning Administrator or do they work for the Circuit Court?

Mr. Shannon: No, they just hear the appeal.

Mr. Apicella: Right, but who are we appointed by?

Mr. Shannon: In this jurisdiction?

Mr. Apicella: Are we appointed by the Zoning Administrator or are we appointed by the Circuit Court?

Mr. Shannon: In this jurisdiction, you're appointed by the Circuit Court. In other jurisdictions, you're appointed by the politicians. So it's different. And that's why the case law factors it in and that's why they actually have the provision in here regarding charters, because that deals with the cities. And in some cities, like Alexandria, it's the politicians that appoint the BZA members, not the Circuit Court. So, I don't think the BZA works for the Circuit Court. I think they work for the citizens in overseeing the Zoning Administrator and applying the Zoning Ordinance, not case law. I think that exceeds the authority of the BZA.

Mr. Apicella: Sir, I appreciate your opinion. We'll have to agree to disagree.

Mr. Shannon: That's fine.

Mr. Apicella: So, is there anything else that you can provide to demonstrate that your client has met what I think is the aggrieved party threshold under that State Code section...?

Mr. Shannon: I would ask for, then, a referral to respond to your memo on this, because it is more than a timeline because you're citing cases in here. That's... I mean, to me that's a little bit more than a timeline. But I'll be happy to respond to this memo on this issue.

Mr. Apicella: Mr. Chairman, I'm not done asking my questions. Can you identify any active zoning applications pending on the subject property that have been submitted and was under consideration by the County between December 20, 2017, and June 1, 2018?

Mr. Shannon: I don't think that had anything to do with my determination that I'm appealing.

Mr. Apicella: You mention the case of Lilly that talks to the requirement for an active zoning application to be in front of a jurisdiction in order for somebody to be aggrieved, and then uses the term aggrieved in the Lilly case.

Mr. Shannon: I'd have to look at Lilly before I make any comments on that. There's... what's nice about the BZA is there's tons of case law on these issues.

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Mr. Apicella: I agree. It also says something similar in Vulcan Materials versus Board of Supervisors. So, if your client had issues or concerns with the December 2017 reclassification and CUP, is there a reason why he didn't pursue it in the Circuit Court?

Mr. Shannon: In terms of that? Well, again, this is an appeal of the Zoning Administrators June 1st letter. I mean, I understand... were you on the Planning Commission at that time?

Mr. Apicella: I did not sit in front of that case, no.

Mr. Shannon: Good. Right now I'm appealing the Zoning Administrators decision. You're going, I think, outside that scope.

Mr. Apicella: Okay, so I'm glad you brought up that point, and I say this with all due respect. So, let's just say even if your client was fully or partially right in the rebuttal of one or more of the Zoning Administrator's responses, and I don't believe that any of the questions' responses were incorrect, but let's just say that hypothetically one or more were answered incorrectly. Since the applicant is not a directly impacted property owner, doesn't have an economic interest in that property or any adjacent property or nearby properties, I'm scratching my head trying to understand what kind of relief are you seeking from and what form of relief could this BZA provide on a legislative zoning decision made by the Stafford Board of Supervisors in December 2017?

Mr. Shannon: Right. This BZA has no authority to make decisions on the legislative authority. This BZA has the ability to look at the Zoning Administrator's decisions and decide whether or not you agree with them or disagree with them, or if they should be modified.

Mr. Apicella: Right. So, if they were modified, what relief does that give to the applicant? What is he seeking here, a different answer?

Mr. Shannon: Well, I guess the question that I have back for you is, is this a standing issue or a substantive argument? Because if we're going to move into the substance, then that's fine and we have standing.

Mr. Apicella: Well, I only bring it up because you brought it up. You brought it up by asking me, you know, whether or not the person has standing, whether or not they're aggrieved; aggrieved is one of those issues that we still are debating, but I would say just from your prior comments opened the door for me to ask this question about what are you asking us to do without our authority that we could provide in this instance? I'm not asking about whether the questions are right or wrong, I'm just asking what are you seeking from this Board that we could give the applicant to make him whole in some way? A different answer to a question that he thinks was answered incorrectly?

Mr. Shannon: If this is a substantive decision and we have standing, then I'm happy to answer that. But I think right now, if this is an issue of standing, we filed a determination... request for determination, we received it from the Zoning Administrator that you oversee, she interpreted the Zoning Ordinance, we disagree with that, we appealed it. The question is whether you're going to kick us out and say you don't have standing, you can't appeal this determination. Or, if you're going to accept it, then make a ruling...

Mr. Apicella: But... but that goes to the point of standing. What can we do for you in order for you to have standing in this case?

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Mr. Shannon: You can overrule...

Mr. Apicella: Get a different answer to a question...

Mr. Shannon: You can overrule the Zoning...

Mr. Apicella: ... where there is no action that the applicant benefits from? It's a mystery to me what we're being asked to do here.

Mr. Shannon: Having the Zoning Administrator overturn on some of these will benefit a lot of people, including the applicant. That's why we asked...

Mr. Apicella: Right, but that's a hypothetical. So, again, there's no active application in front of us that we're adjudicating; it's a hypothetical set of questions...

Mr. Shannon: No, no, there is.

Mr. Apicella: ... on a project that happened and was approved back in December of 2017. That's what the questions are about -- something that happened in December, okay.

Mr. Shannon: I agree.

Mr. Apicella: And then the only thing that changed is the Board decided to make it clear that drive-throughs were allowed via a CUP. That happened in February. And the next thing that happened on that subject property wasn't until, uh, in June of 2018. So, I'm just... again, I'm still not clear. In order to have standing for us to be able to do something for you, relative to the subject property because the application talks about a specific property, it doesn't say in general or asking questions in general...

Mr. Shannon: I agree.

Mr. Apicella: ... or asking about a specific property and specific instances that happened associated with that property, which again, the applicant has no ownership interest in whatsoever. So how... if we decided in the applicant's favor, how does that help him in relationship to this property that was cited in his initial questions and in his appeal? And again, I say it with all due respect because I don't understand. It's a mystery to me what's being sought here.

Mr. Shannon: Right. And at this point, I'm going to go back to maybe these questions would be better for the Zoning Administrator to answer, but we asked 38 questions.

Mr. Apicella: It's your appeal; it's not her appeal.

Mr. Shannon: I know, but she gave us the answers and said we can come here. And now we've come here and you say you can't come here.

Mr. Apicella: No, that's not what we're saying. You can come here; that's not what we're saying. Anybody can come here, the question is whether or not you have standing for us to proceed forward with the case to hear it on its merits. And that's what I think has been decided by case law. You can disagree but that's what the case law, in my opinion, says and what we have voted on previously so there's no precedent here deciding that someone has to have standing for their issue to go forward.

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Mr. Shannon: And I think that that statement alone from the County, the Zoning Administrator is the County to a degree, to a citizen saying you can appeal this. She didn't have to put that in there. I mean, that statement in the staff report is wrong. She didn't have to put that in there. The only requirement under the State Code is if it's in there for a notice of violation, like the gentleman who was here before, or for a written order.

Mr. Apicella: I agree that's murky but I'm still trying to understand how, again, cite me a State Code section that says the Zoning Administrator can charge us with the responsibility... the Zoning Administrator can charge us with the responsibility...

Mr. Shannon: State Code.

Mr. Apicella: ... can charge us with the responsibility to proceed forward with an appeal to hear it on its merits. And that merely having had that information or sentence in the letter by itself provides you with standing under the State Code? I'm giving you the opportunity to cite me something...

Mr. Shannon: 15.2-2309, what are the duties of the BZA.

Mr. Apicella: Right, we have duties but we also have a threshold requirement in 2311(A) that says a person has to be aggrieved. And you're saying that merely having that sentence in the letter, why is this to the level of making the applicant aggrieved?

Mr. Shannon: No, no. Her determinations is what rises to that level. She gave us determinations...

Mr. Apicella: I've seen all case law that says something completely different.

Mr. Shannon: That if she gives us determinations, we have no right to appeal it? Is that really the position?

Mr. Apicella: I didn't say you didn't have a right to come to this panel, I said the issue of standing is relative to whether or not we proceed forward with hearing the case on its merits. Anybody can fill out an application and say I want to be heard by the BZA; anybody can. They can live in California, right. Or Russia.

Mr. Shannon: No, I don't think they can.

Mr. Apicella: Okay. So, why?

Mr. Shannon: They can only appeal a decision, a determination, a notice of violation, or order from the Zoning Administrator. That's it. You guys can't hear appeals...

Mr. Apicella: So, in the last...

Mr. Shannon: ... because they just have a gripe.

Mr. Apicella: ... again, I'm not trying to be argumentative, in the last case that was in front of us, the persons lived locally and they were not a property owner, and we found they didn't have any economic interest in the case, okay, they weren't in close proximity to the issue at hand, and we found that they

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didn't have standing because they were not aggrieved parties. And guess what? That case didn't... our case was not appealed to the Circuit Court.

Mr. Shannon: I think if it was it would have probably lost.

Mr. Apicella: Okay.

Mr. Shannon: I don't think the BZA or lawyers or, and again, I think that might be a good thing because they're just supposed to be overseeing the Zoning Administrator, but they're not here to take gripes of people. When the Zoning Administrator, if she gave us a notice of violation, why do you task to hear that? Where does it say that?

Mr. Kim: Can I just say something, if that's okay? You know, I think going back and forth, I think you're right. Maybe we should just go on the determination of the Zoning Administrator and say, hey, does this case have standing? And it should be simple. Does it have standing? Yes or no. We vote on. It seems like they want to take it to Circuit Court, let them take it to Circuit Court. I mean, that's just my two cents.

Mr. Grimes: Well, again, I think Mr. Apicella was trying to give the applicant as much room as possible to demonstrate standing.

Mr. Kim: No, no, I know exactly what...

Mr. Grimes: It's not like the applicant wasn't aware this was going to be a question.

Mr. Kim: No, no, I absolutely understand what he said...

Mr. Grimes: And I believe it was phrased as such, provide.

Mr. Shannon: Absolutely, and I...

Mr. Grimes: So, you know, this is not a surprise. I even gave you the previous case that we applied those same rules to. So, I do think at this point you do have your opinion, this Board has theirs from based on their experience and working with their attorney, our attorney, excuse me...

Mr. Shannon: Who is that attorney?

Mr. Grimes: We have an attorney that we have on, well, not retainer but we have access to when we need him and in a particular instance we use him. And he happens to be, well, I would consider him one of the best for zoning law because it's Andrew McRoberts. But, I don't think that's here or there at this point. You have your stated opinion, we have ours, I think that we need to finish the discussion up here...

Mr. Shannon: Okay.

Mr. Grimes: ... as to that.

Mr. Shannon: I would ask for a deferral then, as I mentioned to you before, I was in a situation with my trial that I wasn't able to get you the case law. If the case law is what you want, I will be happy to

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provide a full case law brief to respond to this on aggrieved and cite plenty of Virginia cases on this and the Lilly case, the oral determination and the authority that's given to the BZA.

Mr. Grimes: I appreciate that.

Mr. Shannon: We're not set on appealing to the Circuit Court.

Mr. Kim: Okay, I'm sorry. (Inaudible - microphone not on) I don't want to say irrelevant but I'm kind of hearing that, you know, we're not the Circuit Court, we understand that. And what I've heard was you kind of... I'm not sure how to word this... it just seemed like you were more interested in something more real like the Circuit Court instead of the BZA, so that's why I (inaudible - microphone not on).

Mr. Shannon: No, and I don't... I don't want to come across that way. I mean, to me the BZA has absolute real authority to make decisions that I think carry significant weight, especially in development. They're the first tryer. And the Circuit Court has to give deference to the BZA when it interprets the Zoning Ordinance, not for the State Code but for the Zoning Ordinance. And it is... when people have to apply by the Zoning Ordinance for everything, especially in a fast-growth county like Stafford, these rulings are very significant. And they're not frequent. The appeals of the Zoning Administrator are not frequent; I mean, they are an infrequent thing because they usually deal with important interpretation issues. And we get a right to appeal that. Trust me, if I don't have to go to the Circuit Court, it's much better.

Mr. Kim: I'm okay with the appealing and, you know, this is what's great about the county (inaudible - microphone not on) and I agree with that. But I was just, you know, trying to stop the yelling.

Mr. Shannon: Alright. Well, I think a deferral would be reasonable. If you don't want to give it.

Mr. Grimes: We've got one more question for you.

Mr. Shannon: Sure.

Mr. Apicella: Yeah, Mr. Chairman, I apologize because, again, I think this is relative to the case law and us determining whether or not we have jurisdiction in this matter. So, I asked several questions about the subject property, whether or not the applicant owns the subject property, whether he owns any property adjacent to the subject property, whether he owns any property in the nearby vicinity of the subject property, or whether he has any economic or pecuniary interest in the subject property. Direct pecuniary interest in the subject property.

Mr. Shannon: I don't know. I mean, right now, what I... again, we're not adjacent to it, we don't own it. I mean, it's Medicorp that owns it. They're the owners of the land. When we requested the determination, that's you know what we filled out and when we came here we filled out who was the owner of the land. It's not us. Our basis for standing is we requested a determination...

Mr. Apicella: Well, I just wanted to get it on the record that he doesn't have a property interest in the subject property.

Mr. Shannon: He does not own property; Medicorp.

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Mr. Apicella: Okay, thank you.

Mr. Grimes: Thank you very much.

Mr. Shannon: No problem.

Mr. Grimes: Alright, bringing it back for further discussion on the standing.

Mr. Apicella: Mr. Chairman, I would move to deny the request for deferral. I think the applicant had ample opportunity to, and you specifically asked I think over a month ago to provide evidence that the applicant had standing, as well as had the opportunity tonight to provide evidence that the applicant had standing.

Mr. Grimes: Any other Board members have opinion on that? Agree? Disagree?

Mrs. Stefl: I agree with Mr. Apicella.

Mr. Grimes: Okay. I see some waffling at the edge.

Dr. Ackermann: Let's call for a vote.

Mr. Grimes: Alright, so Mr. Apicella has brought up a motion to refuse or reject the deferral request and I think we got a second from Mrs. Stefl. All those in agreement say aye.

Dr. Ackermann: Aye.

Mr. Apicella: Aye.

Mrs. Stefl: Aye.

Mr. Gibbons: Aye.

Mr. Grimes: Aye. Those in disagreement, nay?

Mr. Kim: Nay.

Mr. Grimes: Okay, alright. So, the deferral is rejected. Now we can move on to the actual question of standing, where we are, where we started here. Comments?

Dr. Ackermann: Mr. Chairman, in terms of advice we've received in the past and advice that we have in fact in our archives of legal advice and what we've done in the past, I don't think that this applicant has standing to appeal this. He has no, by all legal definitions that I can see of aggrieved, does not meet the standard of being an aggrieved party.

Mr. Grimes: Thank you Dr. Ackermann. Other comments?

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

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Mr. Grimes: Alright. I have to weigh on this, too. I think that we do have significant opinion on this matter because we did spend a lot of time reviewing it and we have a lot of case information to back up our position on this. So I have to agree with Mr. Ackermann on this as well.

Mr. Apicella: I was just making a motion; I actually have some comments I'd like to make, Mr. Chairman.

Mr. Grimes: I'm sorry, I didn't hear the motion part.

Mr. Apicella: I thought you made a motion, maybe I missed it.

Dr. Ackermann: Well, okay, I will move that the applicant does not have standing.

Mr. Apicella: And I'll second that motion, Mr. Chairman.

Mr. Grimes: Alright, comments?

Dr. Ackermann: I think we've determined, at least from the answers that I've gotten from staff and then we've heard from the applicant's lawyer that the person has no financial interest in this in terms of owning the property or adjacent property. I really don't under... I really don't understand, but again I'm naïve, why this person would ask for an appeal of some zoning determination. So, I just don't see the standing here at all.

Mr. Grimes: Thank you. Mr. Apicella?

Mr. Apicella: Mr. Chairman, again I seconded the motion again with no malice towards the applicant whatsoever. I'm going back to the case that we had before us in February and us deciding fundamental jurisdictional issue about whether or not it's appropriate for us to hear a case. And that was the first time that sort of situation came in front of us and now this is the second time. And again, we've got a significant amount of legal advice based on the last case that is relative I think to this case. And I think that based on the information provided and as further informed by tonight's discussion, I think the following points are relevant as to determining why we don't have jurisdiction in this matter. And I would start by, again, the subject parcel is located at Stafford Hospital Campus. The applicant owns property in North Stafford, which I believe is several miles from the property. He doesn't own or occupy the subject property which he asked questions to the Zoning Administrator, nor does he own or occupy property immediately adjacent to or the nearby vicinity of the subject property. From the package that we received and the opportunity he had tonight, I believe that the applicant lacks any property, contractual, or economic interest in the subject property, on any adjacent properties, on any nearby properties, nor was he a specific party to the rezoning or CUP he inquired about. He was given an opportunity through his agent to demonstrate that he is an aggrieved party, with a direct, immediate, pecuniary, and substantial interest in the subject zoning matter. As required by Virginia Code, Section 15.2-2311(A) and associated case law, one of which again is Friends of the Rappahannock and there are several cases that that case cites to the issue of standing, which I think are relative to this case and to the BZA, but he did not demonstrate, again, that he has standing or met that threshold requirement. I would also say that the rezoning and CUP he asked about was back in March of 2018. It had been approved by the Board of Supervisors in December 2017, that's 3 months from the date of his inquiry. At the time he sent his request in March 2018, there was no pending application involving the subject property before the County. I think both Lilly and Vulcan are pertinent to that point. Instead, the next zoning case on that subject property did not occur until June 2018. So, Mr. Chairman, based on these facts, again, with

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no malice towards the applicant, just as a matter of jurisdictional issues and whether or not we should hear a case, I don't believe that the applicant has standing in this matter and that we do not have proper jurisdiction to consider the merits of this case.

Mr. Grimes: Thank you. With the motion by Dr. Ackermann and the second by Mr. Apicella to reject the case on lack of standing to bring the case, I'd like to get a vote. All those...

Mr. Kim: I'm sorry, Mr. Chairman, can I ask one question to the applicant's representative, if that's okay?

Mr. Grimes: Sure.

Mr. Kim: In just a couple minutes, because I know you and Mr. Apicella were going back and forth, so what standing... now you understand that we are going to vote, if your client does have standing in this... what is your reasoning? Can you do it in a couple minutes and let us know what standing he has?

Mr. Shannon: This is a procedural issue that I think that other jurisdictions where we've requested determinations, if the Zoning Administrator says hey, these aren't... you can't ask these, you know, they will tell us that, they will do that. But when the Zoning Administrator waives the standing issue and says I'm going to answer these determinations. You've requested them, I'm going to answer them, and we disagree with them. If we don't challenge it, then they stand. Her determination on those issues stand. We asked for it and we're going to be precluded from that. If we go ahead and try to raise an issue later, they're going to say no, no, you didn't appeal to the BZA.

Mr. Kim: Oh, no, I absolutely agree with you and that's why I'm giving you the opportunity. I want to know your client's reasoning for the standing. Like what is his standing, basically what's his reasoning.

Mr. Shannon: Right. So, we filed that request for determination. There was 38 issues. There was... and we didn't appeal all of them because some of the answers we're okay with. Issues that dealt with my client owns property in a B-2, in a commercial area, B-2. That is the same thing that the Medicorp property's got. And Medicorps had a proffer for a drive-through that was completely not legal at the time. Now, I get it that the Planning Commission had... went ahead and initiated that they were going to amend it but they never got to that point. But having a proffer for an illegal use is not... you can't do that. And, I mean, the Zoning Administrator ruled on the current zoning, but at that time this is all about a process issue. And to be denied that aspect of once we got the determination, that is what we're now appealing. Because if we don't, and then we go and we file an application for a B-2 for one of these things and we get turned down, and we go challenge that to court, they're going to say well you never exhausted your administrative remedies and appealed the determination to the BZA. So now we're in this catch 22 where we appealed to the BZA, the BZA said we don't have standing. The Zoning Administrator didn't say that. They didn't raise that as an issue. It was the BZA who said no, you can't do that, you can't be heard here. So, that appeal is valid unless we then have to appeal it up. Now, I think that some of the BZA members feel that, and the BZA obviously looks like it's going that way of saying hey, it doesn't matter, we can (inaudible) kicked out anything for standing if we don't think that it applies to that threshold of the case law.

Mr. Kim: Well, I don't want to say anything. I mean, there's a specific formula that I think a lot of us...

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Mr. Shannon: And I think that the attorney that advises the BZA, and that's why I was very careful to making sure I copied everyone on it, the Zoning Administrator, because you know I think that those... a lot of times the County Attorney advises the BZA and I'm like well they can't...

Mr. Kim: Well, not this BZA.

Mr. Shannon: I think that's great. Other jurisdictions, they have the same attorney advising both people which, you know, that's just something you deal with at the administrative level. But, at this point, we have to challenge it because we asked for the determination, she gave it to us, and we're stuck with it. Some of them, we don't mind. You know, there's 38. We're not appealing 38. And some of them are just more procedural. But there's other ones, the ones that we appealed, that have merit, that we have to challenge. I understand that some members think that well, when you get to the next in line, how are you going to get past that? And that's not the point, it's the challenge that is critical here, because otherwise we're stuck with those members. Because if we make... if we go and apply for something and it says no, you can't do it...

Mr. Apicella: I'm sorry, I'm just trying to understand your logic because he asked questions about somebody else's property, not his own property. So, why would he not submit a request for a determination and questions relative to his own property? And how does somebody else's property and the determination on that property affect his ability to do what he wants to do on his property?

Mr. Shannon: Because if the Zoning Administrator starts making decisions based on one B-2 property, as an important citizen, I don't know, like Medicorp, the 5th largest supplier of jobs here in the County and someone else who's B-2 and doesn't have it, that matters.

Mr. Apicella: But even if the County made an erroneous determination in that case, how does it help the applicant also get the same sort of consideration?

Mr. Shannon: At this point, because she responded to our request for determination, that's it, we have to challenge it. And the place to challenge it is here. You're going to kick us out for standing...

Mr. Kim: No, no, I get it.

Mr. Shannon: That's fine, you're going to kick us out for standing but we have to exhaust our administrative remedies otherwise we're stuck with it.

Mr. Kim: So, can I ask, did you take this up with the Board of Supervisors?

Mr. Shannon: Did I take it up with the Board of Supervisors? No. I mean, in our letters I requested to the Zoning Administrator, if you want to meet and discuss this, and my associate spoke with Melody more about the application part of a request for determination, you have 90 days, it goes on the website, we're looking about getting it back on June 1st, you know, and we had to appeal by the 28th, administratively that aspect was all fine. But I requested and said hey, if you want to have a meeting or discussion, I'm happy to meet at your office.

Mr. Kim: Because wasn't the Medicorp decision done by the Board of Supervisors?

Ms. Blackburn: Yes.

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Mr. Kim: So, that's kind of the reason why I'm confused on why it's here.

Mr. Gibbons: Mr. Chairman, we have a motion on the floor.

Mr. Kim: Okay, I'm sorry. I just wanted to give you an opportunity.

Mr. Shannon: I appreciate it.

Mr. Kim: Thank you.

Mr. Shannon: Thank you.

Mr. Grimes: Alright, we have the motion, second by... or motion by Dr. Ackermann, second by Mr. Apicella. All those in favor of that motion say aye.

Dr. Ackermann: Aye.

Mr. Kim: Aye.

Mr. Apicella: Aye.

Mrs. Stefl: Aye.

Mr. Gibbons: Aye.

Mr. Grimes: Aye. All those opposed? None. It carries. Thank you.

Mr. Shannon: Do you know what the vote was on the deferral? There was 3 yea's but then there was...

Mr. Kim: I was the 1 nay.

Mr. Grimes: There was 1 nay.

Mr. Shannon: One nay, and the other two abstained?

Mr. Grimes: I believe they voted to say yes to the deferral, or reject the referral, sorry. I always trip over that one. Thank you very much. Unfinished Business? None? I didn't think so. We haven't met in so long we don't have any. In October I heard we might have something?

UNFINISHED BUSINESS

Ms. Musante: We will possibly have a home business in October.

Mr. Grimes: Okay. So, we all need to get together. I think that we've got some close-out stuff from our work session.

Ms. Musante: Correct.

Mr. Grimes: That I'd like to wrap up before the end of the year. Zoning Administrator's Report?

ZONING ADMINISTRATOR'S REPORT

Ms. Blackburn: Nothing at this time.

Mr. Grimes: Thank you very much. Adoption of the minutes. I'll be honest, there was so much to get through I did not get a chance to review them.

ADOPTION OF MINUTES

February 27, 2018

April 23, 2018

Mr. Apicella: The only reason I would say we might want to defer is I know at least one other person who was here who I think made some comments during that meeting is not currently... so if we could maybe...

Mr. Grimes: I would defer voting on the minutes till next meeting.

Dr. Ackermann: Why not.

Mr. Grimes: Everybody agree? Alright. Alright, I think that is it.

OTHER BUSINESS

ADJOURNMENT

Mr. Kim: Motion to adjourn.

Mr. Grimes: Second. In favor... aye... thank you.

With no further business to discuss, the meeting adjourned at 10:44 p.m.

The letter clarified that a “restricted access entrance” only involves residential development and is not applicable to a commercial development.

On TIAs, the letter indicated that a new TIA is not required by the county when a project identifies a new or modified use(s) that generates less traffic than the project(s) identified by an applicant in a previously submitted TIA.

June 29, 2018: On behalf of the Applicant, Mr. Shannon submitted a Board of Zoning appeal on Ms. Blackburn’s June 1, 2018 response letter. The appeal, in part, notes that Ms. Blackburn’s response was based on current zoning, not zoning rules in place on Dec 19, 2017. The appeal disagrees with a number of the responses in Ms. Blackburn’s letter; reiterating that Stafford’s zoning rules had changed since December 2017.

The appeal package also indicated that the Applicant is a property owner at 3071 Jefferson Davis Highway, and provided tax information for the property owner, MEDICORP, of the subject property. The material provides no information that indicates the Applicant owns the subject property, any adjacent property, or a property in the nearby vicinity of the subject property. Additionally, there is no evidence in the appeal submission that the applicant has a direct financial or economic interest in the subject property or any adjacent/nearby property.

Between December 20, 2017 and June 24, 2018: No evidence was provided by any party to demonstrate that an active zoning application request involving the subject property at Stafford Hospital Center East Campus was before Stafford County.

July 10, 2018: Stafford’s Board of Supervisors and Planning Commission held a joint public hearing to modify the MEDICORP CUP to allow a drive-through pharmacy at Stafford Hospital Center East Campus. MEDICORP’s CUP modification application was submitted to the county on June 25, 2018. The staff report provides a detailed history of the subject property and notes that a drive-through pharmacy was not approved as part of RC17152031 and CUP 17152030, and therefore the property owner needed county approval of the proposed modified CUP to operate as such. The Board of Supervisors approved the CUP modification for a drive-through at the subject property.

July 31, 2018 – August 17, 2018: Mr. Grimes, Stafford BZA Chairman, sought clarification on the Applicant’s Standing as an “aggrieved” party under Virginia Law to have his appeal adjudicated by the Stafford BZA. In response, the Applicant’s counsel cited Ms. Blackburn’s letter which indicated that her determination could be appealed to the BZA. No further evidence, state code citations, or case law was provided to demonstrate that Mr. Lovell meets the standards to be considered an aggrieved party and has sufficient standing under State Code Section 15.2-2311(A) and as further clarified by VA Supreme Court Case, Friends of the Rappahannock v. Caroline County, 286 Va. 38, and other prior cases related to Standing to have his appeal case considered by the BZA on its merits

TIMELINE AND OTHER MATERIAL INFORMATION

October 2017. The Stafford County Planning Commission held a public hearing and voted to recommend Board of Supervisors Approval of Ordinance 018-08 (referred to the PC in August 2017). This ordinance change would authorize drive-through uses in several county zoning districts with an approved Conditional Use Permit. Despite this proposed ordinance change, Section 28-37 of the Stafford County Code, entitled “Nonlisted Uses,” indicates that “If a use is not specifically permitted in Table 3.1 [Stafford Zoning Table of Uses and Standards], an application may be made by a property owner to the administrator for such a use as a conditional use pursuant to section 28-185.

December 19, 2017: Stafford’s Board of Supervisors and Planning Commission held a joint public hearing on RC17152031, a Reclassification to amend the existing proffers on MEDICORP properties located at the Stafford Hospital Center East Campus to allow an outpatient Medical Clinic. The Board and PC also held a Public Hearing on CUP 17152030, a Conditional Use Permit to allow a “Hospital” use in a B2 Zoning District and allow an exception to the maximum fence height requirements.

While included in the RC17152031 proffer amendment submitted by the applicant, a drive-through pharmacy was not included in the CUP request/approval.

The Board of Supervisors approved both RC17152031 and CUP 17152030.

February 6, 2018: Stafford’s Board of Supervisors approved Ordinance 018-08 which authorized drive-through uses in several zoning districts, including the B2 Zoning District, with county approval of a Conditional Use Permit.

March 7, 2018: Mr. Roy Shannon, on behalf of his client, Mr. Everett Lovell (the “Applicant”) submitted a letter to Ms. Susan Blackburn, Stafford’s Zoning Administrator, specifically referencing the Family Health Center Medical Clinic located at the Stafford Hospital Center East Campus and the associated Rezoning (RC17152031) and CUP (17152030) approved by the Stafford Board of Supervisors on December 19, 2017. The letter sought a determination via 38 questions related to the subject property and Rezoning/CUP. In summary, these questions were on requirements for and approval of drive-throughs, proffers, conditional use permits, restricted access entrances, and Transportation Impact Assessments (TIAs).

June 1, 2018: Ms. Susan Blackburn, sent a letter to Mr. Shannon responding to his March 7, 2018 letter. Ms. Blackburn’s letter indicated that the requested determination would be based on the county’s zoning regulations in place at the time of her response, not the Dec 2017 timeframe. The letter notes that RC17152031 and CUP 17152030 were approved by the Stafford Board on December 19, 2017, and that drive-throughs were permitted in the B-2 zoning district with a CUP. The response noted that no CUP for a drive-through at the subject site had been sought by the applicant or approved by the county as of June 1, 2018. In order for the property owner, MEDICORP, to construct/operate a drive-through, it would need a CUP authorizing such a use.