

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
February 26, 2019

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) of Wednesday, February 26, 2019, was called to order with the determination of a quorum at 7:01 p.m. by Chairman Robert Grimes in the Board of Supervisors Chambers of the George L. Gordon, Jr., Government Center.

MEMBERS PRESENT: Robert Grimes, Steven Apicella, Heather Stefl, Dana Brown, Robert Gibbons, Brian Jenkins, Dean Larson

MEMBERS ABSENT: Adela Bertoldi

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

DECLARATIONS OF DISQUALIFICATION

Mr. Grimes: Good evening ladies and gentlemen, and welcome to the February 26th 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 standing, the second will be hearing of the merits of the case, if required, after review of jurisdiction and standing. Hear and decide upon requests for Variance from the Zoning Ordinance when a literal enforcement of the Ordinance would result in unnecessary hardship to the owners of a property. Hear and decide on requests for Special Exceptions where the Zoning Ordinance allows for Special Exceptions. The Board consists of seven regular members and two alternate members. An alternate member may be called upon to participate when a regular member is unable to hear a case. Let the record reflect that we have a quorum tonight with seven voting members present. The members present and voting tonight are Mr. Apicella, Ms. Brown, Dr. Larson, Mr. Keith [Jenkins], Mrs. Stefl, Mr. Gibbons, and myself, Robert Grimes. Alternates are not here tonight so they will not be seated at the dais. County staff is represented tonight by Ms. Susan Blackburn, the Zoning Administrator, Ms. Musante, the Deputy Zoning Manager [Deputy Zoning Administrator], Stacie Stinnette, the Senior Administrative Associate, and Mr. Jeff Harvey, the Director of Planning and Zoning is also with us tonight. 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, state their name and address, and present their case to the Board. The presentation shall not exceed 10 minutes unless additional time is granted by the Board. Members of the Board may ask questions of the applicant to clarify or better understand the case. The Board will then discuss the jurisdiction and standing of the case presented. 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 and provide closing remarks. 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 applicants, speakers, presenters, and audience to act with a level of decorum and respect appropriate for a courtroom setting. After the applicant's final response, the Chair shall close the public hearing. After the public hearing has been closed, there shall be no further public comments. The Board shall review the evidence presented and the Chair shall

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seek a motion. After discussion of the motion, the Chair shall call for a vote. In order for any motion to be approved, four members of the Board must vote for approval. In order to allow the Board time for appropriate review, the applicant or applicant's representative is required to submit relevant material to the Department of Zoning and Planning, 10 business days prior to this hearing to be included in the staff report. The Board may accept additional relevant material from the applicant or the applicant's representative during the hearing; however, large amounts of additional material may require a deferral, at the Board's option, on behalf of the applicant to allow the Board time to consider that additional material. Members of the public and/or staff may also submit relevant material during the hearing. The applicant should be aware tonight that we have seven voting members present. You must have four affirmative votes to approve an application. If you do not think that there are enough members present to enable you to receive a fair hearing, then you have the right to defer the hearing until another meeting. However, you may defer the hearing for this reason only once in any 12 month period. Deferral requests are granted at the sole discretion of the Board. The applicant may also withdraw his or her application at any time prior to a vote to approve or deny the application, provided that the applicant has not withdrawn a substantially similar application within the previous 12 months. Any person, or persons, who do not agree with the decision of the Board, shall have 30 days to petition the Stafford County Circuit Court to review our decision. Also, be aware that the Board will not hear any denied application for a Variance or Special Exception that is substantially the same request for at least one year from the date of our decision. I will now ask anyone who has a cell phone or other electronic device to please silence it. Thank you. This Board requires that any person who wishes to speak before this Board shall be administered an oath. Therefore, I ask anyone who wishes to speak tonight to stand and raise your right hand. Do you hereby swear or affirm that all testimony before this Board shall be nothing but the truth?

Audience: I do.

Mr. Grimes: Thank you, you may be seated. The Chair asks that when you come down to the podium to speak, please give your name and address clearly into the microphone so our recording secretary can have an accurate record of the speakers. Also, please remember to sign the form on the table at the back of the room. Thank you. Members of the Board, I will remind you also, please speak clearly into your microphones so that the recording secretary can have an accurate record of the conversations this evening. 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 the Board tonight? Ms. Brown?

Ms. Brown: Yes, I just wanted to state that the weekend before the meeting was supposed to happen last, uh, last month in January, I did visit the property at 1508 Garrisonville Road. The gate was closed so I was unable to do anything but drive by. And I did want to mention, Mr. Chairman, on the role call tonight, did you mention our new member, Mr. Jenkins?

Mr. Grimes: I did; well, actually, you know what? I said your last name incorrectly. It's Mr. Jenkins. Thank you Ms. Brown.

Ms. Brown: That was all I had.

Mr. Grimes: Anyone else? Mrs. Stefl?

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Mrs. Stefl: I, too, visited the site. I did drive around a little bit. I did not talk to the applicant or any person on the property, but I was in the proximity of the site.

Mr. Grimes: Thank you. Anyone else? Alright, hearing no other declarations, we'll move forward. I will now ask the Secretary to read the first case.

PUBLIC HEARINGS

1. V18-01/18152603 - H. Clark Leming for All Muslim Association of America, Inc. - Requests a full variance from Stafford County Code Section 28-39(o)(1)(a)(4), which requires 900 feet between newly established cemeteries, and private wells and perennial streams, on Tax Map Parcel No. 19-3E. The property is zoned A-1, Agricultural, and located at 1508 Garrisonville Road within the Rock Hill Magisterial District.

Ms. Musante: Case V18-01/18152603; Applicant, H. Clark Leming for All Muslim Association of America, Inc., requests a full variance from Stafford County Code Sec. 28-39(o)(1)(a)(4), which requires 900 feet between newly established cemeteries, and private wells and perennial streams, on Tax Map Parcel No. 19-3E. The property is zoned A-1, Agricultural, and is located at 1508 Garrisonville Road, within the Rock Hill Magisterial District. We have the Application; Owner's Consent Form/Application Affidavit; Applicant's Exhibit: Buffer/Useable Area - State Requirements prepared by Bowman Consulting dated December 2018; Applicant's Exhibit: Buffer/Useable Area Exhibit - Stafford County Requirements prepared by Bowman Consulting dated December 2018; Existing Well Permit from Health Department dated March 1995; Ordinance O16-39; Virginia Code Sec. 57-26, relating to cemeteries; Virginia Department of Health Regulations, Secs. 12VAC5-630; Planning Commission Minutes, May 9, 2018 and May 23, 2018; Board of Supervisors Minutes, August 21, 2018 and September 18, 2018; Site Plan for Golf Range; the Tax Record; Adjacent Property Owner Notification and Map of Adjacent Property Notification; Chesapeake Bay Provisions, Virginia Code Sec. 62.1-44.117, County Code Chapter 27B; Former County Code Chapter 8; Current County GIS map of approximate location of streams and wetlands on the Property; Virginia Code Sec. 15.2-2201, 15.2-2309, relating to variances. The Property is a tract of land consisting of approximately 29.4 acres zoned A-1, Agricultural, located at 1508 Garrisonville Road. It is currently occupied by a single-family dwelling, a golf driving range, a cottage, and associated outbuildings. The single-family dwelling was constructed in 1971 and the cottage in 1982. The cottage was originally permitted as a garage and staff has no record of a permit to convert it into an accessory dwelling. In 1992, a site plan was approved for the Garrisonville Golf Center to utilize 10 acres of the 29.4 acre parcel for a driving range. The driving range is still in operation. In June 2015, All Muslim Association of America purchased the entire Property. To date, no plans of development have been filed by AMAA with the County for the Property. As part of its variance application, AMAA is suggesting a proposed cemetery use. No plans of development for a cemetery and no application for an ordinance, as required by State law and the County Zoning Ordinance has been filed. Ordinance O16-39, a portion of which the applicant seeks a variance, was approved by the Board of Supervisors on December 13, 2016. It repealed Stafford County Code Chapter 8, "Cemeteries," in its entirety, and moved the cemetery provisions to the Zoning Ordinance in Stafford County Code Sec. 28-39(o), "Cemeteries." In applicable part to this variance request, the Ordinance provides in Sec. 28-39(o)(1)(a)(4) that: No cemetery shall be established within 900 feet of any terminal reservoir or any perennial stream that drains into a terminal reservoir. No cemetery shall be located within 900 feet of any private well used as a drinking water supply. The Property is located within 900 feet of perennial streams. Cannon Creek is generally located east of the Property and Aquia Creek generally located south of the Property. The current County GIS maps showing approximate location of the perennial streams is included in Attachment 16. Ground-truthing of the exact location of the stream banks, wetland boundaries, extent of perennial flow, and critical

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resource protection area buffer is necessary. The applicant has submitted a map with the variance application, but has not conducted an environmental site assessment as outlined in the Chesapeake Bay Compliance Plan application, which would identify the extent of the wetlands, perennial streams, and CRPA so that the extent of encroachment, if any, can be determined. The Property is also located within 900 feet of private drinking wells. A private well is permitted for the Property. The existing well permit is included in Attachment 5. The Applicant has not indicated whether this well is in use and/or has been appropriately capped if not in use. The Ordinance, mirroring Virginia Code §57-26(1), also provides in Sec. 28-39(o)(1)(a)(2) that: No cemetery shall be established within 250 yards of any residence without the consent of the owner of the legal and equitable title of the residence. However, consent shall not be required if the location for the proposed cemetery is separated from any residence by a state highway, the proposed cemetery is not less than 250 feet from the residence at its nearest point thereto. The Property is within 250 yards of residences and within 250 feet of residences separated by a State highway. No consent forms have been provided to the County by the applicant, or any other property owner, showing consent to a cemetery being located on the Property, even though the applicant states that it has the consent of property owners on its side of Garrisonville Road. Lastly, the Ordinance provides in Sec. 28-39(o)(1)(c) that: No cemetery shall be established without receiving approval of a site plan pursuant to Article XIV of this chapter. In addition to the standards set forth in Article XIV, an application for approval of a site plan shall demonstrate compliance with owner consent, setback, and distance requirements as described in paragraph a above. As of this report, January 18, 2019, no site plan has been submitted for development of a cemetery on the Property. Therefore, there is no approved plan of development for the Property. The applicant's exhibits, drawn by Bowman consulting, were not submitted as site plans and would not meet the County's requirements for site plan submission. Virginia Code Sec. 57-26, "Restrictions as to location of cemeteries and as to quantity of land," (State Code) authorizes the County to regulate cemeteries in its Zoning Ordinance. In applicable part to this variance request, Virginia Code Sec. 57-26(1) provides: No cemetery shall be hereafter established within a county...unless authorized by the appropriate ordinance subject to any zoning ordinance duly adopted by the governing body of such county... This State Code provision is incorporated into County Code Sec. 28-39(o)(1)(d), which requires an application to the Board for adoption of an ordinance to establish a cemetery. To date, the Board has not been asked to approve or approved an ordinance to establish a cemetery on the Property, nor is there a pending application before the Board requesting the same. As noted previously, Virginia Code Sec. 57-26(1) further provides: Nor shall any cemetery be established within 250 yards of any residence without the consent of the owner of the legal and equitable title of the residence; provided that subject to the foregoing if the location for the proposed cemetery is separated from any residence by a state highway, it may be established upon such location without the consent of the owner of such residence if it be not less than 250 feet from the residence at its nearest point thereto... This State Code provision is mirrored in County Code Sec. 28-39(o)(1)(a)(2) and, as noted above, the Property is within 250 yards of residences and within 250 feet of residences separated by a State highway. No consent forms have been provided to the County by the applicant, or any other property owner, showing consent to a cemetery being located on the Property. The applicant is requesting a full variance and relief from the following two elements of Sec. 28-39(o)(1)(a)(4), "the nine hundred (900) foot setback requirements between new cemeteries and **[1] private wells** and **[2] perennial streams...**" The applicant submitted two exhibits showing its interpretation of the Ordinance and State Code cemetery requirements as they apply to the Property. These exhibits are conceptual in nature, state on their face that field studies have not been done, and that they are subject to revision with additional study. Exhibit B, related to the Ordinance and included in Attachment 4, interposes lines to show how the provisions of Sec. 28-39(o)(1)(a)(4) affect the usable area of the Property. Exhibit A, related to the State Code provisions and included as Attachment 3, interposes lines to delineate "250' buffer per VA State Code." [Staff interprets that this is referring the provisions of State Code Sec. 57-26, but notes that these provisions concern consent of a property owner within a prescribed distance, not a buffer as suggested on the exhibit.] The remainder of the Property is marked on the exhibits as

“useable” with the exception of an area marked with the “assumed limits of RPA” (Resource Protection Area). On both exhibits, dotted crosshatching is used to mark “consenting property,” which are located directly adjacent and contiguous to the Property on the east side of Garrisonville Road. [Staff interprets these notes as referring to the consent provisions in the Ordinance and State Code.] The applicant states that the Virginia Department of Health’s private well regulations, pursuant to 12VAC5-630-10 (Attachment 8), require a 100-foot separation between a cemetery and a new private well used as a drinking water supply. An email from Tommy Thompson with the Virginia Department of Health, dated June 21, 2016, is included with the Application and stated, “[in] my professional opinion and, according to the Regulations, if there is at least 100’ of separation distance between this existing bored well and the proposed cemetery, there should be no public health problem created by a cemetery being installed.” The applicant states that the proposed cemetery use complies with all applicable requirements of State law and the Chesapeake Bay Preservation Act (Attachment 14), and complied with the County Code at the time the Property was acquired in 2015. It should be noted that no request has been made to the Zoning Administrator for a determination that the owner/applicant has a vested right to use of the Property for a cemetery pursuant to the provisions of the prior cemetery ordinance or otherwise. The applicant’s assertions as to “vesting” are not before the BZA as part of this application. In the foregoing regard, the application does not address the provisions in former County Code Sec. 8-19, which required an application to the Board of Supervisors to establish a cemetery and Sec. 8-20, which required the Board to approve the establishment of a new cemetery by ordinance. Former County Code Chapter 8 is included in Attachment 15. Both of these provisions were adopted in 1979 and were in effect at the time the Property was acquired by the applicant. The applicant has not made those applications. The applicant states that on May 9, 2018, the Planning Commission voted to recommend to the Board that the cemetery setbacks of the County Code Sec. 28-39(o)(1)(a)(4) remain unchanged. Such action is not reflected in the Planning Commission’s meeting minutes (Attachment 9). Staff notes that at its May 23, 2018 meeting, the Planning Commission voted to “send Ordinance O16-39 unchanged to the Board of Supervisors for them to approve.” The applicant also stated the Board adopted this recommendation—to maintain Ordinance O16-39, as adopted—at its August 21, 2018 meeting. Again, such action is not reflected in the Board’s meeting minutes (Attachment 10). The minutes instead reflect that the Director of Planning and Zoning presented the Planning Commission’s recommendation to the Board at its August 21, 2018 meeting. At its September 18, 2018 meeting, the Board voted for option one, which was to maintain the Ordinance as adopted on December 13, 2016. The standards for evaluation and approval of a variance request are set forth in Virginia Code Sec. 15.2-2309(2), which provides that: [To] grant upon appeal or original application in specific cases a variance as defined in Sec. 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in Sec. 15.2-2201 and the criteria set out in this section. To grant a variance, the BZA must find that: 1) The applicant met its burden of proof by a preponderance of the evidence; 2) The application meets the definition of a variance as set out by Virginia Code Sec. 15.2-2201; and 3) The application meets the criteria of a variance as set out by Virginia Code Sec. 15.2-2309(2). If the BZA finds that the statutory requirements are met, the BZA shall grant the variance. The BZA may impose conditions necessary in the public interest when it grants a variance. It may also require a bond or guarantee to ensure compliance with the conditions. However, if any provision is not fully and sufficiently met, the BZA should deny the variance request. When an applicant requests a variance from a zoning requirement of a locality, the applicant, not the locality, has the burden of proving the variance should be granted. The applicant must meet that burden by a preponderance of the evidence. Black’s Law Dictionary defines the preponderance of the evidence as “[the] greater weight of the evidence...; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.” “Variance” means, in the application of a zoning ordinance, **[a] a reasonable deviation from [b] those provisions regulating the shape, size, or area of a lot or parcel** of land or the size, height, area, bulk,

or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and **[c] such need for a variance would not be shared generally by other properties**, and provided such variance is **[d] not contrary to the purpose of the ordinance**. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning. **(a)** A variance is a reasonable deviation from regulations. “Reasonable deviation” is not defined, but generally a reasonable deviation is a request to lessen the standard, for example, reducing a side yard setback from 80 feet to 60 feet. Here, the applicant is asking for a *full* variance of the Ordinance requirements in Sec. 28-39(o)(1)(a)(4) (for ease of reference, the contents of this provision will be referred to as “900-foot Separation”). The applicant is requesting that that provision not apply to the Property. To effectively remove a provision from the Ordinance is not a *reasonable deviation*, but a request for an ordinance amendment. An ordinance amendment is within the purview of the Board of Supervisors and does not appear to be within the statutory authority for a variance by the BZA. **(b)** The regulation a variance application seeks relief from must affect at least one of the enumerated property features like shape, size, or area. Based on the applicant’s exhibits, which interpret the Ordinance, the area of the Property would be affected by application of the 900-foot Separation. **(c)** The need for a variance must not be generally shared by other properties. Staff is not aware of the need for a variance from the 900-foot Separation to develop a cemetery on other properties in the County. The applicant has not provided information, showing that the Property is uniquely situated with regards to its close proximity to private wells and perennial streams. **(d)** If granted, a variance should not be contrary to the purpose of the ordinance from which it is providing relief. Because the applicant is requesting a *full* variance from the 900-foot Separation, the resulting use would be contrary to the purpose of the Ordinance. When adopting the Ordinance, the Board acknowledged “that studies have found cemeteries can be a source of pollution affecting water quality from surface water run-off and groundwater intrusion that negatively affects drinking water supplies.” One purpose of the Ordinance was to protect groundwater and drinking water by prohibiting a potentially contaminating use from being located too close. A *full* variance from the 900-foot Separation would be contrary to this purpose. Virginia Code §15.2-2309(2), provides that a variance shall be granted if the evidence shows that: the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property *or* that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, *or* alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, *and* (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; *and* (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application. If a variance meets at least one of the criteria from the first paragraph and all criteria provided in paragraphs (i)-(v), in conjunction with the other requirements discussed above, the Virginia Code states that the BZA shall grant the variance. **[The] strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance...** As applied to the Property, the 900-foot Separation would restrict the utilization of the Property for a cemetery. The applicant identified in its exhibit, a small area of the Property that would be available for cemetery use after application of the 900-foot Separation. The applicant states that the

use of the Property for a cemetery is unreasonably restricted but does not provide specific information in that regard, other than to state that its quadrangle shape is “irregular shape and narrow width.” No specifics are provided as to the limitations on the use—only possibly the area available. It is noted again that the Property is currently being used for a golf driving range, single family dwelling, and other apparently related uses. The applicant does not demonstrate that without a variance the utilization of the Property is unreasonably restricted or the current uses suffer a hardship. **(i) The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.** The applicant states that AMAA acquired the Property in good faith in 2015. Staff does not know, nor does the applicant provide, the extent of due diligence done by the applicant regarding a possible cemetery use. The applicant also states the hardship was created by the Board’s adoption of the Ordinance in 2016 after AMAA acquired the Property. Staff notes that the Board updated the prior cemetery ordinance in order to bring the County’s cemetery provisions into compliance with State law and to address public environmental, health, safety, and welfare concerns. **(ii) The granting of the variance will not be of substantial detriment to adjacent and nearby property and nearby properties in the proximity of that geographical area.** The applicant states that the properties directly adjacent to the east and west of the Property are owned by AMAA, and the owners of the other adjacent, contiguous parcels have consented to the proposed cemetery use of the Property. The Applicant does not provide a copy of those consents. Further, while consent is required under the Ordinance and State Code, consent does not show that granting a variance from the 900-foot Separation would not be of substantial detriment to adjacent properties either those mentioned by the applicant or the others. The only adjacent property to the north is the Marine Corps Base Quantico, which likely would not be impacted by the granting of the requested setback variances. Considering the non-residential uses on Base near the Property, granting a variance from the 900-foot Separation likely would not be a substantial detriment to the Base. The applicant provided no information on or from the Base. The other properties in the geographical proximity of the Property are located to the south of the Property across Garrisonville Road, State Road 610. The applicant states that those properties are separated by the State road and the proposed cemetery will be located beyond the 250 feet consent area required by the State Code and Ordinance. Therefore, the applicant concludes that no consent from those property owners will be required or necessary. The applicant provides no analysis regarding whether there will be a detrimental effect on these properties. Some of the properties to the south are served by private wells which are within 900 feet of the Property. The applicant states that the proposed cemetery would be located well beyond 100 feet from each private well. As proposed by the applicant in this variance request, the Property would meet the VDH’s well to cemetery separation regulations. The sufficiency of the 100 foot requirement was confirmed by VDH professional. Staff notes again that the exhibits provided by the applicant do not show the proposed location of the cemetery, only the applicant’s interpretation of the useable area of the Property, and are not a site plan or plan of development. Information provided to the Board when it considered the Ordinance, including some from these property owners, indicated that they believed that they would suffer substantial detriment if only the VDH 100-foot setback was used. They also noted that the VDH setbacks only applied to the permitting of new wells near an established cemetery, and not the establishment of new cemeteries near existing well. These property owners believed that the State standard for setbacks from public water wells should also apply to private wells. **(iii) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.** The applicant states upon information and belief, there are no other existing or proposed cemetery sites in the County’s A-1, Agricultural Zoning District that are similarly impacted by the 900-foot Separation. Staff can verify that the Ordinance does not apply to existing cemeteries. Staff is not aware of any proposed or pending site plans or applications submitted to the County seeking to develop a cemetery. **(iv) The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property.** The applicant

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states that the proposed cemetery is a by-right use in the A-1 Zoning District. However, pursuant to State law, the Ordinance requires the Board to approve applications to establish new cemeteries in the County by ordinance, with the exception of churchyard cemeteries and family cemeteries on private property. As of January 18, 2019, neither a site plan nor an application for a proposed cemetery on the Property has been received. If the BZA granted the variance from the 900-foot Separation it would not result in a use that is not otherwise permitted on the Property, with the caveat noted above, or a change in the zoning classification of the Property; it would, however, substantially change the zoning classification requirements on the Property. **(v) The relief or remedy sought by the variance application is not available through a special exception or modification.** A cemetery is not subject to the approval of a special exception, as it is a by-right use in the A-1 Zoning District; it is subject to approval by the Board by ordinance. The Ordinance does not provide for modification of the 900-foot Separation by special exception or other special use permits. To find in favor of the applicant's request for a variance from the provisions of County Code Sec. 28-39(o)(1)(a)4, which requires a 900-foot separation from perennial streams and private drinking wells when establishing a cemetery in the County, the Board of Zoning Appeals must find that, by a preponderance of the evidence, the applicant proved its request met the State Code definition and required criteria for a variance. In summary, the applicant desires a full variance from key requirements of the Ordinance—the 900-foot separation requirement between cemeteries and private drinking water wells and perennial streams. Removing these key requirements is kin to amending the Zoning Ordinance. The applicant asks the BZA to assume that key requirements of the State Code and County Code are met. The applicant has not submitted an application nor site plan for a cemetery use. The applicant has not provided the written consent of the applicable adjoining property owners. The applicant has not provided sufficient information such that this variance request is timely before the BZA for decision.

Mr. Grimes: Thank you. I know that was long; I appreciate that. So, do we have any questions for the staff? Yes, Mrs. Stefl.

Mrs. Stefl: One of the criterias is that they must have a pre-meeting before submitting their application, and then also a second meeting. Did that occur in this case?

Ms. Musante: We did... we actually did a phone conference, phone meeting. So it was not done in person for the application.

Mrs. Stefl: And there was no prior... because we have to have two meetings before an application is submitted, correct?

Ms. Musante: No. The normal process is an applicant will come in and meet with me, go over the application, and then the second one is to basically drop off the application. In this case, we did do a phone...

Mrs. Stefl: Initial meeting.

Ms. Musante: Yes, mm-hmm.

Mrs. Stefl: And then they brought in the packet and that was it.

Ms. Musante: Correct.

Mrs. Stefl: Okay, thank you.

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Mr. Grimes: Other questions for staff? Ms. Brown?

Ms. Brown: Hi, Melody? I hope you can hear me okay. Just real quick - could you confirm for me that there is a 2-bedroom, 1 bath house on the property? I have a reason for asking. And while you guys are looking that up, my other question is, does the County have records for a new home business for the property since January of 2018?

Ms. Musante: That would be information that we would have to look up.

Ms. Brown: Okay. Maybe this... maybe I could get on this one. Would a business, started in January of 2018 or later, have required a home business rural special exception from this Board, a business for commercial vehicle hauling, shipping cargo interstate? Would that be something that would have come to this Board?

Ms. Musante: It's possible, depending on the magnitude of the business.

Ms. Brown: Okay. To my... I've been on the Board; to my knowledge we haven't approved any special exceptions for this property since January of 2018. Um, okay. Alright, that's all I have for right now.

Mr. Grimes: Other que... yes sir.

Dr. Larson: So, has County staff heard from any of the property owners across 610 to the south of the property?

Ms. Musante: The only contact we've had is what we've received today, and I'm not sure where they're actually located in relation to the proposed cemetery. And you do have information from those two property owners.

Dr. Larson: Okay. From the property owners across 610?

Ms. Musante: I'm not sure where they're located because the information came in late so.

Dr. Larson: Is that part of what was sitting here waiting for us on our... on the dais?

Ms. Musante: Yes.

Dr. Larson: Thank you.

Mr. Apicella: Mr. Chairman?

Mr. Grimes: Yes.

Mr. Apicella: I've got some questions. So, the subject parcel, it's 29 acres and it's in Stafford County's A-1 zoning district, right?

Ms. Musante: Yes.

Mr. Apicella: Okay, and how many different types of uses are identified in the County's A-1 district?

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Ms. Musante: Approximately 35 by-right.

Mr. Apicella: I'm not going to read them all, but some of those, 30 or so, include agriculture, bed & breakfast, campground, lodge, place of worship, recreational enterprise, and single-family dwellings.

Ms. Musante: Correct.

Mr. Apicella: Is that correct?

Ms. Musante: Correct.

Mr. Apicella: You said this, but I think it's worth kind of re-going over this territory. Has the parcel been improved, and that's to say are there any current existing uses on the parcel?

Ms. Musante: Yes.

Mr. Apicella: Can you tell us again what those are?

Ms. Musante: They have a single-family dwelling, they have an accessory dwelling which I'm not sure how that got there but it is there, and they have a golf driving range.

Mr. Apicella: So, 3 or 4 existing uses.

Ms. Musante: Yes.

Mr. Apicella: Is Stafford County aware of any specific physical conditions or characteristics on the subject parcel that are special or unique, or otherwise creates a hardship to the point that none of the 30 or so identified uses can occur on it?

Ms. Musante: No.

Mr. Apicella: To your knowledge, did the applicant fully complete the County's Variance Application and, in particular, I'm speaking to Parts A and B, either in their actual application form or in their separate justification?

Ms. Musante: Can you repeat the question? Sorry.

Mr. Apicella: I'm just curious, when they submitted their application, this is basically what the application looks like, several different parts to it; Parts A and B basically ask about... basically go through the criteria. And I noticed that, at least with respect to the application and I believe as well with the justification submitted, most of these questions were not answered.

Ms. Musante: Correct.

Mr. Apicella: Mr. Chairman, I believe Mr. Harvey, the Director of Planning and Zoning, is here. I'd like to ask that he be considered an extension of staff and that we be able to ask him some questions in that regard.

Mr. Grimes: Absolutely.

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Mr. Apicella: I think he's got to state his name and...

Mr. Grimes: Mr. Harvey?

Mr. Harvey: Good evening Mr. Chairman, Board members, I'm Jeff Harvey, the Director of Planning and Zoning.

Mr. Apicella: Thank you for being here Mr. Harvey. Under the state code, are localities allowed to modify their Zoning Ordinance to make requirements either more or less restrictive?

Mr. Harvey: Mr. Apicella, the state code allows the locality through the purpose of zoning to establish zoning requirement and criteria that would establish zoning classifications for land use types plus other performance standards. Generally speaking, a locality must follow the Dillon Rule and the Dillon Rule sometimes allows, based on the state code legislations, sometimes ability to be more restrictive than certain criteria and less restrictive in others.

Mr. Apicella: And we've done that from time to time, we've amended our ordinances based on circumstances or to be more in compliance with the state code, is that correct?

Mr. Harvey: Correct.

Mr. Apicella: Do you recall what were the primary reasons the County revisited its cemetery ordinance and established or revised additional provisions?

Mr. Harvey: Well, it stated in the purpose of the ordinance amendment in 2016, the ordinance was deemed to be out of compliance of state law. And also there was a concern about the public water supply... or excuse me, drinking water supplies, specifically when you read the preamble to the ordinance. It goes on to say, whereas, Stafford County Code Chapter 28 has standards pertaining to establishment of cemeteries, whereas Stafford County Code Chapter 8 is not consistent with Virginia Code Section 57-26, whereas the Board desires to repeal Stafford County Code Chapter 8 in its entirety and applicable provisions be relocated to appropriate sections of the County Code, and whereas the Board acknowledges that studies have found cemeteries can be a source of pollution affecting water quality from surface water runoff and groundwater intrusion that negatively affects drinking water supplies, and whereas the Board has considered the recommendation of the Planning Commission, staff, and testimony at the public hearing, and that the Board adopted the ordinance finding public necessity, convenience, general welfare, and good zoning practice.

Mr. Apicella: Thank you. Is protecting public health, safety, and welfare one of the core responsibilities of local government?

Mr. Harvey: Yes sir.

Mr. Apicella: As the revised ordinance was being developed, was any scientific evidence considered and used in adopting the setback requirements in the ordinance update?

Mr. Harvey: Mr. Apicella, there was a number of studies that were reviewed which became the basis for some of the code provisions.

Mr. Apicella: And you've seen the package that was provided for us; I think some of that material is in the package in the staff report?

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Mr. Harvey: Mr. Chairman and Mr. Apicella, I've not had the opportunity to take a full look at the staff report at this point in time.

Mr. Apicella: Can... Melody, can you answer that question?

Ms. Musante: I'm sorry?

Mr. Apicella: Was any of the evidence that was collected during the development of the ordinance included in our staff report?

Ms. Musante: There's copies of Planning Commission minutes and Board minutes.

Mr. Apicella: So it did at least refer to some of that scientific evidence?

Ms. Musante: Yes.

Mr. Apicella: Mr. Harvey, does Aquia Creek and/or Cannon Creek feed into any county public water sources?

Mr. Harvey: Mr. Apicella, they do... they eventually become Smith Lake Reservoir which is actually Aquia Creek.

Mr. Apicella: Thank you. And this sort of goes back to a previous question, but I think it is worth asking. Can localities set conditions for specific uses? We've heard that there are about 35 or so different uses in A-1 district. Presumably some of those uses have different parameters or requirements that have to be met.

Mr. Harvey: Correct. Some uses are permitted by-right. Some uses require a conditional use permit. Others require a special exception in order for them to be authorized. Some code provisions speak to performance standards relating to specific use types.

Mr. Apicella: Even within a by-right there can still be some specific parameters associated with it.

Mr. Harvey: There can be, yes.

Mr. Apicella: Are property owners guaranteed the ability to establish each and every identified use in a zoning district irrespective of the established conditions for that, for all the uses?

Mr. Harvey: No sir. Some of those uses may or may not be applicable to a particular piece of property. It may be due to engineering constraints or other factors, but they are uses that are permitted in that zoning classification provided the owner can provide the appropriate permits and applications that comply with the code.

Mr. Apicella: Right, but the bottom line is, if they can't meet the conditions then they have to presumably consider some other uses on their property.

Mr. Harvey: That or come to this Board and seek relief.

Mr. Apicella: Even with setbacks does it appear that any portion of the subject parcel could be used for a cemetery? So, we have setbacks in the cemetery ordinance, the property is 29 acres. Can any portion

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of the property be utilized as a cemetery whatever size? I'm not saying the entire parcel but any portion of the parcel, could it be used for a cemetery based on the standards that were established?

Mr. Harvey: Mr. Apicella, based on my knowledge of the 900-foot setback from perennial streams, as well as private wells, that the entire property would be encompassed in that 900-foot area.

Mr. Apicella: Okay. I thought it wasn't clear for certain that Cannon Creek meets the requirements. I mean, I think some more study would have to be done to see the extent to which it feeds into a public water source.

Mr. Harvey: And Mr. Apicella, one of the points that was raised in the staff report is we currently do not have detailed environmental studies to determine the extent of the Resource Protection Area, as well as other factors that may influence some of that. For instance, there may be a well on the existing property and that may have an influence on whether or not the property is usable based on the 900-foot requirement.

Mr. Apicella: But, as it stands now, not 100% sure that a cemetery couldn't be located on the property; more investigation would have to be undertaken.

Mr. Harvey: Yes.

Mr. Apicella: To your knowledge is the subject parcel unique in any way?

Mr. Harvey: Mr. Apicella, I'd say that the property is similarly suited to other agricultural zoned properties in the County. But one thing that may be considered somewhat unique in this instance is that the standard applies to a 900-foot setback for properties that are along a creek that drain to a reservoir within the County. There are 3 reservoirs within the County so this does not affect all watersheds within the County or all streams within the County.

Mr. Apicella: Okay, so with that said, are there any other parcels in Stafford's A-1 district where these specific cemetery standards are applicable and those could in fact be potentially developed as a cemetery.

Mr. Harvey: Mr. Apicella, it could be applicable to any cemetery that is... or any piece of agricultural zoned property that's more than 25 acres.

Mr. Apicella: Thank you.

Mr. Grimes: Any other questions for staff? Alright, hearing none, I'll bring it back to the Board here to discuss jurisdiction standing. Do we have any comments from the Board on that? Mr. Apicella?

Mr. Apicella: Mr. Chairman, I see no reason that the applicants don't have standing. They own the subject property, so to the extent that's an issue here, and I don't think it is, I would say that we should be able to proceed forward under the notion that they do have standing.

Mr. Grimes: Anybody have any concerns about the applicant having standing or jurisdiction to bring this case here in front of us? Alright, hearing no opposition, we'll go ahead move forward then. Will the applicant or his or her representative please come forward and present their case. I'll remind you, Mr. Leming, you have 10 minutes.

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Mr. Leming: Well, hang on before you start the clock on this.

Mr. Grimes: I'll let you get your papers together.

Mr. Leming: I do have 1 exhibit and this is not a new exhibit, this is what I hope is a easier to follow illustration of our prior Exhibit B. The lines on the previously submitted Exhibit B were a little confusing and I think even in the staff report they suggested that there was an area in the middle of the property that was not covered or encumbered by the two 900-foot setbacks. That is not the case. And regardless of whether you're coming from Cannon Creek or Aquia Creek, the setbacks do encumber the whole property. And just to orient you, the small blue area toward the southern portion of this plat is just simply that area that is encumbered solely by the 900-foot private wells setback coming from the south. The red portion from the northern... from the north part of the plat is simply that area encumbered only by the 900-foot setback coming from the perennial streams. The area in the middle, the purple, is the overlap; that is the area that is covered by both of the setbacks. So, I thought that would assist. Now, I have one more question. The staff report that was read to you was from last month. We have submitted a supplemental justification addressing many of these issues that's not referenced in the staff report or in the presentation. Has the supplemental report been received by the BZA members?

Mr. Grimes: Yes, it has.

Mr. Leming: Okay. Alright, thank you. Well, that helps me. Now, Mr. Chairman, I'll do the best I can to move through this. First, let me... I want to introduce Juvaria Khan. Juvaria, stand up just a moment. Juvaria is staff attorney with Muslim Associates and she is a private counsel for the AMAA and has come tonight to observe but may be able to answer questions if they come up at a later point in time. Thank you very much. I also have Pamela Pruitt who is a, for lack of a better phrase, a soil scientist and there is an affidavit from Ms. Pruitt that was attached to the supplemental justification that gets into the detail of the effect on the adjacent properties. The AMAA has operated a cemetery in Stafford County since at least the 1990s, I believe, on Brooke Road. The cemetery is close to capacity. So, in 2014 the AMAA commenced to search for another cemetery location. There were some basic considerations in their, in their search. The first is that unlike Christian churches, mosques don't have cemeteries co-located with the churches. They are required to be separate under Muslim custom. The, um, so the search was for a piece of land that met the acreage requirements, minimum 25 acres was already part of the ordinance at that time. In 2015 with little topographical or wetland issues and this parcel was identified, the subject parcel; it met these requirements. They conducted site visits. They did obtain permission from the cemetery early on, before they even entered into a contract, from the Dyes who were the only other residents on the north side of Route 610. All of the other parcels over there, the two other parcels over there, were purchased by the AMAA, and the Dyes did provide their consent in 2014 and you have that consent as part of the supplemental justification. In January of 2015, they entered into a contract. Now, they did this after going to the County to find out whether they could do a cemetery on this property. At that point, cemetery was a by-right use in an A-1 district, and some of you would be quick to point out, well, that's no guarantee but they did what ordinarily people would do, they went to see if they could do on the property what they had in mind. They could, they entered into the contract. And they went to settlement a few, a few months later. They also commissioned a geotechnical report, which I'll, I'll share with you at a little later point. And on May 1, 2015, they went to closing. They paid off the mortgage in two years later, and at that point, in 2017, went about development of the cemetery or attempted to proceed with that only to learn that the County ordinance had changed so that such that they could no longer do a cemetery on this particular parcel. So, that was the... and, and most of you know the story that from that point the Board of Supervisors asked the Planning Commission to take another look at the ordinance, the Planning Commission did, stayed with its original position and the

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Board did the same thing although I would point out that it was a unusual vote, a 3-2-1 vote with one member missing. So, that's where we are right now and that's why we come to you not seeking to re-challenge the ordinance. That's not what this is about. We're not disputing what the Board has the authority to do or that this was a legislative act within the Board's discretion or that there may have been a good basis for what was done. This is a Variance Application and, as such, it is restricted as was indicated in the staff report to those five criteria and one of the two standards that we have to meet. And the, the law is very clear on that that the BZA shall grant the variance in the event that those five criteria are met and we meet one of those two standards that we'll talk about in just a moment. Now, the one important thing and there was already... already had been some discussion about this. There's been a good bit of evolution of the variance criteria. Prior to 2009, the standard for a variance was, and what was... what had to be shown was a clearly demonstrable hardship approaching confiscation. So we're getting into what would be the equivalent of a taking. Alright? Nothing, nothing can be done with the property, the point that was made earlier. And the Virginia Supreme Court actually upheld and interpreted this provision as I've indicated in the Cochran case in 2004. In 2009 the General Assembly however changed quite dramatically State law. The confiscation language was deleted, the language was deleted about interfering with all reasonable beneficial use of the property. That's gone now. And then in 2015 it was amended again and the hardship language was changed. The only thing that has to be demonstrated at this point is a hardship. Gone is the language about unnecessary hardship, undue hardship, clearly demonstrable hardship. That's all, that's all out now. Now, getting into the criteria themselves, the issue before the BZA is simply whether or not they meet these criteria. And starting, there is some discussion in the staff report about the definition of variance, which is at another section of state code, that's not part of the criteria. So, even though we address that in the supplemental justification, I'm not going to address it here in the interest of time. Now, the statutory criteria. I want to point out that the, the two prongs of that are if the... has to do with whether or not there is a restriction, an unreasonable restriction of the property. We must either show that there is an unreasonable restriction of the property; in this case it's not just a restriction, the cemetery use. The use that the property was purchased for is completely eliminated 100%. Now the other prong is simply whether it's possible or whether the variance would alleviate a hardship due to a physical condition relating to the property. Now, either one of those we can meet. I don't think there's any question that there's an unreasonable restriction; they can't do a cemetery at all. And the fact that they can do other things on the property does not address that because that language is gone from state law and the General Assembly has eliminated that. So we meet one of those two criteria. Now, the shape of the property. How many properties in the county... this property is longer than it is wide, 900-foot setback coming from each side. And you have to find a property that was wider than six football fields in order to avoid any effect from those setbacks. So we have the creek to the north. We have the road to the south. And what's left is the land that something can or cannot be done with, dealt with. In our view, we meet both of these standards. This is an unreasonable restriction to eliminate the use altogether and there is a hardship because of the shape of this property in this location. It's not a self-imposed hardship simply because the creeks were there when the property was purchased, the road was there, the wells were there, everything was in place. What changed was the ordinance in between the purchase and the attempt to use the property. Now, the statutory criteria. The property was acquired in good faith and I think I've addressed this in describing what the AMAA did in trying to locate a property that they could use for the purchase. Certainly they purchased it with the intent to put a cemetery there and thought they could do that. Now, second, and I think this is what this primarily turns on. The granting of the variance will not be a substantial detriment to adjacent or nearby properties. You have an affidavit from Ms. Pruitt in the supplemental justification. Conditions 3... or criteria 3, 4, and 5, I don't think are serious issues. There is not... this is not reoccurring so broadly in the county such that we could do a zoning ordinance amendment to take care of it. This is the only instance that has come to the County's attention. The variance does not result in a use not otherwise permitted. Recall the paradox here; this is still a by... a cemetery is a by-right use in an A-1 district. The relief is not available through a special

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exception. Now, what I'd like to do, Mr. Chairman, and I, I see that I'm running a little short in time, but I'd like to have Ms. Pruitt address one issue if I might.

Mr. Grimes: That's fine.

Mr. Leming: Alright, now, I'm going to pass out to you... this is the soil study, the geotechnical report that was commissioned. It was not something that was known to certainly the attorneys in the case, but it is relevant and it has been...

Mr. Grimes: Is there... did you not include that in your original application?

Mr. Leming: No sir, it was not.

Mr. Grimes: Was there a reason for that?

Mr. Leming: I'm sorry?

Mr. Grimes: Was there a reason for that?

Mr. Leming: Uh, well, my reason is that I knew nothing about it. I don't think Ms. Khan knew anything about it. The members of the AMA did find the report; it is dated, it's 2015 so it's several... it's going on 4 years old. But they did come up with it. I don't think that it occurred to anybody that there was something like this out there. So, I ask you to bear with me and Ms. Pruitt, if you would come up for just a moment and identify yourself for the, for the record. I'm not sure I did, I'm Clark Leming.

Ms. Pruitt: My name is Pam Pruitt, I'm a licensed site evaluator in the Commonwealth of Virginia. I'm a former regulator. I've got 31/32 years' experience in the field. And what I did was I looked at the information and the studies that the ordinance was relied upon to understand what the science was behind it. And what I found was that these are... this is good information, but this is a very broad stroke and a very generalized... all three of them are very generalized studies. One of the studies that was conducted in Africa speaks only to minerals. And soil is, at best, made of minerals. It also has bacteria in it. The dwarf ledge muscle recovery plan, that's a 1993 study that I don't know has any follow-up, that really did not address any potential contaminants from cemeteries. The World Health Organization study 1998 does look at it but one of the things that I see is that it's very generalized. It's not a site specific study. Each and every site is different. In looking...

Mr. Leming: Let me stop you there for just one minute. Now, based on that review and the other documentation, she gave you a three-point opinion in her affidavit. And I hope that you've had an opportunity to familiarize yourself with that, because her conclusions are site specific and they go to this issue and whether there would be an effect on the adjacent properties from the granting of a variance here. Now, what I'd like her to address, the study, which she has seen today for the first time, from Frawling and Robertson and I, I want her to share with you whether or not after review of that study it changes any of the opinions that she's tendered to you in her affidavit on page 2.

Ms. Pruitt: So, if we look at the study, and I realize you guys are just receiving this today, and we look at there was 10 borings plus an additional 2 that were dug, the first 10 had no indications of groundwater. They found no water at all. Water is what really needs to carry contaminants. Typically soil absorb a lot of the contaminants and minerals just from the chemistry in there. The... there was 2 borings that when they dug they came back and they installed piezometers in them to look at a more long term effect. What they found was that boring number 7 is located in the lowest part of the property

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as I understand and it did have some water in it. The other boring I believe boring number 5 had no water. That said, the majority of the information I look at... it's boring number 2, I'm sorry, it was dry... the information that I look at does not lead me to believe that this would be a public health threat. To further understand, you know, and look at what other localities are doing, I look throughout the state of Virginia at various ordinances, no other county has introduced any kind of ordinance that restricts the... or that sets an offset between a bored well and a cemetery at 900 feet. All of the other ordinances are at 100 feet.

Mr. Leming: And so in the other jurisdictions that you looked at, the state setbacks or the ones that are placed...

Ms. Pruitt: Yes, yes.

Mr. Leming: ... but no local setbacks that are more restricted.

Ms. Pruitt: That's correct, that's correct.

Mr. Leming: Alright. Alright, thank you very much. Two last points -- we did in our supplemental application try to clarify when we say full variance we have to comply with state code. So, we've structured that as a 800-foot variance request from the north, from the streams, because we have 100-foot RPA that must be observed there, and from the south. And this is the subject matter of Exhibit A. We are... we don't have consent from the neighbors on the south, so we have to observe 250 feet and there are two bubbles shown on Exhibit A that show those encroachments into the property that could not be utilized for that. Now, that and now as far as the, the issue that was discussed in the staff report as to the fact that there are no other applications that have been filed, I don't know what site plan application we could possibly file. An application for a non-cemetery? The staff would have no authority to approve an application at this point showing a cemetery. The variance is the discretionary part of the review process. It's a ministerial function to get a site plan. I'm not sure what function it is with the new apparatus the Board has set up the process that you must go through there. But, until we know whether or not there's land for a cemetery and whether or not a variance can be obtained from the setbacks, there is nothing to submit. There is nothing that we could possibly put before the County. So, this is the starting point. And that's not an uncommon thing. In fact, I just had a variance situation like that in the City of Fredericksburg where they had to get a site plan and a ARB review, but we started with a variance. I'm almost done Mr. Apicella. Okay, I appreciate you're hearing this and I recognize that this is a controversial issue and the neighbors don't want this and the County has spent a lot of time looking at this, but this is a step that the AMAA feels that they were obligated to take to see if relief could be obtained in this fashion through the channels, the administrative relief channels, that have been established. So, that's why we're here.

Mr. Grimes: Alright, thank you, Mr. Leming.

Mr. Leming: Yes sir. Nobody has any questions; I cannot believe that.

Mr. Grimes: I'm getting ready to ask that question. Does anybody have questions for the applicant?

Ms. Brown: I do, Mr. Chairman.

Mr. Grimes: I'm sure we do. Ms. Brown.

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Ms. Brown: Mr. Leming, could you tell me how many businesses are currently being operated at 1508 Garrisonville Road, the property in question?

Mr. Leming: I don't know of any, but... Who's the best one to answer that? John? Come up here and address Ms. Brown's question if you would. John, John you're the President; come on over here to the microphone. You're the Vice President of the... former President. Okay, past President. Step down. Alright, please introduce yourself.

Mr. Khan: My name is John Khan. I've been a resident of Virginia since 1981. And your question, in reference to any businesses, there is no business of AMAA or any subsidiaries that are being conducted out of that location. I don't know if the tenant is or has they started a business, a home based business that we're not aware of.

Ms. Brown: Okay.

Mr. Khan: Aside from the hitting range.

Mr. Leming: The driving range.

Mr. Khan: The driving range.

Ms. Brown: Okay, well, you've got the driving range. According to the State Corporation Commission, in January of last year there was a business registered for, it's called McCahn Transport. That was done on January I think 25 of 2018. So you're... that's not your business?

Mr. Khan: No.

Ms. Brown: Because it's got your address and an agent named on there of...

Mr. Khan: What's the agent's name?

Ms. Brown: Jessica Michelle McMann... McCahn, I'm sorry.

Mr. Khan: That's not my name. My last name Khan, K-h-a-n.

Ms. Brown: Okay. Well, there's a C-a-h-n, Jessica McCahn.

Mr. Khan: I have no clue who that is.

Mr. Leming: I would point out that under the state documents that it's not clear that the business is in the same location as the business address and certainly not as the registered agent.

Ms. Brown: Well, actually... actually it used to be in Goldvein, Virginia, and then there was an application to get it changed to Stafford, like I said, in January of 2018. And so it moved from Goldvein and it was under Cheryl Denise McCahn and then it changed to Jessica Michelle McCahn and it was at 1508 Garrisonville Road. So...

Mr. Leming: Well, the owner knows nothing about that.

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Mr. Khan: I'm not actually the owner; the owner is the organization, but we have no clue what you're talking... this is first we're hearing about this.

Ms. Brown: Okay. My other question is, you own the property next door at 1566 Garrisonville Road?

Mr. Khan: The organization purchased that property, yes.

Ms. Brown: Okay. Can I ask why that land was purchased?

Mr. Khan: Why that land was purchased? It was a decision that the board made. Initially when we were purchasing the property, the person who resided there was... our real estate agent asked that person to give us permission. And she... she said that she was not going to be interested in writing anything at that point. And we... we wanted to close on the property and so we said okay no problem. And then later on after we had acquired 1508, maybe a year later we had our agent talk to her and see if she wanted to sell the property, she was interested in selling the property. And she said yes she was interested. So, and then we further on looked and the board approved and we acquired the property.

Ms. Brown: Okay, do you have plans to use that for the cemetery as well?

Mr. Khan: No, that's not in the plans.

Ms. Brown: Hmm. Okay, because I was looking on your website, I believe it's yours, it's the AMAA Muslim cemetery.org. And it mentions that piece of property. There's a posting on there from the web person. It says you bought it in August of 2016 and this land would also be used for the future cemetery in the area as the current land on Brooke Road will be full. Also, it goes on to say this was a strategic acquisition in the broader scheme of the land use rules for cemetery use. So you did not buy it? This is incorrect?

Mr. Khan: I don't know who wrote that but yes...

Ms. Brown: Okay. And then I also read on the same site that you... the organization was planning on purchasing and operating its own funeral home with full services, you know, washing and preparing bodies. Do you plan to use... do you plan to do that on any of the properties on Garrisonville Road?

Mr. Khan: Ms. Brown, I think that is beyond the scope of this particular variance application because that... if we are discussing that as plans in future, obviously prior to getting approvals from BZA we can't do anything. So should we plan to do it when this organization or the board actually moves on that particular initiative, then we would actually hire our council to actually move on to that.

Mr. Leming: It's not a by-right. So, if they did decide to do that they would have to come back to the County probably for a rezoning. So, I don't know what the feasibility of that is but that's a long, long way down the road. They just seek to establish a cemetery on the parcel that is 29.4 acres at this point.

Mr. Khan: Correct.

Ms. Brown: Okay. So, just in closing then, you don't know anything about the other business...

Mr. Khan: Correct.

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Ms. Brown: ... on the property, and the property next to it you weren't planning on using for the cemetery?

Mr. Khan: Not at all.

Ms. Brown: Okay. Thank you.

Mr. Grimes: Questions for the applicant? Mr. Apicella?

Mr. Apicella: Mr. Leming, thanks for being here tonight. In order for the BZA to grant a variance, must both the variance definition, under State Code Section 15.2-2201 and all of the criteria in 15-2.2309?

Mr. Leming: Yes. And if we meet one of the two standards and the final criteria, then (inaudible - not at microphone) pretty clear (inaudible - not at microphone).

Mr. Apicella: You mentioned one of these cases, but I'm going to ask you about two. What are the controlling legal principles the Virginia Supreme Court proffered in the Cochran v. Fairfax BZA case, as well as the Martin v. City of Alexandria case?

Mr. Leming: The Chochran case is the one where the Supreme Court emphasized the (inaudible) aspect of the granting of a variance. However, the Virginia General Assembly has implemented what we refer to as a legislative veto of that decision. That is not considered good law anymore because of the language that was removed from the statute. So, at this point, we're not talking about confiscation, we're talking about a restriction, an unreasonable restriction on the property, and a hardship, a mere hardship, not one approaching confiscation and not undo all of that language is gone. So, that... those cases are prior to the legislative amendments to the visa criteria which we're all bound by.

Mr. Apicella: So, you're saying the entire Cochran case in toto should be ignored as it might apply to this application.

Mr. Leming: To the extent that it... to the extent that you're reading it as you seem to be with some of your questions, as requiring that there be no other viable use on the property, that there be a complete confiscation of the property in order for the BZA to grant a variance, yes, absolutely. That is no longer good law in Virginia.

Mr. Apicella: Okay, I'll get into that a little bit further in a minute or two. So, what I think I hear you're saying then is if an applicant can't achieve any of one, of many allowable uses on a property, that constitutes an unreasonable restriction under the State Code.

Mr. Leming: I wouldn't phrase it that way. I would say that a... the use is proposed here. Everybody knows what the, what the use is; the question is whether or not the ordinance imposes an unreasonable restriction on that use -- not on any use, but on that use of the property.

Mr. Apicella: Okay, we'll touch on that a little bit further in a minute. In the Falls Church BZA versus O'Malley case from 1985 which involved the impact of health and safety regulations to a given piece of property, the Virginia Supreme Court stated that no hardship was found because of the right to use a property in a particular way is not absolute but conditional, and to hold otherwise would render the requirements null and void. Are you saying that that legal principle is not applicable here?

Mr. Leming: Nope. No with the, not with the legislative changes.

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Mr. Apicella: Okay. So, you've mentioned...

Mr. Leming: We do have new Supreme Court law interpreting the new...

Mr. Apicella: We do? So, can you mention which specific cases and cite where they say that...

Mr. Leming: We have a, we have a case just cited last legislative or last Supreme Court term which gets in deals with peripherally at least the new criteria. And confiscation, I'll be happy to get you the citation, I don't think is directly relevant but what it does is to recognize the new criteria and that the original standards that were established pre-2009 and addressed by the court in Cochran are no longer good law in Virginia.

Mr. Apicella: So, it's kind of hard to... I appreciate what you're saying but in the absence of seeing it and seeing the specific verbiage, it's hard just to make that conclusion based on...

Mr. Leming: You know what? You know what, Mr. Apicella? The conclusion is clearly implied by the changes in the statute itself.

Mr. Apicella: Okay.

Mr. Leming: And that's what the court... that's all the court did. You tracked the changed.

Mr. Apicella: Actually I have the changes.

Mr. Leming: Okay. And the confiscation language is gone. The unreasonable hardship language, hardship language is gone. The undue hardship. Now it's just a hardship. And it's an unreasonable restriction. But Cochran is no longer good law in Virginia. I will tell you that categorically.

Mr. Apicella: Mr. Chairman, I have a copy of HB 1849 from the 2015 session; I have copies. Can you pass those out and provide one to the applicant as well. Give her a minute to do that. Mr. Chairman, Mr. Leming, I agree the legislature did remove some wording. They realigned the variance criteria in 2309. It added unreasonably restrict the utilization of the property to the variance definition. But that same phrase, if you look at the highlighted sections of the bill on page 2, first again under the variance definition highlighted in green you'll see unreasonably restrict the utilization of the property that was added to the variance definition. And then on page 4 when you look under 2 you'll see a couple of places where I highlighted in green. I'll go to the strikeout portion. You'll see that unreasonably restrict the utilization of property was in the statute and was merely moved to a different place under 2. So, I find it, at least in my opinion, more than coincidental that the Virginia Supreme Court in the Cochran case also cited this specific phrase in its ruling. In fact, the court noted that the statutory construction for this particular phrase means that in the absence of a variance the ordinance interferes with all -- and I stress all -- beneficial uses of the property taken as a whole. I've got the case in front me so if the Chairman would indulge me I'm going to read where the sections come from. They don't specifically refer back to the confiscation issue. I'm on page 13. I'm sure you're familiar with the case. I'm sorry I didn't bring extra copies. It says adhering to the rule in Packer, we construe the statutory terms effectively prohibit or unreasonably restrict the utilization of the property, unnecessary hardship and undue hardship. Several different terms but all provided in this notation in the light that hold that the BZA has no authority to grant a variance unless the effect of the zoning ordinance as applied to the piece of property under consideration would in the absence of a variance interfere with all reasonable beneficial uses of the property taken as a whole. It goes on to say on page 14, without any variances each of the properties, and it's speaking to the three different circumstances that were reviewed then

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consolidated in the Cochran case, without any variances each of the properties retains substantial beneficial uses and substantial value. The effect of respective zoning ordinances upon them in no sense interfered with, and again I'll stress the word all, reasonable beneficial uses of the property taken as a whole. So, I don't see where the statute itself reaches the same conclusion that you do. I just see that they changed. Number one, they added the reasonable beneficial uses or unreasonably restrict the utilization of the property to 2201 and just moved it around in 2309. So, in the absence of your providing a specific case that overturns Cochran, I'm just not reaching the same conclusion that you are and I find it...

Mr. Leming: Well, we'll have to differ.

Mr. Apicella: Okay, that's fine.

Mr. Leming: (Inaudible - not at microphone) problems with what you analyze, or somebody analyze for you...

Mr. Apicella: No, nobody analyzed it for me, I did it all on my own.

Mr. Leming: The definition of variance is not part of the statutory criteria...

Mr. Apicella: I asked you... Sir, I asked you the question. I'm not trying to be disrespectful. I asked you upfront do both the definition and the criteria... the definition under 2201 and the criteria in 2309 have to be adhered to. And your answer was yes. Are you changing your...?

Mr. Leming: Yes, 2201, the definition, if you look over at 2309, what it specifically indicates there is that if one of these two standards is met and the criteria are met, that the variance shall be granted. There's no referral back...

Mr. Apicella: So, you're saying again the definition does not... the definition for a variance would not have to be adhered to in a BZA granting a variance.

Mr. Leming: I misunderstood... I did not understand you were talking about another section of state law. Everything that you, that the BZA needs to decide a variance is contained now at 2309, and Cochran is not good law, period. I'm sorry, that is my professional opinion. I don't think there's anything about the Cochran case that a lawyer practicing in the circuit court today would utilize as you're seeking to utilize that case. It's simply over.

Mr. Apicella: Well, we've had legal opinions to the contrary. I'll go down a different line of inquiry if that's okay Mr. Chairman.

Mr. Grimes: That's fine.

Mr. Apicella: What specific... you mentioned the word hardship... hardship is associated with physical conditions on a property. You didn't mention that when you discussed it but I'm going to ask you, what specific physical conditions exist on the property that preclude the applicant from continuing with the existing uses? What physical characteristics of the property...?

Mr. Leming: The physical characteristics of the property have to do with its width and its length.

Mr. Apicella: Twenty-nine acres.

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Mr. Leming: It is longer than it is wide. And the location of the streams to the north and the east and the road and the wells to the south, those things are fixed. Now, the physical characteristic of the property, the lack of width, the fact that this whole entire property is not even 1,800 feet across means that the application of the setbacks in this... for this particular property wipe out the planned cemetery use completely. That is what's unusual about the property. Now, Mr. Harvey...

Mr. Apicella: Sir, that wasn't... that wasn't my question. I didn't ask about the cemetery. I said what specific physical conditions exist on the property that preclude the applicant from continuing with the existing uses.

Mr. Leming: The... the... the response to that only can be dealt with in the context of the proposed use for the property. That is the unreasonable restriction.

Mr. Apicella: So, you're not... you're not going to answer the question. What stops... what about a 29-acre parcel stops it from being a driving range or to have houses put on it or houses to be maintained on it?

Mr. Leming: And my answer to that is it's irrelevant. What else can be done on the property that's irrelevant to the unreasonable restriction part of the code? The unreasonable restriction is that they can no longer put a by-right use on the property because of the width of the property and the fact that the setbacks devour the entire use of the property for that purpose.

Mr. Apicella: We're going to have to respectfully disagree. So, I'm going to again, similar line of question just to get into the record, what physical conditions preclude the applicant from pursuing the over 30 other commercial or residential uses in Stafford's A-1 zoning district?

Mr. Leming: It's irrelevant.

Mr. Apicella: Okay. The material provided us indicates that the current owners were interested in the parcel and you noted this in your justification as far back as 2014. They purchased it in 2015 and the revised cemetery ordinance wasn't changed until December 2016. That's about 18 months after the purchase date and certainly longer from the date that they expressed some interest in the property. So, can you help us understand why the applicant did not formally pursue a cemetery use at any point, and I say formally, pursue a cemetery use at any point prior to the December 2016 date when the ordinance changed and the old cemetery provisions were still in place?

Mr. Leming: I'm not sure that I can but Mr. Khan I think probably can tell you why they delayed and why they didn't immediately go and seek a site plan.

Mr. Khan: Their justification for that was the term of financing. It was financed by the seller and the seller put a condition on the note saying that we could not initiate process of any type of zoning or request for application until the loan was paid off completely. And the duration of that term was two years. The day from the acquisition and the payoff, and we started our query about for zoning when we came to Mr. Leming's office was in March and we paid the loan off end of April of 2017.

Mr. Apicella: But that, I mean, as I hear you say it, sir, and I appreciate your circumstances and what you're trying to do here, isn't that a self-imposed condition that you all undertook to preclude yourselves from being able to move forward for whatever period of time that you agreed to and as long as the loan was outstanding?

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Mr. Khan: That was a condition that was put by the lender.

Mr. Apicella: Right, but you didn't have to agree to that condition.

Mr. Khan: We wanted to acquire the property because it was ideally the right property for us under the directives that we had received by A-1 zoning by-right, knowing all of that information, being a layman and understanding that aspect of it, and then that's what made us proceed forward. And we didn't think anything else of it.

Mr. Leming: Let me... nobody's here arguing that they're entitled to something. There was a reference in the staff report to vesting; this is not a vesting case. They didn't do anything to vest themselves. That's simply background. The issue is whether or not under these circumstances given their plan for the property, given the imposition of these setbacks, whether or not that constitutes grounds for a variance under either of the two standards and the five criteria. And I think you've heard from us on each of those criteria so.

Mr. Apicella: Mr. Chairman, I have some additional questions. Have any of the nearby parcel owners raised concerns that the establishment of a cemetery would be substantially detrimental to them? Have any of the nearby parcel owners raised concerns that the establishment of a cemetery would be substantially detrimental to them?

Mr. Leming: I think they've done a lot of that. Yes, there have been public hearings and yes, there have been considerable opposition to this. There was considerable community support for getting the ordinance changed as soon as it was learned that the cemetery was planned across the street. And then the County moved forward with lightning like speed to change the ordinance before anything could get started. And that's what happened. Now, the Board of Supervisors may have had a public health justification for the whole thing, but it was in response to the knowledge that a cemetery was coming in that location. That's what triggered it.

Mr. Apicella: Okay. Have all the owners within 200 feet of the subject parcel formally consented to the establishment of the cemetery as required by the state code?

Mr. Leming: Well, you're aware of the variation there involving a road. There was not the requirement under state law to obtain the consent of the owners on the other side of road. If you don't have their consent, you observe the 250-foot from the residence, not the well. The setback of the County's is oriented to the well. The setback under state law...

Mr. Apicella: Is residence defined in that section of the code? Because I've looked at the state code and residence has numerous definitions in the state code. There's no specific definition of residence as it relates back to that specific code section.

Mr. Leming: In the absence of a definition in that section, we interpreted residence to mean the home on the property.

Mr. Apicella: I appreciate that's your interpretation. Based on the scale used in Exhibit A, it appears Mr. Silver's property is within 250 feet and so why does... you all provided an exhibit that showed at least a couple of properties being within the 250 foot line from the property... from your property... not your property but the applicant's property. I'm just curious why Exhibit A doesn't show Mr. Silver's property also being within that range.

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Mr. Leming: I think it does.

Mr. Apicella: No, it doesn't.

Mr. Leming: Well, there are two bubbles.

Mr. Apicella: I'm not talking about the bubbles, I'm talking about there's an exhibit, Exhibit A...

Mr. Leming: That's the one that shows the application's (inaudible - not at microphone).

Mr. Apicella: It has a long line with an arrow. It shows two properties, parcel 19B-1-2 and parcel 19-4 that are within 250 feet. But using that same scale, which is again it's not an exact scale, I'm just asking, it seemed like Mr. Silver's property is also within 250 feet. It could be five feet more, it could be five feet less. It's hard to know with certainty.

Mr. Leming: You're right. It's hard to know with exact certainty. The intent of Exhibit A was to capture the nearest residence that would protrude onto the, onto the property. And the engineers identified those residents that were closest and then developed the exhibit that you reference from that. But yeah, but, to answer your question, if indeed it's not there then there is the requirement under state law that the cemetery be 250 feet from the residence.

Mr. Apicella: It's not that they be 250 feet, it's so they get consent.

Mr. Leming: Well, no, if you don't have consent. That's not how I read it.

Mr. Leming: No, read the statute. There's a road in between.

Mr. Apicella: Right. It just says you need to get consent from people who are 250 yards away or from 250 feet away if there's a road that separates it. It doesn't say that you have to be 250 feet away. It just says you have to get consent of. And I think what I read, at least in some of the material that was provided, number one there's a disagreement about what that distance line is and also whether or not consent was pursued or received from those folks. We can move on to a different line of questioning.

Mr. Leming: (Inaudible - not at microphone) the statute says, consent shall not be required if the location of the proposed cemetery is separated from any residence by a state highway. The proposed cemetery (inaudible - not at microphone) 250 feet from the residence that is nearest point thereto. So, that is... that's the intent, to establish the cemetery 250 feet...

Mr. Apicella: Again, that's not how I read it. It tells me you need to get consent. We can disagree. I'm going to move on, sir. Is there anything...

Mr. Leming: (Inaudible - not at microphone) consent shall not be required.

Mr. Apicella: ... is there anything that precludes Stafford County from amending its cemetery ordinance to achieve the specific setback changes the applicant is requesting in lieu of this variance application?

Mr. Leming: I think what the Board adopted through its text amendment is an entirely separate analysis. And there may be a form somewhere where that's addressed. But, for your purposes, for the BZA purposes, we're not challenging the ordinance. We're not here saying that the ordinance is bad, that the

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Board didn't have the authority to adopt it or that there wasn't a public health justification for it. We're saying that we have a unique situation and that we're entitled to a variance because we meet the statutory criteria. That's all. It's an exception to the rule. We're not challenging the rule. The rule... this is a variance.

Mr. Apicella: So, I'm reading criterion number 3, the condition or situation the property concerned is not so general recurring in nature as to make a reasonably practical the formulation of a general regulation to be adopted as an amendment to the ordinance. So, that tells me that, as a layman, that if the Board can amend its ordinance to provide you the relief you're seeking, as well as the same relief to everybody else who's similarly situated, then a variance wouldn't be appropriate. So why is this situation unique?

Mr. Leming: Based on my experience you're also misreading that criteria...

Mr. Apicella: I can't see how I can misread it. It's pretty plain and straightforward.

Mr. Leming: (Inaudible) what I think it means. It simply means that there are numerous examples of this same situation. If the County had before, and the County addresses this in their staff report, if there were other examples of situations like this where somebody was trying to establish a cemetery and the setbacks were proving to be a problem then that would figure that criteria. But there is no other example and that's the way to address that criteria, in my opinion.

Mr. Apicella: That's your opinion. I don't necessarily agree with that. Is it the legislative prerogative... well, first of all, I'd go back to hasn't the applicant already asked Stafford County Supervisors to reconsider the setbacks in the new ordinance?

Mr. Leming: I'm sorry, what?

Mr. Apicella: Hasn't the applicant already gone to the Board of Supervisors and asked them to revisit and change the setbacks?

Mr. Leming: As I recall, the procedure, one of the Supervisors went to the Board and asked the Board to send it back to the Planning Commission. I don't know of any instance where the AMAA went to the Board of Supervisors and said please look at this again. I believe that it was a motion made by Mr. Milde. Now, there may have been conversations between Mr. Milde and other Board members, but it was Board...

Mr. Apicella: So, the applicant in no way, shape, or form reached out to Mr. Milde and asked him to pursue a change, is that what you're saying?

Mr. Leming: I think... as I understand, it has nothing to do with the variance.

Mr. Apicella: It does. It's part of the criteria.

Mr. Leming: It really doesn't, Mr. Apicella. I think you're way off on that.

Mr. Apicella: Sir...

Mr. Leming: As I understand it... as I understand it, the only thing that happened is that Mr. Milde realized what the effect of this was. And when the Board unanimously voted for this in 2016, I think

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there were several Board members that didn't quite understand what this... what had happened here. And so the Board voted to reconsider. And I think that's the only way to look at it.

Mr. Apicella: Okay, that's fine. Is there anything now stopping the applicant from again asking the Board of Supervisors or, for the first time, asking the Board of Supervisors to reconsider the new cemetery ordinance? Do they... can they not do that?

Mr. Leming: We can all tilt at windmills, but I think that's been carried as far as that can possibly go.

Mr. Apicella: You mentioned the vote was very close, 3-2-1.

Mr. Leming: It was 3 to 2 to 1 (inaudible - not at microphone) split on the Board right now, but all of this, you know, all of that entire effort, you know, you're going to have.

Mr. Apicella: Right. But that one that wasn't there is now back or could be back.

Mr. Leming: That's possible.

Mr. Apicella: Just sayin'.

Mr. Leming: Anything is possible, Mr. Apicella, but, you know, they've been there and tried that.

Mr. Apicella: Just a few more questions, two more questions, Mr. Chairman, if you'll indulge me.

Mr. Grimes: That's fine.

Mr. Apicella: Is it the legislative prerogative of the local Board of Supervisors to establish land use standards and to periodically change those standards?

Mr. Leming: Of course.

Mr. Apicella: And does the BZA have the legislative authority to revise an ordinance or to make a decision that effectively renders an ordinance provisions' moot?

Mr. Leming: The BZA follows the variance criteria. In fact, it would be unlawful for the BZA to render any kind of opinion on the validity of an ordinance. That's not the BZA's job. It's to look at the particular situation and determine whether or not an exemption or a variance is warranted under the circumstances.

Mr. Apicella: Yeah, that's not quite how I asked the question but, that's okay. Thank you.

Mr. Leming: Okay.

Mr. Grimes: Do we have any other questions for the applicant? Alright, hearing none.

Mr. Leming: Alright, thank you all.

Mr. Grimes: Thank you Mr. Leming. Any members of the public who wish to speak in support of the application, please come forward. Seeing none... this is in support of the application. Okay.

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Mr. Vitaletti: My name's James Vitaletti, Vit-aletti. I'm the President of the Rock Hill Volunteer Rescue Squad. We're located right across the road from the proposed cemetery. We just want to go on record saying that we'd rather see a cemetery there instead of a housing tract, more houses going up in our area. And as far as the well water issue goes, I've been a volunteer paramedic there for 15 years. We've not been able to use our well for drinking anyway because of high mineral content and a high chemical issue. It's ruined a lot of our copper pipes out there and stuff like that. So, we've not been using our well for drinking anyway for the time I've been there. The building's been there for about 30 years. I've been about 15. That's all. I just wanted to say that we'd rather see cemeteries than houses over there.

Mr. Grimes: I appreciate that. Is there any questions for this gentleman? None? Thank you very much. Anyone else wish to speak in support of the applicant? Alright, seeing none. Any member of the public who wishes to speak in opposition, please come forward.

Ms. Birchenough: Good evening. My name's Kristi Birchenough. I'm just here to say that we don't really want a well... or a cemetery that close to our drinking water. We do use our well for drinking water. You know, we're 4 houses in from Mr. Silver but we still feel that with the downward slope of the property and everything running off towards our road that it would severely impact our water. And I have children and they play in the water and they drink the water and the bathe then the water and I just don't think it's best for their health and ours. And that's it. Thank you.

Mr. Grimes: Great, thank you very much. For all those folks that want to speak, you can start queuing right down the aisle is fine. A reminder that each speaker has 3 minutes.

Mr. Street: Right. Good evening my name is Robert Clay Street. I live in the Apple Grove subdivision. I'm the President of the Apple Grove HOA and I'm here tonight to discuss a few items that concern myself and some of my neighbors in regards to granting this variance. The first reason to not grant the variance is safety. Research shows that traditional cemeteries house up to a thousand bodies per acre; double that number if they stack couples. The property we're discussing is just over 29 acres. That's 29,000 and possibly 58,000 bodies decomposing feet from Aquia Creek, the main moving body of water that feeds Smith Lake and is then distributed throughout our County. After looking at other cemeteries in our County, there is not one that is this close to a body of water that feeds our County's water supply. Aquia Creek also surrounds the Apple Grove subdivision and regularly floods into the common areas where our children play. Any contaminants or funeral debris that makes its way into Aquia Creek becomes a health and safety issue for our neighborhood and a monetary burden on our community to clean it up. If this variance is granted, there are no restrictions or regulations on the cemetery's activities, methods, or materials used for the burials moving forward. My second reason to not grant this variance is the cemetery's impact on traffic. The west most entrance to our neighborhood marks the location where 610 narrows to one lane in each direction. From there it is only 450 feet to the edge of the property we are discussing here tonight. The stretch of 610 along this property has no shoulder, no turn lane, and nowhere to safely pull off, park, or pass. This combination of road conditions, traffic flow, and location would lead to major traffic issues in this area of 610. During a field procession, all traffic travelling in the same direction would have to wait until the entire procession is onto the property before continuing further west on 610. There are no drawings available to show planned onsite parking or traffic flow patterns, so I'm going to use the existing entrance to the driving range for my next statement. A procession turning into the entrance must only backup nine tenths of a mile to completely block all three access points in our community, essentially trapping everyone in Apple Grove until the procession has made it onto their property. The combination of 1) the funeral procession, 2) normal westbound traffic on 610 who, per Virginia state law, are not allowed to enter or cut through the procession, and 3) a roadway that goes from two lanes to one equals all westbound traffic on 610

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stopped and an entire community trapped in their subdivision. What are we supposed to tell westbound travelers on 610 during these times? Wait? Be patient? Don't get mad with, whip a right turn into Apple Grove, speed down one of our streets in a rage and attempt to backtrack or get in front of the procession? The fact is that the property is located directly off one of the main thoroughfares in Stafford. This section of road creates a perfect storm of road issues for large amounts of slow moving and turning traffic. If you grant this variance you effectively increase the size of the cemetery to an unlimited number of variables and therefore create a much larger traffic impact. Thank you for your time. Please submit my statement in writing and please vote no for this variance.

Mr. Grimes: Thank you.

Mr. Street: Thank you.

Mr. Schlosser: Friends and neighbors, my name is Kevin Schlosser. I live in Stafford's Apple Grove community. I'm here today to talk to you about proper planning and due diligence before making big decisions. Whether it's buying a house, a car, or a piece of land, doing your homework is critical. If you're a parent buying a family vehicle, purchasing a shiny two-seat sports car is not a good decision. If you buy a house around here, you would find through your careful research that Quantico has regular explosive ordinance exercises that shake things up. You can't really tell them to stop or take legal action. Proper research would have discovered this unchangeable fact. The well-intentioned folks who purchased the golf facility to use as a cemetery have not done their proper research. Out of approximately 379 properties in the County that have suitability for their purpose, they chose a property that is not suitable. It is bordered by creeks and streams that are prone to regular flooding. Furthermore, they have chosen a property close to communities that would be affected by the contamination coming from a cemetery. This would include contamination of water wells, bodies of water where people recreate or get their drinking water. This is entirely unacceptable. To date there are no regulations or standards regarding the burial of human remains. Because of this, there are no commonsense rules governing the distance of ceme... because of this there are commonsense rules governing the distance of cemeteries from bodies of water and water wells. These were established specifically to address contamination of our water and our environment. The folks planning the cemetery have a previous history of not doing their proper feasibility research. There are public records of this. They have already consumed County bailout funding for their previous mistakes. It should not be the County's or the community's burden to accommodate their poor planning. Remember the Quantico ordnance practice? I have no doubt that those explosions affect the rock strata leading down to our water table. Even if burial vaults were used, the integrity of any seal would not endure the activities of Quantico for long, leeching embalming chemicals and decomposing human remains into our bodies of water and the water table. Additionally, if any geological studies were done, they would be inaccurate after the next few Quantico training exercises. Oh, and speaking of noise -- even though the residents of the cemetery might be quiet once they move in, the heavy equipment digging the graves in very rocky soil will make plenty of noise while they help them move in. Please submit this in writing for record and please vote no on the variance request. Thank you and have a good evening.

Mr. Grimes: Thank you.

Mr. Fry: Chairman, Board members, my name is Jim Fry. I'm a consumer of Stafford County water and also a licensed real estate agent. I've reviewed the online post by Stafford County for tonight's meeting on the cemetery to which I want to make a few comments on. The statement, or the suggestion, made by the applicant that this cemetery will have no negative impact on the community simply is not true. I'm a local practicing real estate agent. I buy and sell land. I buy and sell homes. I can state with absolute certainty a cemetery going in against an established community will significantly impact

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property values and the days on market to sell the property. Not everyone wants to live next to a cemetery, especially one that will have several thousand bodies buried in it. This isn't a family or church cemetery, but a large commercial cemetery doing business as a nonprofit, a 501(c)(3). That's just one consideration. The other thing is the impact this cemetery will have on local wells and the County water supply. The cemetery will drain into Aquia Creek which feeds into Smith Lake where 30,000 homes and 2,500 businesses get their water supply. The Planning Commission and the Board of Supervisors duly passed the ordinance to protect the community wells and the County water supply by establishing the 900 foot setback from wells and County water, our arteries. Also, what happens when the cemetery goes bankrupt? Who's left to handle the waste, leaving an even bigger impact on nearby landowners? Now, in closing I'd just like to say that in the world of real estate contracts and both common law, this is a caveat emptor, buyer beware. And for these reasons I suggest that you deny the variance. Thank you.

Mr. Grimes: Thank you.

Mr. Minor: Yeah, my name is Patrick Minor. The applicant had provided an opinion from, or an opinion from Pam Pruitt. She states in her title that she is an onsite evaluator. Nowhere in her report does she state that she ever went onsite to evaluate the property. She also provided no scientific evidence or studies backing her opinion. In addition to this, she also mentions multiple bodies will have no impact on drinking water. Multiple bodies is way less than thousands of bodies. She also misstates Virginia Department of Health Regulations on locations of cemeteries to the locations of new wells to those existing cemeteries. New wells creation is much different than old wells and new cemeteries. New wells have to pass groundwater tests for quality water. Older wells with thousands of bodies next door just starting to decompose is much different scenario. She also states in her report that she was paid. This is a disclaimer that her opinion was paid for and therefore biased. She has provided no soil or she's... I'm sorry... she has provided no soil analysis, no slope analysis on the property, no analysis on flooding, or how to grade the site to mitigate impacts... or to mitigate impacts of groundwater contamination. The applicant has not provided concrete evidence that granting a variance will not impact our property. Therefore you should deny the variation. Thank you.

Mr. Grimes: Thank you.

Mr. Vanuch: Good evening. My name is David Vanuch. I want to focus on five items tonight. One, body burials are not regulated in the state of Virginia. That means there is no limit to the number of or way in which burials take place in order to reduce impacts to nearby lands. Instead the state grants that authority to the local government and their ability to create setback requirements. Two, there is no limit to the number of bodies that can be buried on this alleged cemetery site. It is not proposed, it's alleged. By industry standards this could be anywhere from 60,000 to 100,000 bodies. Let that sink in -- 100,000 bodies decomposing with standing water in flooded areas of a cemetery as the applicant has shown no mitigation plan to property prone to flooding. Three, the applicant has not conducted soil analysis or provided a site plan that demonstrates where bodies will be located, how they intend to mitigate any impacts to nearby properties, where access roads will be, tree removal, and road frontage tree buffers to block the view of burials from nearby properties. Instead they are proposing a maximum relief of the setbacks to impose the greatest detriment to nearby properties and the maximum number of bodies. They have provided zero evidence, rationale or logic, to substantiate on how they derive the proposed variance request as the law only allows the BZA to grant a minimum variance if all the applications of the law have been met. Four, the applicant has not secured the signatures required by state law, mine included. The applicant cannot artificially impose a green buffer or inappropriately demonstrate that property line to property line is not the appropriate measurement, which it absolutely is. Drinking wells sit closer than dwelling units, so this misguided attempt to rewrite state law on the part of the applicant

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is incorrect. The BZA cannot grant this variance or set conditions for its approval. That would be contrary to what the law gives the BZA the authority to do. The Board of Supervisors is a legislative authority here and eliminating a setback requirement or imposing conditions contrary to what the Board of Supervisors might require would not be within the BZA's authority. The alleged application would still need Board approval. The 900-foot was the least restrictive setback on the scientific evidence that is still protecting public safety when creating the ordinance. Some studies show contamination of drinking water could occur more than 1,200 feet away, so the Board of Supervisors could implement a larger setback in order to approve the establishment of a cemetery especially based on soil type and slopes. In closing, the applicant has failed to show that through a preponderance of evidence they are being unreasonably restricted. They can and do engage in profitable uses on the property. They also fail to show that this self-inflicted hardship does not meet the required criteria of being acquired in good faith as they still don't have the correct signatures required by law. Granting a variance can't be detrimental to the nearby properties. Instead, a multitude of evidence exists showing how granting the variance will have detrimental impacts to nearby property. And lastly, granting the variance should not change the zoning classification which the staff report shows by granting this variance. It will in fact change the zoning classification on this property. This leaves the BZA with no options but denial. Appreciate your time.

Mr. Grimes: Thank you.

Ms. Lozano: Hello, my name is Iris Lozano. I'm here tonight to speak in opposition to granting the AMAA a variance at 1508 Garrisonville Road. I believe I'm a property owner that I'll be affected. And here are the things I hope you keep in mind to help protect our water and property values. This day in County do not regulate cemetery. Bodies can be buried with zero oversight and regulation. There that is no limited to the numbers of body this property will have. Therefore I know that my drinking water could be impact by contamination and chemicals and this composition wastes. There were dozens of studies review at the planning meetings and Board meetings which is why the ordinance was created. Eliminating that setback will impact my property directly and go against the intent of the ordinance which is a violation of law. Allowing a cemetery in a highly residential area could change the character of a close knit community. We don't want to look at a cemetery every day. A study from veterans affair shows that our property will be worth at least 12% less. I just purchased my home a year and a half ago and I don't want to lose value or have my well contaminated and not be able to sell my home. The AMAA doesn't meet the criteria for a variance. I will make this simple for you. They have other uses on the property which equals no hardship which equals no authority for the BZA to grant them a variance. AMAA did not do the proper groundwork with the residents and they are now trying to eliminate our opinions and safety by coming to you and ignoring us. They will not and have not ever spoke to anyone across the street. And continue to try to manipulate the law to their benefit with no regard to our safety for drinking water and protection of our largest investment, our home. Thank you.

Mr. Grimes: Thank you.

Mr. Silver: Good evening members of the Board, my name is David Silver. I reside directly across the street from the cemetery. Protecting the well water rights to the same degree as the public water for the residents of Stafford County. This is to show Aquia Creek and how wide it is; also to show the volume of water that's running through it now. It has trees that have fallen into the creek and some small creeks that flow into from the driving range. As you can see, when the creek floods, it goes all the way up to the back of Apple Grove tennis courts and basketball court. It still has running water within... standing water within 50 feet of the back. The driving range has its own flooding problems behind the office that you can see. The next slide will also show this. The house that is located to the right has a well that's 40 feet deep. This shows the picture zoomed in to show the flooding a little better. I split up the pictures so

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you could see it. This shows picture 2 to zoom in to show the small valley and the water runs through. The driving range is not flat property and has a lot of dips and valleys. Now, you can see this second level of my house in the picture 1 and the range is about 25 feet higher than the road. And the second picture you'll see that the ditch, between my property and Garrisonville Road floods a lot. My front yard floods due to all the rain and snow during the winter. About 3 years ago my basement flooded due to all the water backed up in the front yard and had no other place to go but back up into my garage. My well is less than 50 feet but my property line is about 25 feet on the other side of the white fence I just put up, and it's about 35 feet deep. When my yard floods, so does my well. As you can see, it's at ground level in the picture I just... and my well is very likely to be contaminated if any contaminants go into the ditch or into the ground. I just don't want to end up having to buy bottled water to drink like Hartwood District residents. So please, vote no on the variance and please add my attorneys letter to the record. Thank you for your time.

Mr. Grimes: Thank you.

Mr. Apicella: Mr. Chairman, may I ask this speaker a question? How close is your property to the subject property?

Mr. Silver: Well, my property line is right near the...

Audience member: Mr. Apicella, we have a PowerPoint presentation that's going to show that (inaudible - not at microphone).

Mr. Apicella: Okay, thank you. And he asked that his previous attorney submission be entered in the record.

Mr. Grimes: Yes.

Mr. Apicella: Are we going to do that Mr. Chairman?

Mr. Grimes: Yes.

Mr. Apicella: Okay, thank you.

Ms. Brown: Mr. Chairman, I had a question as well for Mr. Silver.

Mr. Grimes: Yes.

Ms. Brown: Mr. Silver, could you tell me approximately when these pictures were taken?

Mr. Silver: These were taken Sunday and...

Ms. Brown: Okay, so within the last 30 days.

Mr. Silver: ... Monday and today.

Ms. Brown: Okay.

Mr. Silver: Yeah, the well was taken today and the creek was taken yesterday or Sunday.

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Ms. Brown: That's fine. (Inaudible) in the last 30 days. Thank you. That's all from me.

Mr. Grimes: Thank you. Yes sir.

Mr. Hanford: How you doing? My name's Troy Hanford. It's probably not a whole lot of people in this room that are closer to that property than I am. I do see several of my neighbors here. Two of my neighbors that are actually in the room right now own horses. We all have dogs. I've got two small children at home and a wife. Obviously there's somebody that's a lot smarter than I was that put this 900-foot ordinance into place and it was for the safety of the people that were around so that the water was not contaminated. We do drink our water, we bathe in our water, obviously that's our main concern. I just wanted to voice my opinion. I mean, I could stand at the end of my driveway and literally spit on the property across the street. I am on the other side of 610 but that's how close we are. Nobody's ever come to my door asking for any type of consent. As a matter of fact, I didn't know until fortunately a couple of our neighbors told us awhile back that the original hearing was here. If I recall correctly from the original hearing, and I might not, but there were several other proposed properties that actually fit what they needed to do. But the applicant decided to push for a variance on this one particular property, which I'm not really sure why that happened. But I just wanted to voice my opinion. I appreciate your time.

Mr. Grimes: Thank you very much.

Mr. Moughon: Hi, good evening, my name is Steven Moughon. I'm just across the road. I have a PowerPoint here. I just wanted to talk about a few concerns that I have and some of my neighbors have as well. The first thing is about the signatures that were never asked for and, of course, never given. And why that's important is... we can skip to the next slide... if you look, on the right-hand side of the picture is where the proposed cemetery would be. And then there's at least 7 properties right across the street. I want to take special notice of properties one and six because they are the houses and the wells are right next to the road. If you skip to the next slide. This is 2 Skywood Court and, as you can see here, you know, we're not talking about 900 feet, we're not talking about 250 yards, we're not talking about 250 feet. We're not even talking about 100 feet. The house itself is less than 100 feet away from the edge of the property. If you go to the next slide you'll see the well itself on this property is less than 70 feet away from the edge of the property. And this isn't the only house. If you go to the next slide after that you'll see 1503 Garrisonville Road. This house is also less than 100 feet away from the edge of the property. And the well on the next slide is less than 80 feet. These are just two representative examples. All the other properties have wells as well. They're also very close to the property. Now, I know that there's been a lot of back and forth about, you know, how many feet and how many bodies and to be honest I'm not a lawyer. I'm definitely not a soil scientist but I want to show some pictures here. If we go to the next slide, this is from where I live. If you look across the street at the property, you can see that there's a slight incline. So, what we did is we measured the elevation both from where we live in Skywood and the property itself. So if you go to the next slide, this is, this is from Skywood Court; the elevation is 255 feet. The next slide is the property and the slide after that is the elevation on the property; so that's a change of about 50/56 feet. As you can see, these properties are right next to each other so there is a significant difference in elevation between these two properties. So, we're very concerned about the water runoff and, as we all know you know in the past year we've had a lot of rain water. The last concern is the current cemetery that's operated by the AMAA off of Brooke Road has a lot of standing water and that's not been managed well. So, if we go to the next slide... we can skip this, I want to go to the one after that... this is a picture of the current cemetery. This was last May and it shows a lot of standing water. What's important is that this was taken on May 28. If you go to the slide after this, the slide after this, the slide after this, this was two months later in July. And you can still see that there's standing water. So this wasn't a one off picture that was taken after a storm. So, it's, you

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know, it's with all of these concerns that we have. I mean, first we were never consented even though the AMAA did consent some homeowners, but we're literally less than 100 feet away. There's a lot of standing water and there are concerns. You know, I just don't buy what people say. I mean, our wells are less than 100 feet away from the edge of the cemetery. So, you know, I definitely appreciate your consideration and the time that you all put into this. Thank you.

Mr. Grimes: Thank you.

Mr. Patterson: Good evening. I had planned on speaking from a paper but forgot it at home. Good evening members of the BZA. My name is Glenn Patterson and I reside in the Rockville District. I'm here this evening in opposition to the application for a zoning variance submitted by Clark Leming on behalf of the All Muslim Association of America. There are several inaccuracies in the applicant's variance request and I'll speak to a few of them, other residents will speak to the remainder. First, the variance application indicates in the section entitled variance justification... oh, excuse me... okay, that you've met all elements of state law which requires them to get permission from all affected homeowners prior to submitting application. That's been said by many tonight. They never submitted an application for the cemetery, which Ms. Musante indicated, nor the request for an ordinance permitting a cemetery which is required by state law. Mr. Leming would have you believe that any cemetery is a by-right use according to the Stafford County zoning ordinance. That contention conveniently ignores Section 28-6 of the zoning ordinance which clearly states if any portion of this chapter is in conflict with the Virginia statute, the Virginia Statute shall prevail. If any portion of this chapter is in conflict with any other section of this or any other county ordinance, then the more restrictive shall prevail. The AMAA's plan to establish a cemetery on the property at 1508 Garrisonville Road is in conflict with state law under Virginia Code 57-26. It's in conflict with the new cemetery ordinance O16-39, and it was always in conflict with the old zoning ordinance. For these reasons and others, which you'll hear from, you should deny the application request. Thank you. Oh, and Mr. Apicella, in response to the question that you asked Mr. Leming earlier about why that got sent back down? On September 19, 2017, Mr. Khan whose presence this evening testified and specifically requested that the Board refer the cemetery ordinance back to the Planning Commission for review and reconsideration of the 900-foot setback. Thank you.

Mr. Grimes: Thank you.

Ms. Benitez: Good evening. My name is Heydy Benitez. I'm a property owner required under state law to sign and give permission for a cemetery. I also (inaudible) a well water and have over a million dollars invested in my home. If I may well become my... I'm sorry. If my well were to become contaminated, my home would be worthless. That is probably why state law requires people to cite cemeteries. Based on evidence and research the Board of Supervisors and Planning Commission have conducted, it is very clear put an unlimited number of bodies based on what I've heard. It could be 90,000 across my home completely unregulated. I'm confident my well would become undrinkable. I don't want to look at my beautiful home at a cemetery and be reminded of death every day, which is not right. We also have a lot of family gatherings in front of the yard, so Easter, Fourth of July, and trust me we have a lot of kids to come over and having a cemetery in front of us is not the ambiance we want them to see. Thank you. I ask that you deny the variance request.

Mr. Grimes: Thank you.

Ms. Sorto: Hello, my name is... good evening, my name is Bertila Sorto. I live with my parents, brothers, and my son. We purchased our home in July of 2018. No one ever came to us about the potential cemetery on Garrisonville Road. Our property is within 250 feet from the land. The AMAA

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owns the and under the Virginia law they are required to get our signature. On the County GIS site, my home is approximately 100 feet from the property line from the AMAA property. I do not believe they meet the requirements to allow the BZA to grant the AMAA without them working with every neighbor on Garrisonville Road for our signature. I would respectfully ask you to deny the variance. You do not have that authority because they have not presented a complete packet to the BZA. We have a well... we have a well located less than 50 feet from the property and we have farm animals and children that drink that water. If it were to become contaminated we couldn't afford water to be brought in. Who would help us? Would I lose my home because I couldn't afford to buy another one? So I ask you to vote no on giving them a variance. Thank you.

Miss Fuentes: Hello, my name is Kate Fuentes and I'm just here to say please protect our well water and our well and I'm just here that I'm... I don't want to die from cancer and I also don't want... and I even want to look at a cemetery every day, even when I come home from school. It'd be pretty annoying to see that. Thank you.

Mr. Apicella: Mr. Chairman, I think she's the youngest presenter that we've had in front of the BZA in my many years.

Mrs. Stefl: What an excuse, you know, to stay past your bedtime.

Mr. Grimes: So, do we have anybody else who wants to speak in opposition of the application? Alright, seeing none, does the applicant wish to respond or add additional information?

Mr. Leming: I'll stay within my time limit this time.

Mr. Grimes: Thank you.

Mr. Leming: First of all, the Muslims with their funerals they don't use processions. That is not their custom. Second, a lot of discussion about what the authority of the BZA is. The statute is very clear what authority the BZA has; to grant variance and what's necessary. The granting of a variance is not an attack on the underlying ordinance. It's a deviation from the underlying ordinance. And of course there is authority to do that. There has been references to public safety and I think that's somewhat beyond the scope of the, of the variance application, but the purpose for the statute. The main question there is why is Stafford out there all by itself on this issue? Why is there nobody... why is there no other Virginia jurisdiction that has anything even remotely close to this? Now, you know, as Mr. Fry mentioned, property values and the effect of a cemetery on property values. The purpose of the setback, as I understand it and I think it's stated on the face of the ordinance, is to protect the wells, protect the drinking water supply. It doesn't have anything to do with property values. So I would submit that that's an irrelevant issue with regard to the variance application because the variance that's requested is from the setbacks that are there to protect the ostensibly to protect the water supply. We do have... we talk about all these other studies... we do have... we're the only ones here, and I apologize profusely for bringing it in tonight, but we're the only one that has a site specific analysis of the property that was based on actual borings. And Ms. Pruitt has commented on that. None of the authors of any of the reports have been to the site. The County didn't do any kind of study, scientific study, before it adopted this ordinance. So, Ms. Pruitt is the closest thing I think you have to anything accurate. The... I did go back and look at our Exhibit A. The Silver property is on there; it's the one closest but it's very clearly drawn in and the bubble that extends out from that is from Mr. Silver's property albeit from his house. There was some discussion about a by-right use. It's not, it's not the way... we didn't make it up. That's how the County has, the paradox of how the County has set this thing up. You have a by-right use in any one district that's still there and yet there's all this apparatus that you have to go through to attain

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that. So that's not our characterization, that's how the County set it up. Thank you all for hearing us tonight. I know that these... I know that these issues are contentious. This one's been going on a long time, but I very much appreciate your patience and the civility with which the members of the Board and the members of the public have presented their positions tonight. So, thank you very much and maybe I'll be back in another year.

Mr. Grimes: Alright I appreciate it. Thank you. Do we have any follow-up questions? I know that you, Mr. Apicella wanted to follow-up with Mr. Harvey.

Mr. Apicella: Mr. Harvey, I got a few more questions for you if you don't mind. Sorry. The applicant's submission and comments tonight referred to a Virginia Department of Housing... I'm sorry, Health... regulation as a bases that must be used in determining cemetery setbacks. So, when I read 12VAC5-630-380, it appears to refer to the citing of new wells to existing cemeteries. Additionally, the language that's in our package is Attachment 8, page 3, uses the term minimum standard. So, while it's not clear to me that this regulation even applies to this set of circumstances, I'm just going to generally ask you when a regulation uses the term minimum standard doesn't that allow a locality to have a higher standard?

Mr. Harvey: Mr. Apicella, with regard to the regulations of the location of groundwater wells, that's primarily in the purview of the Virginia Department of Health.

Mr. Apicella: Yeah, I'm sorry, no, I said housing. I misspoke there but my real question is, again, when a state regulation is not a state statute, it specifically mentions a minimum standard. Again, can a locality not establish a standard that's greater than the minimum standard? So, if it's a hundred feet as a minimum standard, again, since the word minimum standard is right there in the regulation, can Stafford not impose a higher standard or threshold in that?

Mr. Harvey: Mr. Apicella, in some regulations, yes. With regard to the location of wells, again, that is something that's regulated by the Department of Health.

Mr. Apicella: Okay. I asked this question before, I'm going to try and ask it a different way. Are there any parcels of land in Stafford that are large enough or otherwise meet the requirements where the setbacks were... these setbacks were put in place for a cemetery use and that cemeteries could, in fact, be placed on those properties?

Mr. Harvey: Mr. Apicella, in review of preparing the ordinance, the Planning Commission had a committee that looked at various things including the studies that were referenced tonight, as well as looked at GIS maps that were generated that looked at parcels under various scenarios of 25, 50, and 100 acres to see if there were multiple properties that could be eligible for cemeteries. And in all three cases there were.

Mr. Apicella: In the hundreds?

Mr. Harvey: In the case of the 25-acre criteria, yes.

Mr. Apicella: Okay. I thought I read somewhere in the neighborhood of 350 or 370, something in that range. If... so, the applicant has requested, at least in the initial application, a hundred percent setback waiver. To me that's pretty significant. It's not 5 feet, it's not 10 feet; in this case it's 900 feet or even if it went to a 700-foot setback versus 900, that's what, 75, 80 percent of the prescribed standard?

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Mr. Harvey: Yes.

Mr. Apicella: So, again, given the extreme request in this case, if the BZA approved the requested waiver, wouldn't we be taking on a legislative role instead of an administrative role and essentially undo the very setbacks that were established to protect public health and safety that were just implemented a few years ago?

Mr. Harvey: Mr. Apicella: You're asking me for an opinion which I think would be the finding of the BZA to make that determination.

Mr. Apicella: Okay, fair point. Thank you.

Mr. Grimes: Any other follow-up questions for staff? So, in this case I'll go ahead and close the public hearing and now bring the matter back to the Board for discussion.

Ms. Brown: Mr. Chairman?

Mr. Grimes: Yes.

Ms. Brown: I'd just like to remind everybody out there, and thank you for coming tonight. The job at the BZA is as Mr. Leming has stated. We are here to rule on a request for a variance and nothing more. I've considered a lot of information for this case. I have a binder that's 4 inches thick and I've looked at it very, very carefully. But, I'm gonna make a motion to deny the applications request for a variance. Simply put, I just don't believe that you meet the criteria as provided by Code Section 15.2 that the strict application of the variance would unreasonably restrict the utilization of the property. I don't believe that the current utilization of the property is unreasonably restricted. Currently, the property is being used for businesses. I'm not sure who's operating them but they are being used for multiple businesses. And I don't believe that you've established an undue hardship. There are numerous other reasonable beneficial uses that you could use on the property. Your reason for requesting a variance is not something that's unique to your property. All property owners who wish to apply for a cemetery would have to comply with the same setbacks of the ordinance. Sorry, I've got my notes I've been making all night here. It appears to me, like Mr. Apicella insinuated, that you are asking for a variance because you don't like one of the county ordinances and I feel that granting the ordinance would be... granting the variance would be contrary to the purpose of the ordinance. The BZA, we don't make ordinance amendments. We don't make changes that would amount to granting a rezoning. Nor does the BZA approve cemeteries. In summary, I just don't think that you qualify.

Mr. Gibbons: Mr. Chairman, I second the motion.

Mr. Grimes: Thank you Mr. Gibbons. Would you like to offer any commentary on that?

Mr. Gibbons: I'll wait till the end.

Mr. Grimes: Thank you. Any other comments from the Board members before I take up this motion for a vote?

Dr. Larson: Mr. Chairman?

Mr. Grimes: Yes sir.

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Dr. Larson: I will be supporting the motion. I find that the... there is not an unreasonable restriction on the utilization of the property without the variance. The geographical features that were cited by the applicant that apply to this property are perennial streams, which is the reason for the setback in the first place. That determines the setback. It's measured from things like perennial streams. It is unclear, I appreciate what everybody said tonight, it's unclear to me that there's a safety hazard. I think there probably would have to be more research done on that. I would be very hesitant under any circumstances to effectively not, I wouldn't say overturn but ignore a county ordinance which is essentially what we're being asked to do. Only apply the state codes and sort of pretend to the county ordinance isn't there. When the county... when the Board of Supervisors has met twice to discuss this and come to the same conclusions, they referred it to the Planning Commission. That strikes me as... the need for this strikes me as legislative, not to be before the BZA. So I'll be supporting the motion.

Mr. Grimes: Any other commentary from the Board members? Mr. Apicella?

Mr. Apicella: Mr. Chairman, back in November the Board asked me to take a deep dive into proposed findings and conclusions. So, as we discuss this and as I reviewed the material I took a shot at it. Not different from my colleagues as they just articulated their concerns, but maybe a little bit more expansive. So, if you'll bear with me. I believe the following findings and conclusions exist in this case. The application and testimony does not demonstrate, based on a preponderance of evidence offered by the applicant, that a sufficient case exists for the Stafford BZA to grant the requested variance for this matter pursuant to Virginia State Code Subsections 15.2-2201 and 15.2-2209, as well as Stafford County's Zoning Ordinance. Specifically, when applying state law, as further informed by relevant Virginia State Supreme Court decisions to the specific factual circumstance of this case, this application does not meet the legal standards for this BZA to grant a variance for the following reasons. First, the strict application of the County's Zoning Ordinance does not unreasonably restrict the utilization of the property. The issue here is not determined on the basis of whether the County's Zoning Ordinance adversely affects the applicant's ability to establish just one particular use where many other uses are also permissible, but rather whether the County's Zoning Ordinance unreasonably restricts any utilization of the property taken as a whole. In this instance, Stafford's Zoning Ordinance still provides over 30 other potential A-1 uses aside from the existing golf driving range and other improved uses already on the property. Two - the application does not demonstrate where the granting of a variance by the BZA will alleviate a hardship due to the physical condition of the property or improvements thereon. There is nothing particularly unusual about the physical conditions or characteristics of this 29-acre parcel to require a variance. As previously noted, there are numerous alternative uses that could occur on the subject parcel and there was insufficient evidence provided to show that the size, shape, or topography of the parcel precludes the establishment of every single one of those uses absent a variance. The application does not address whether the waiver of the setback would be a substantial detriment to the nearby property owners which is required under the controlling statute. We did, however, receive testimony from nearby property owners, as well as other evidence provided prior to and during this hearing, that the establishment of a cemetery in this area would be detrimental to its neighbors. In particular, the citing of a nearby cemetery would likely impact the aesthetic and economic interests of its neighbors, their water quality, as well as the public health and safety of county water users. Four - the application suggests that the established setback standards do not comply with Virginia's well standards. While it's not clear whether those standards apply to the citing of new cemeteries to the extent that those standards do apply to the siting of new private wells after a cemetery is established, those standards are noted as minimum requirements and it is clearly within localities purview to establish more robust standards, and setback standards in particular, than the minimum standards. The setbacks... number five - the setbacks at issue are applicable to the establishment of cemeteries throughout the County and the application does not show how the location of private wells for neighboring homes or perennial waterways is unique with respect to the property in question. Six - because the subject property is not so

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unique compared to other similarly situated properties in the zoning district such that it should be considered for an exemption, the situation of the property concerned is of a general or recurring nature. Consequently, it is reasonably practical for the Board of Supervisors to formulate an amendment to the zoning ordinance to address any concerns including modifying the current setbacks for cemeteries should they wish to do so. Since the situation could be addressed by an amendment to the ordinance, it does not under the statute qualify for a variance. Seven - approving a variance based on these circumstances would be contrary to the purpose of the ordinance which is to protect public health, safety, and welfare. The changes sought by the applicant in this case are clearly - clearly - legislative in nature. The BZA's role in approving or denying a variance is statutorily limited. It is not the BZA's role to analyze the propriety of zoning ordinance provisions, including the bases for setback distances. As an administrative body in variance cases, the BZA's role is to apply the zoning ordinance as currently written. To exceed its authority and grant a de facto legislative action would be impermissible, illegal infringement on the legislative role of the Stafford County Board of Supervisors. In summary, Mr. Chairman and my colleagues, the applicant has not met the statutory requirements for the granting of a variance and the remedy sought from this BZA is outside the scope of our authority.

Mr. Gibbons: Mr. Chairman.

Mr. Grimes: Thank you. Yes sir.

Mr. Gibbons: I will reiterate what you just said here because I think... there's an old saying, we need a town crier and you do a good job. But years ago the forefathers created governing bodies and political subdivisions and with that they gained responsibility to take care of the welfare of the residents. So, this belongs at the Board level, not the BZA. Thank you.

Mr. Grimes: Thank you. So, we have a motion from Ms. Brown to deny the variance application, second by Mr. Gibbons. Ms. Brown, would you like to amend your motion to include the finding of facts that Mr. Apicella laid out?

Ms. Brown: Yes I would. They're very similar to mine.

Mr. Grimes: Excellent. So, we have the motion by Ms. Brown and second by Mr. Gibbons to deny the application for variance. Can I get a vote for all those in favor to deny the application say aye.

Mr. Jenkins: Aye.

Mr. Gibbons: Aye.

Mr. Apicella: Aye.

Mrs. Stefl: Aye.

Dr. Larson: Aye.

Ms. Brown: Aye.

Mr. Grimes: Aye. All those opposed? None opposed; the application is denied for the variance 7-0. Thank you very much. You'll be hearing from the County shortly. Members, we have a few things left to do tonight and I just wanted to ask the quick question, does anybody need a break?

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Several members at once: Yes!

Mr. Grimes: In that case we'll take five.

Meeting recessed at 9:36 p.m.

Meeting reconvened at 9:44 p.m.

UNFINISHED BUSINESS

Mr. Grimes: Alright, so let me start this back up; everyone's here? Excellent. Make sure you talk into your microphones for the next few parts please. Let me find the agenda. Unfinished Business. One was the by-laws. My bad - I was supposed to send them to Andrew. As soon as I saw the messages today, I remembered that.

Ms. Musante: Okay.

Mr. Grimes: So, we need to still do that but I would like to just send him the changes.

Ms. Musante: Okay. We do not have the track changes.

Mr. Grimes: Got it.

Ms. Musante: What we did was take the original document and modified with what was...

Mr. Grimes: I can send you or I can do a comparison between the two and create that document if you'd like.

Ms. Musante: That would be great.

Mr. Grimes: Okay. Let me make a note to myself. And I'll just... since I'm going to do that, I'll just send it directly to Andrew.

Ms. Musante: That's fine.

Mr. Grimes: And for everybody, I was talking a little cryptically there, I apologize. When we last met and we revised the by-laws, we had a discussion right there at the end that we probably should run those by the BZA attorney. And so that's what we're talking about. So, instead of to... to save our funds that we have left from the various cases which actually we have a lot more than I thought.

Ms. Musante: We do.

Mr. Grimes: Which is good. But to conserve the funds I'm just going to send them and just ask him to review the track changes. Maybe, Dr. Larson, you can help me... were those previously reviewed by some council?

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

Mr. Grimes: So, thinking out loud here, should we just have him review the whole thing?

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Dr. Larson: We could.

Mr. Grimes: I mean, I don't think there's much in there. They're our by-laws.

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

Mr. Grimes: Anybody else have any thoughts on that? And I'm reconsidering that now that I saw that we do have more funds left than I thought we did.

Ms. Brown: I'd like to get the whole thing looked at.

Mr. Grimes: Significant more funds than I thought we did.

Mr. Apicella: I would just say that we should stress to him focus on anything that stands out, anything that might cause him concerns. I don't think there's a lot there that would; just to kind of limit our, I don't want to say exposure, but really cost because we really don't know what's going to happen over the next year and we should probably just want to make sure our kitty isn't exhausted because, I mean it is only five or six pages but he exhaustively goes through it, that could really add to the costs...

Mr. Grimes: He could spend a lot of money fast.

Ms. Brown: So he's not gonna look at the whole thing?

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

Mr. Grimes: I could do that. You know, he's been pretty good... he's been pretty good. If we just say just give us a quick cursory review, hit the high points; he's done that pretty well so. I'll try to do that. Okay, great. Any other Unfinished Business?

Ms. Musante: I don't believe so.

ZONING ADMINISTRATOR'S REPORT

Mr. Grimes: Okay. Zoning Administrator's Report. You're early tonight.

Ms. Blackburn: Good evening Board members. I do have one note. I think Melody sent this to you but I wanted to make sure you got it. We were informed on February 15th that the appeal that you all heard concerning, let's see, what was it -- it was for the drive-throughs and restricted access entrances and trip generation rates. It was concerning the clinic up by the hospital.

Mr. Grimes: Right, that wasn't being built?

Ms. Blackburn: Yeah, yeah. They had, you know, applied for a determination. I did the determination. They appealed the determination. You all did not hear the case for lack of standing. And the circuit court also dismissed the case for... with prejudice.

Mr. Grimes: Awesome.

Ms. Blackburn: So, I just wanted to let you all know that they did agree with you.

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Mr. Grimes: That is nice to hear, thank you.

Ms. Blackburn: Yes.

Mr. Grimes: We got a win. Anything else?

Ms. Blackburn: That's it.

Mr. Grimes: Okay. Before we move on to the minutes, do we have cases coming up next month that we know?

Ms. Musante: We do. We have two special exceptions for rural home businesses. One is for weddings and events, and the other is for landscaping company.

ADOPTION OF MINUTES

November 28, 2018

Mr. Grimes: Okay. Weddings and events... always a fun one. Alright, adoption of minutes. I have one or two small changes, one I think it is. Hold on one second. On line 937 it says I actually like the ad and I think that should be a-d-d. And that was... yes, that's... I just want to make sure because we did this two months ago. That's on the November 28 meeting minutes. That's the only change that I have.

Ms. Musante: Were you talking...?

Mr. Grimes: The word "ad" - it's a-d, it should be a-d-d. That was all, it was minor.

Dr. Larson: Mr. Chairman, I have a couple of small ones. On line 1636, after the comma, let the people that are, delete in our and just say present speak. Not sure where the in our came from. Line 1636 after the count. Let the people that are present speak. That should be what's in between the two commas. And then, let me know when you're ready for the next one. Okay, so line 1638, just below it toward the end of the sentence, they can't be heard if, you add we there, defer the case. Okay. And then in the last one is line 2885... 2885, just before the end of the sentence I'll just read the way it should read - Already approved by the Board by consensus. Is my consensus doesn't make any sense. Okay, that's it.

Ms. Brown: Mr. Chairman, I had a couple.

Mr. Grimes: Okay.

Ms. Brown: Um, let me know when you're ready. Okay. Page 23, line 1132. The first word in the sentence is meetings; that should be minutes. I'm sorry, repeat? Okay. Line... I'm sorry... page 23, line 1132, the first word in the sentence is meetings; that should be minutes, not meetings. And then on the very next page, page 24, line 1146, it's in the middle, it says planning commission, their meetings are all posted. Again, that should be minutes, not meetings. And then on page 26, line 1279, it starts out didn't get your paperwork on time; it should be paperwork in on time. Same page, line 1291, at the end of the sentence instead of that inch thing, it should be inch thick. So strike thing and write thick. I'm sorry Melody. On page 27, line 13, it's through the hole punch here, 1316, in the middle of the sentence it says that's ever been a thing we've been asked to do; it should be that's ever been a time where we've been asked to. And page 44, line 2159, the first word is out; it should be down.

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Ms. Musante: Should be what?

Ms. Brown: Down.

Ms. Musante: Down?

Ms. Brown: Yes. Instead of getting turned out because of that, it should be turned down. And one more; page 53, line 2634, at the very end of the sentence it says how to do the fining of fact - I think it should be finding of fact. And that's it. So see I do read.

Mr. Grimes: Any other changes? Okay, do I have a motion to approve the November 28, 2018, meeting minutes as amended?

Ms. Brown: A motion to approve the minutes.

Mr. Grimes: Yes, do I have a second?

Dr. Larson: Second.

Mr. Grimes: Second. All those in favor say aye.

Mr. Gibbons: Aye.

Mr. Apicella: Aye.

Mrs. Stefl: Aye.

Dr. Larson: Aye.

Ms. Brown: Aye.

Mr. Grimes: Aye. Done. Next one, 2019 meeting calendar. We have the proposed calendar in front of us which are already two in.

OTHER BUSINESS

- 2019 Meeting Calendar

Mr. Apicella: Mr. Chairman, the only date that we... that I think we definitely want to talk about is November 26. That's two days before Thanksgiving. I don't know about other folks, sometimes I take the whole week off. But that's just one person. So I think Thanksgiving falls on November 28th this year?

Ms. Brown: It was, I saw that. It was two days before.

Mr. Grimes: So, Melody, what are our other choices for November? Should we move to the 21st or the 19th?

Mr. Apicella: Do we know when the Board has their meetings in November?

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Ms. Musante: Do they have two meetings?

Mr. Grimes: Does anybody have their calendar up on the website?

Ms. Musante: The 5th and the 19th are the Board meetings... are the Board dates - we think. We could do December... we could do a December 10th.

Mrs. Stefl: When does the County do that celebration? Is it on Tuesday nights?

Ms. Musante: I don't know because we weren't invited to that this year, so I don't remember. I think it was a Tuesday or Wednesday night I'm pretty sure.

Ms. Brown: I can look on my calendar here.

Mr. Apicella: I was hoping to do the 19th.

Mr. Grimes: Well, we could still do the 19th and meet in the ABC, right?

Ms. Musante: Yes.

Mr. Apicella: Stacie doesn't like that.

Mr. Grimes: Yeah, I know. We'll do the 19th and hope we don't have a case? I mean, I know it's tough on you Stacie.

Ms. Brown: Okay, the Christmas party this year was on a Tuesday. It was on the 4th.

Mrs. Stefl: Yes, it's always like that first...

Ms. Musante: First week.

Mr. Grimes: What's happening on the 17th of... well, no, I don't want to go that far in. The 3rd of December?

Ms. Musante: That's a Board meeting.

Mr. Grimes: And on either side of that, booking it on the 4th or the 2nd?

Ms. Brown: Do we have to have our meetings on a Tuesday?

Ms. Musante: No.

Mr. Grimes: That's why I was looking at Monday the 2nd or Wednesday the 4th.

Ms. Brown: I'd rather go with the Wednesday the 4th but.

Ms. Musante: December 4th would work.

Mr. Grimes: Everybody good? Let's do December 4th on that then. Right. And no December meeting just like we've done in the past.

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Ms. Brown: So actually there'll be a December 4th meeting and no November meeting.

Mr. Grimes: Right. Skipping December sort of. Alright, so that's all good. We don't need anything else on that. Next one is the Annual Report. Everybody has a copy of this? Does anybody have any comments and/or changes to anything noted in the Annual Report?

- 2018 Annual Report

Ms. Musante: Mr. Grimes, on page 5 of 5, Susan found an error on A18-03. So I'm gonna have to revise that once I get back in the office and get the exact language.

Mr. Grimes: Okay.

Ms. Musante: And it was it was an appeal and I had for rural home business so I missed taking that section of it out. So I'll have to put that language in. But it was the drive-throughs and access appeal.

Mr. Apicella: Since we're on that page, where it says special exception approved on the last one. Do we have a number? Just to be for consistency.

Ms. Musante: I can check that. I'll just add it.

Mr. Gibbons: Mr. Chairman, can I add a request before we get in the election thing?

Mr. Grimes: Sure.

Mr. Gibbons: We should send a resolution to the Board to give Ernie a proclamation.

Mr. Grimes: Yeah, we are working on that. We've run into a bit of a challenge with that. We were also going to do the same for Mr. Kim. But, you know, definitely Ernie because of his longevity on the Board. We're just working out some logistic issues with the County, so hopefully we'll have something next month?

Ms. Musante: Hopefully.

Mr. Grimes: Maybe?

Ms. Musante: Mm-hmm.

Mr. Grimes: So that's the plan. Absolutely.

Mr. Apicella: And, Mr. Chairman, on page 4 where it talks about by-laws changes, did we actually make those changes or did we propose those changes?

Mr. Grimes: They are proposed. I should have had them done because I...

Mr. Apicella: No, no, no, I'm just... because right now it says made so I just wanted to be sure...

Mr. Grimes: So, what I was going to offer, since we have to make these changes anyway, can we hold off on approving the Annual Report till next meeting?

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Ms. Musante: Sure.

Mr. Grimes: Let's just do that and then maybe I'll have the by-laws approved.

Ms. Musante: Perfect.

Mr. Grimes: Maybe we move that up early in the meeting next time.

Ms. Musante: Okay.

Mr. Grimes: We just get the by-laws out of the way, get them approved, then we can review this and that would be approved also. So, we'll just defer this to the next meeting. And you'll make your changes that you need to make. Wonderful.

Ms. Brown: Mr. Chairman?

Mr. Grimes: Yes.

Ms. Brown: Before we move on, in that last section about asking for anything new, I did want to ask something.

Mr. Grimes: Yes.

Ms. Brown: There's been some changes to the home businesses and the home occupations, and it might be good if we got briefed on those on how that's all working. Melody, could you help us with that next month?

Ms. Musante: Yes.

Ms. Brown: On what's gonna require a special exception, what's no longer gonna require one. Just kind of give us a little training on what happened.

Ms. Musante: Sure.

Ms. Brown: Is that okay with you guys? Because I'm not really clear on what we need to...

Mr. Grimes: More training is always good.

Ms. Brown: Well, it's just that they changed it. So, I want to make sure I'm familiar with all the new rules.

Ms. Musante: I'll go ahead and send you all the copy of the new ordinance so you can be reading it and see the changes.

Ms. Brown: It's already approved and it's done.

Ms. Musante: It's approved, yes.

Mr. Apicella: And you had some sheets maybe that also had that information?

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Ms. Musante: Yes.

Mr. Apicella: That might be good, too.

Ms. Musante: Mm-hmm, we have those.

Mr. Apicella: And just to let everybody know, we're also looking at changes to the A-1 zoning district. I don't know, is it appropriate for me to ask Mr. Harvey where that stands since he is here? Okay.

Ms. Blackburn: It's going back to the CEDC with some clarifications on things and hopefully they will then, and that goes for the first meeting in March, and then hopefully they will vote to send it on to the Board for them then to refer back to the Planning Commission again and go through the process.

Ms. Brown: It has to go up and back again?

Ms. Blackburn: Yes, because it was work done by committee and the Planning Commission did review the work done by the committee, but it was the direction of the Board that it needed to go back to the Board before anything more was done about it as far as a public hearing by the Planning Commission.

Ms. Brown: Oh.

Mr. Apicella: Mr. Chairman, one more thing. I apologize. Maybe under new business for the next meeting or the meeting following that, at our last meeting way back when, we talked about the changes that were being made to the CUP. Certain standards were being modified and we talked about how that might also need to be applied to special exceptions, the wording tweaks. That doesn't ring a bell with you? I've kind of raised it, I'm not sure if it's the willful compliance piece or something else.

Ms. Blackburn: Yeah, they were changing the code to eliminate willful compliance.

Mr. Apicella: Yeah, so we might need to do the same for consistency for special exceptions.

Ms. Blackburn: Yes, we can check to make sure that we're... that the statutes allow us...

Mr. Apicella: So, I mean, I'm not sure if this necessarily needs to be referred by the BZA but it might be helpful since we're the ones who basically execute it.

Ms. Blackburn: Right, right. We can ask if it's in the same ballpark.

Mrs. Stefl: I have a matter.

Mr. Grimes: Yes.

Mrs. Stefl: I had written our Chairman, I guess it was just too late to get on the agenda, and I didn't want to include all of you unless we were in a public forum and we could talk about it a little bit. But, I know this is probably bringing up a sore subject but I recently, I mean, with all the stacks of paper now that we get, my personal printer charges me. HP has done this new program where you can only buy like 50 pages a month and then you're charged. It's supposed to be a supposed to helping the ink but, you know, we're being asked to do a lot of work outside of just a lot of volunteering here. I know a lot of us do due diligence and, you know, we go out to our... out to the sites. I'd like to maybe get just sort of a temperature from the Board about maybe going back to the Board of Supervisors and looking into

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some type of compensation, be it per meeting, monthly. You know, I'm not saying that we're on the caliber of the Planning Commission who does get some type of a stipend but sometimes these monthly meetings do take quite a bit of work and a lot of time probably away from our personal life and our professional life.

Mr. Gibbons: The state code says no.

Mrs. Stefl: Well, other counties and other jurisdictions do.

Mr. Gibbons: Compensation for like supplies and stuff, they do that.

Mrs. Stefl: Yeah, and I mean staff has been really great when we have had supplemental information like I came and got I think something from Melody but then we got you know information from the attorney that, you know, I printed from home and things like that that just... it's all these things that are just building up and up and up and I don't know, you know, our new member here, you know, he probably sees that it's a lot of work sometimes, these meetings so. I don't... I don't know... well I don't know how the other counties then and other jurisdictions get around if you're saying it's state code.

Mr. Gibbons: You can get a compensation for mileage, you can get a compensation for equipment and paper and ink. That's not paid, that's just compensation for services rendered.

Mrs. Stefl: But like Arlington does it per meeting.

Ms. Brown: Yeah, I have researched that too.

Mrs. Stefl: Yeah.

Ms. Brown: And other counties do and it is in code that we can provide that. I don't think that our Board has the stomach for it. However, Susan, maybe you could help me on this. There was talk at one time about increasing our duties. Has that gone anywhere? Like for signage and things like? Sign ordinances...

Mr. Gibbons: Get Bob Thomas to change the state code.

Ms. Brown: There was some talk among the Board of Supervisors at some of the meetings; I don't know if it was CEDC... I don't remember what committee it was... about possibly handing over sign packages to the BZA.

Ms. Blackburn: Oh, if there was discussion of that, it would have been in the ordinances... that that would have been done. And we still have it as a conditional use permit within the sign ordinance. So that has not been changed. I think there may have been discussion because you all have the power given by the state code that you can put time limits on your special exceptions. The Board of Supervisors does not have... has not been granted that authority. When they approve a conditional use permit or they can approve a rezoning, it's a legislative act. Even if they were to do special exceptions, it is still a legislative act. And that stays with the land in perpetuity. But the Board of Zoning Appeals is allowed to put time limits on stuff. So, there may have been some discussion that well, do we want things that potentially don't get to stay forever on the piece of property but there's only been discussion of some of the things in the A-1 uses that we have changed or proposed to be changed to be a special exception. But other than that, I don't know of anything else.

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Ms. Brown: It came out of the sign code meetings that we were having?

Ms. Blackburn: Oh, it could have been, yeah. No, but nothing more has been done...

Ms. Brown: And there was something else that I heard we might get. I don't remember what it was.

Mrs. Stefl: Well, I mean, if I'm in the minority, it's not the first time, it won't be the last so.

Mr. Grimes: Well, again, just to let folks know that maybe weren't here before, I actually sent a letter two years ago?

Ms. Musante: Yes.

Mr. Grimes: Two years ago to the Board of Supervisors requesting a stipend for all the Board members. And basically they never formally got back to me. They got word back to me through Mr. Gibbons actually that there was no appetite to do anything like that. I agree with Heather, if we could... at one point there was an allowable reimbursement and then that disappeared or somebody was denied. I can't remember what it was but...

Ms. Brown: How long ago was that? Do we remember? Was it this Board that we have now or was it a different Board?

Mrs. Stefl: No, I think it was our previous Board of Supervisors.

Mr. Grimes: Yeah, it was like two years ago.

Mrs. Stefl: Yeah.

Mr. Grimes: So, I mean...

Ms. Brown: It might be worth trying with a different Board.

Mr. Grimes: The letter's free to send, right? The only thing they can do is say no. And we're already getting zero so.

Mrs. Stefl: I mean, I almost feel, I hate to use the term, but we're almost turning into like Planning Commissioner lite, you know? In the amount of research, the amount of time, the amount of stuff that we do...

Mr. Grimes: Well, and the types of cases we're seeing.

Mrs. Stefl: Yeah. And the minutia's that we have to get into that, you know, unlike other Boards, you know, who don't... I don't know... I mean, I don't want to downplay other Boards, I'm sure they work just as hard and do just as much work. But it's just I can only... my personal privilege here is I just see the amount of time it's taking and costs and things like that so. Alright, thank you Mr. Chairman.

Mr. Grimes: Alright. So, thank you Mrs. Stefl. We'll go on to the Elections of Officers. Can I get a nomination for Chairman.

ELECTION OF OFFICERS

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A. Election of Chairman

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

Mr. Gibbons: Second.

Mr. Grimes: Okay.

Ms. Brown: I'll second that.

Mr. Grimes: Well, I get two second that already. Anybody else?

Mr. Apicella: I don't think you actually need a second for nominations.

Mr. Grimes: No. The way the nominations work is I take all the nominations, we take them in order, per our by-laws and code, and then we vote on the names in order and the first person to get that majority gets the seat. So, just everybody knows how the rules kind of work. So, anybody else other than Mr. Larson? So, make this quick...

Mr. Apicella: Dr. Larson, just for protocol sake.

Mr. Grimes: Dr. Larson, sorry. So, all those in favor of electing Dr. Larson to Chair for the BZA for the upcoming year say aye.

Mr. Jenkins: Aye.

Mr. Gibbons: Aye.

Mr. Apicella: Aye.

Mrs. Stefl: Aye.

Dr. Larson: Aye.

Ms. Brown: Aye.

Mr. Grimes: Aye. I think that's unanimous. Any against? Seeing none, 7-0. Nominations for Vice Chair?

B. Election of Vice-Chairman

Dr. Larson: Mr. Chairman, I'd like to nominate Mr. Apicella for Vice Chair.

Mr. Grimes: Mr. Apicella; anybody else? Hearing none, all those in favor for Mr. Apicella as Vice Chair for the upcoming BZA say aye.

Mr. Jenkins: Aye.

Mr. Gibbons: Aye.

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Mr. Apicella: Aye.

Mrs. Stefl: Aye.

Dr. Larson: Aye.

Mr. Grimes: Aye. Those opposed?

Ms. Brown: No. And it's not that I have anything personal, Mr. Apicella, I just... I'm going back to what the Board of Supervisors again... we are the only Board in Stafford County that doesn't have term limits on our officer positions; the School Board, the Board of Supervisors, and all the Boards and Commissions underneath the Board of Supervisors, except for us. I understand state code says we don't have to play by those rules. I just think it's a good idea that we should. I think we need to train some new people. We've had two people leave since our last meeting and now we're kind of down on training and I just think we should. So, I'm not voting against you because I don't like you, Mr. Apicella, I do. But I just... I believe in these term limits, so I'm gonna vote no.

Mr. Grimes: Alright. So, moving on to Secretary; nominations for secretary.

C. Election of Secretary

Mr. Apicella: I'd like to nominate Mrs. Stefl.

Mr. Grimes: Mrs. Stefl. Anyone else? Hearing none, seeing none, all those in favor of Mrs. Stefl for Secretary say aye.

Mr. Jenkins: Aye.

Mr. Gibbons: Aye.

Mr. Apicella: Aye.

Mrs. Stefl: Aye.

Dr. Larson: Aye.

Ms. Brown: Aye.

Mr. Grimes: Aye. Those opposed? Hearing none, done, passed. Do we have a motion to adjourn?

ADJOURNMENT

Mrs. Stefl: So moved.

Mr. Grimes: Second?

Ms. Brown: Second.

Mr. Grimes: All in favor say aye.

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Mr. Jenkins: Aye.

Mr. Gibbons: Aye.

Mr. Apicella: Aye.

Mrs. Stefl: Aye.

Dr. Larson: Aye.

Ms. Brown: Aye.

Mr. Grimes: Aye. Thank you. Good night everyone. Happy New Year! Thank you all.

With no further business to discuss, the meeting adjourned at 10:13 p.m.