

**STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES**  
**June 25, 2019**

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) of Wednesday, June 25, 2019, was called to order with the determination of a quorum at 7:01 p.m. by Chairman Dean Larson in the Board of Supervisors Chambers of the George L. Gordon, Jr., Government Center.

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

MEMBERS ABSENT: Jeffrey Spinnanger

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

DECLARATIONS OF DISQUALIFICATION

Dr. Larson: Good evening ladies and gentlemen and welcome to the...this meeting of the Stafford County Board of Zoning Appeals. Is Susan Blackburn around here?

Ms. Musante: She had to run up to the office for a second.

Dr. Larson: Okay, we'll come back to that.

Ms. Musante: Okay.

Dr. Larson: Okay, so 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, 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. And the second will be a hearing on 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. And hear and decide on requests for special exceptions where the zoning ordinance allows for special exceptions. The Board consists of seven regular members and two alternate members. An alternate member may be called to participate when a regular members unable to hear a case. Let the record show that we have seven members seated at the dais, and one alternate, Mr. Bob Gibbons. And let the record also show that representing the County tonight, our Zoning Administrator Susan Blackburn, Melody Musante, our Deputy Zoning Administrator, Stacie Stinnette, the Associate Administrator, and Melody Musante, the Deputy Zoning Administrator. Before I go any further I think there's a little business we want to take care of. It's very important. Susan Blackburn, would you please stand. Okay, I'll speak into the microphone. Susan is our Zoning Administrator as I introduced. She's been doing this for seven and a half years. Okay, and she's been doing a fantastic job. We really appreciate Susan. And we want to wish her well. She's going to retire basically this month correct?

Ms. Blackburn: Friday.

Dr. Larson: Friday, so none too soon. So please accept this token of our appreciation and good luck to you.

Ms. Blackburn: Thank you.

***Board of Zoning Appeals Minutes***  
***June 25, 2019***

Dr. Larson: The hearings will be conducted in the following order. The Chair will ask the staff to read the case and members of the Board may ask questions of the staff. The Chair will then ask the applicant or the representative to come forward and state their name and address and present their case to the Board. The presentations 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 jurisdiction in standing for appeals cases. 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 three minute time limit for all individual speakers and a five 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 three minutes to respond and provide closing remarks. We ask that each speaker present... I'm sorry; present their views directly to the Board and not to the applicant or other members of the Board. We require applicant, speakers, presenters and the audience to act in a level of decorum and respect appropriate to a courtroom setting. After the applicants final response the Chair will close the public hearing. And after the public hearing has been closed there shall be no further public comments. The Board shall review the evidence presented and the Chair shall seek a motion. After discussion of the motion the Chair shall call for a vote. In any ... 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 applicants' 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 deferral at the Board's option on behalf of the applicant to allow the Board time to consider the additional material. Members of the public and or staff may also submit relevant material during the hearing. The applicant should be aware that we have seven members voting tonight. You must have four affirmative votes to approve an application. You may... if you do not think you can get a fair hearing tonight because of the number of members present you may request a deferral. And you can refer that ... you can defer that only one time in a 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 or substantially ... a substantially similar application during the previous twelve months. Any person or persons who do not agree with a decision of this Board shall have 30 days to petition the Stafford County Circuit Court to review our decision. Also be aware that the Board will not hear any denied application for a variance or special exception that is substantially the same request, for at least one year from the date of our decision. Now I ask that 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 the Board shall be administered an oath. Therefore I ask that anyone who wishes to speak tonight stand and raise your right hand. Do you hereby swear or affirm that all testimony before this Board shall be nothing but the truth.

*Voices from the audience: I do.*

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

Ms. Musante: There are no changes.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Mr. Larson: 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: Yes, Mr. Chairman.

Dr. Larson: Go ahead.

Ms. Brown: I just wanted to state that I drove by the property at 104 Hoyt Street yesterday afternoon around 1:30 - 2 o'clock. I did not speak with anyone. I did note that the public hearing sign was down, though. And the second thing I wanted to say was on Sunday evening on my way back from dropping my daughter at Virginia Tech, I did an impromptu stop by the Liberty Hall Estates to look at the cemetery. My husband was with me. I noted that the public hearing sign was down so I got out and my husband replanted it. I also ran into a nice woman walking along the street who saw what I was doing and asked who I was. She seemed to be interested in the public hearing so I invited her to come and bring any information she may have. She said she might. I also told her I could not comment on the case and other than that I spoke to no one.

Dr. Larson: Thank you. Does any other member of the Board wish to make any declaration?

Mr. Jenkins: Sir, I as well have driven by both of the properties and spoke with no one.

Dr. Larson: I drove by the Hoyt Street property, didn't speak with anyone either. The sign was down when I was there, too, so I put it back in the ground. Okay, thank you. I'll now ask the secretary to read the first case.

**PUBLIC HEARINGS**

1. A19-01/19152699; H. Clark Leming agent for Hamid Nejati - Per Stafford County Code, Sec. 28-349, "Appeals to board generally," the applicant is appealing a notice of violation dated February 21, 2019, regarding noncompliance with Stafford County Code, Sec. 28-35, Table 3.1, "District uses and standards," for operating a club/organization on Tax Map Parcel No. 54D-3-1-6. The property is zoned R-1, Suburban Residential, and located at 104 Hoyt Street.

Ms. Musante: A1901-19152699, H. Clarke Leming, agent for Hamid Nejati. Per Stafford County Code Section 28-349, Appeals to the Board generally. The applicant is appealing a Notice of Violation dated February 21, 2019 regarding noncompliance with Stafford County Code Section 28-35, table 3.1, District uses and standards for operating a club organization on Tax Map Parcel Number 54D-3-1-6. The property is zoned R-1, Suburban Residential and located at 104 Hoyt Street. You have the application, owner's consent form, a copy of the violation notice dated February 19, 2019, photos of the property, the 2008 Board package, 2008 Reclassification, 1981 Reclassification, definition of community use, Stafford County Code Section 28-349, Stafford County Code Section 28-295, Virginia Code 15.2-2286, copy of the tax record, and copy of the public notice. The subject property consisting of two lots, lots 5 and 6, block 1 in the Brookfield Subdivision. The two lots have been combined into one tax... parcel... tax parcel number for tax record purposes. There are three structures on the property one is a single-family dwelling and two accessory structures in the rear of the property. The dwelling and the larger accessory structure are non-conforming for setback. According to the applicant the larger accessory structure is being used for wrestling instruction and the dwelling is being used as an office. The use of the other accessory structure is not mentioned. The property was zoned to B-2, General Business prior to 1978. The Comprehensive Rezoning of the county in 1978 rezoned the property to R-1, Suburban Residential. On November 17, 1981 the Board of Supervisors approved Ordinance O81-77

which rezoned the lots to B-1, Convenience Commercial. This rezoning was to allow the property owner to operate and upholstery shop in the rear of the property. On August 19, 2008 the Stafford County Board of Supervisors adopted ordinance O08-53 which rezoned the property back R-1, Suburban Residential. A violation notice was issued on February 21, 2019 for using an accessory structure for a club organization on an R-1, Suburban Residential zoned property. As stated previously there are three structures on the property a single-family dwelling and two accessory structures. Their property was rezoned to B-1 in order to allow for the largest accessory structure in the rear to be used as an upholstery shop. In 2008 the property was rezoned back to R-1, Suburban Residential, for tax purposes to lower the tax assessment on the property. According to the owner at the time the upholstery shop had not been operational since 1992 and the property owner wanted to lessen the tax bill. The owner did retain a single-family dwelling as their home. In November 2018 the property was acquired by the current owner. Thereafter, he leased the property to the current tenant Powerhouse Wrestling Academy. A complaint was received on February 21, 2019 stating the street was blocked by cars associated with patrons of Powerhouse Wrestling Staff conducted a site visit and documented the observations. It was observed that a wrestling training operation was being conducted in the large accessory structure on the rear of the property. The applicant Hamid Nejati represented by Leming and Healy P.C. is appealing the Notice of Violation received February 27, 2019. The Notice of Violation states that the accessory dwelling is being leased for a club organization in an R-1 zoning district and is not an approved use in that district, the use as a commercial use in a residential district. The Notice of Violation also included the corrective measures that the club, Powerhouse Wrestling Academy, must vacate the accessory structure within 30 days and the tenants in the dwelling must complete an affidavit describing their relationship in terms of a family. In the applicant's justification for the appeal the uses conducted on the property are described and why the use is permitted in the R-1 zoning district. The uses described are a wrestling club consisting of 20 to 25 regularly participating members, a facility for pre-terminates weigh-ins for local high school wrestling teams and a training facility for martial arts. The justification also states the dwelling is used as an office for Powerhouse Wrestling and has a waiting room for those waiting to pick up participants and are participants waiting to train. The justification states the Powerhouse Wrestling Academy is allowed because the applicant has determined that it is a community use per the definition in the Stafford Zoning Ordinance. The justification adds a swimming pool is open to the community featuring lessons instruction and competition. A swimming pool could be constructed on the property and would constitute a community use under the ordinance. According to the applicant, therefore the use is a community club not in public ownership used by wrestlers and others for training; as such it is a by-right use in the R-1 Zoning District. The Notice of Violation cited the property owner for allowing a club organization to operate on the premises and that it is a commercial use not permitted in the R-1 Zoning District. The term club is also used by the applicant in the justification. Therefore agreement on that term has been made. Interpreting the club to be a community used which is permitted within the R-1 Zoning District is outside the authority of the applicant. The determination of permitted uses is within the authority of the Zoning Administrator pursuant to Virginia Code 18.2-2286(a)(4) and County Code Section 28-295. Determining if a use is permitted on a property can be accomplished by submitting a request to the Zoning Administrator for a determination of use or by applying for a certificate of occupancy, which requires the use in any structures related to the use be reviewed for compliance with the applicable county requirements. Staff has not received a request for a determination of this use or reviewed an application for a certificate of occupancy. Therefore the use of the property for a club organization is a commercial use of the property and is in violation of Section 28-35, Table 3.1 District Uses in Standards. As a result, the corrective measure of vacating the property is required.

Dr. Larson: Thank you. Are there any questions for staff?

***Board of Zoning Appeals Minutes  
June 25, 2019***

Mr. Apicella: Mr. Chairman, before we go to questions I thought our new protocol is to determine whether or not the applicant has standing.

Dr. Larson: I have in my notes, it's after the question... questions for staff.

Mr. Apicella: Okay.

Dr. Larson: Are there any questions for staff?

Ms. Brown: I have none at this time.

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

Dr. Larson: Very good.

Mr. Apicella: Just to clarify, this is or is not a property owned or operated by HOA, if there is an HOA.

Ms. Musante: We are not aware of an HOA.

Mr. Apicella: Does anyone else in the subdivision operate a similar activity.

Ms. Musante: Not that we are aware of.

Mr. Apicella: How does the county define a commercial use or activity?

Ms. Musante: A commercial use any activity carried out for pecuniary gain.

Mr. Apicella: And how does the county define an accessory use.

Ms. Musante: A use, building or structure that is subordinate an area extent and purpose to a principal use or structure.

Mr. Apicella: Does the county have a definition for a business? And if not how would identify a business?

Ms. Musante: We do not have a definition for business. We refer to the Webster's dictionary.

Mr. Apicella: So can you provide us what that definition would be.

Ms. Musante: You do have a copy of that as a handout for this evening. And it says a usually commercial or mercantile activity engaged in as a means of livelihood. A commercial or sometimes an industrial enterprise, such enterprise as the business district dealings or transactions especially of an economic nature. Do you mean to keep going?

Mr. Apicella: I think that works.

Ms. Musante: Okay.

Mr. Apicella: Is the subject property leased and is there a house on it.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Ms. Musante: We are assuming it's leased by the Powerhouse Academy and it does have a house on it.

Mr. Apicella: But the academy, they're not the owners of the parcel.

Ms. Musante: No they are not.

Mr. Apicella: And since there's a house on it the activity that we're here to talk about is that and where it's occurring is that considered an accessory use?

Ms. Musante: Yes.

Mr. Apicella: Do we know if the lessee charges for the services they provide.

Ms. Musante: Yes.

Mr. Apicella: And does the lessee have, for lack of a better term, a business license and/or has an LLC or some similar type of instrument that it has applied for and has been issued by the state or by the county?

Ms. Musante: We do not know that.

Mr. Apicella: Do all the club participants live in the subdivision?

Ms. Musante: I cannot answer that.

Mr. Apicella: Where... I thought I saw that a good number of the participants actually went to school in Spotsy, so I'm assuming that some of those folks actually live in Spotsy, but I am not clear. Maybe the applicant can provide further insight into that. Where are the participants parking? Do we know?

Ms. Blackburn: According to the photos that we received and the complaint concerning the activities, they are parking in... on the property. There are some parking spots there, but also on the street.

Mr. Apicella: Okay, we do have definitions for home business and home occupation. This activity would not fall under either of those definitions. In terms of community uses, as the county defines it, and I think as we saw in our application, is it normal for a homeowner to operate a community pool, a tennis court or a similar facility in their backyard for the use of and benefit of their entire neighborhood?

Ms. Musante: No.

Mr. Apicella: You indicated in the staff report that the applicant could have, so I assume they have not, but you could further elaborate, could have sought a zoning determination to determine whether this was in fact a community use under the county's definition. That that has not yet occurred?

Ms. Musante: We have not received an application for determination, nor have we received an application for a certificate of occupancy.

Mr. Apicella: And I saw through the staff report the property has been rezoned several times, back and forth from a business use to a residential uses. Is that correct?

Ms. Musante: That is correct.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Mr. Apicella: And so one of the relief valves the applicant could pursue at any point in time is a rezoning.

Ms. Musante: Correct.

Mr. Apicella: Okay, that's it Mr. Chairman.

Dr. Larson: I have one question. I don't see a definition in the code defining public ownership. Does staff have an understanding of what that term means? It's important, it's part of the community use definition. Okay, I will continue then. Any other questions for staff? Go ahead Adela.

Ms. Bertoldi: I think she was first.

Dr. Larson: Go ahead Heather.

Mrs. Stefl: Does staff... one of the things that was given to us was a R-1, Suburban Residential definition. I guess this is relevant. And so one of the things in there for a Conditional Use Permit is a recreational facility. Does staff have a definition for that? So, if not I had a Webster's dictionary one for it too.

Ms. Musante: Recreational facility, an enclosed indoor area used by the general public for recreational purposes. Recreational facilities may include but are not limited to stadiums, arenas, skating rinks, video game facilities or senior citizen recreational facilities.

Mrs. Stefl: Okay. And then also you said that this probably started with a complaint. Was this a neighbor complaint or a former member complaint or something without divulging anonymity or anything.

Ms. Musante: I'm not aware of who the complainant was.

Mrs. Stefl: Okay, that you.

Dr. Larson: Any other question?

Ms. Bertoldi: Yes, just to answer Steven's question and then I do have a question to follow up on it. Powerhouse is not registered at all as a business or DBA with the Virginia Corporation Commission. I looked it up and they are nowhere to be found. So that leads me to ask the question to staff is, who is paying the taxes on the property and at what rate is it being paid? Is it being paid as a residence or as business?

Ms. Musante: They are... their property is zoned residential. So without having somebody here from the Commissioner's Office I can actually not speak for them. But with it being a residential property, they would be at a residential tax rate.

Dr. Larson: Other questions for staff? Were we able to find anything on that, something about public ownership?

Ms. Musante: The only thing that we have in the Zoning Ordinance is public area, which states any public place, public right-of-way, any parking area or right-of-way open to the use by the general public

***Board of Zoning Appeals Minutes  
June 25, 2019***

or any navigable body of water. We don't have a... and we have public facilities, but that's it. We don't have public ownership.

Dr. Larson: So in that case public means the general public.

Ms. Musante: General Public.

Dr. Larson: Okay, I mean I could see where it might be government vs. public. I could see where it might be well and in finance it means something totally different, public versus private.

Ms. Musante: Public facilities are public infrastructure typically supplied by a governmental organization for general public use including but not limited to streets, highways, airports, parks, schools owned and operated by Stafford County or the Commonwealth. Public parking lots, police facilities, corrections, and fire protective facilities.

Dr. Larson: Could you repeat that please, just the first part would be good.

Ms. Musante: Public facilities, public infrastructure typically supplied by a governmental organization for general public use.

Dr. Larson: Okay. Thank you.

Ms. Brown: Mr. Chairman.

Dr. Larson: Go ahead.

Ms. Brown: I do have a question before you close out.

Dr. Larson: Go ahead. That's uh... I'm finished.

Ms. Brown: Okay, um maybe I missed this I just want to just be clear for myself. Is Hoyt Street, is that a state maintained road?

Ms. Musante: As far as we know yes.

Ms. Brown: Okay, thank you.

Dr. Larson: Are there any more questions for staff? Okay, let's take a look at jurisdiction is standing. Does anybody any comments on jurisdiction?

Mr. Apicella: Mr. Chairman I see from the staff report that the owner, and I apologize if I'm not pronouncing the name right, is Hamid Nejati. And since I believe this individual is the applicant and is the property owner, I think therefore they do have standing in this case to appeal the notice of violation.

Dr. Larson: Does anybody disagree with the standing question? Okay. And I think jurisdiction is obvious. I mean we're responding to appeal to a Zoning Administrator's decision that's in the law. So, I think that's very clear.

Mr. Apicella: Do we need to take a formal vote on that or we just don't have consensus.



Dr. Larson: I don't think so, just by consensus is fine, I think. Okay, so we find we have both jurisdiction and standing satisfied. Will the applicant or his or her representative please come forward to present their case.

Ms. Karnes: Mr. Chairman, members of the BZA and staff. My name is Debrarae Karnes. I worked for Clark Leming, and I am an attorney and a land use planner. Just as an aside, I ask staff to provide a chair because my hip is going bad and so if I sit down it's not out of any disrespect it's... I'm losing stamina. So I'm here to present the case involving the wrestling training center which is both a club and a community use. The thrust of this case, I can summarize it. I think there is a real due process issue here and I'm going to attempt to define due process very broadly, which I understand to be that the applicant has a right to be told what the problem is in clear language. When I look at the definition of community use, it clearly says can be done by a private owner. It clearly is listed as a by-right use in the R-1 district and by the way when you look at the definition, in the definition section of the Zoning Ordinance they also define non-residential uses. The staff implies this is a non-residential use, a commercial use, I would say is pretty much the same thing. But when you look at the Zoning Ordinance non-residential uses are pretty much everything except dwellings and community uses. So community use if that's what we have here is residential. The staff did a good job in summarizing the uses on the site, wrestling training for 20 to 25 wrestlers, martial arts training weigh-ins. There's also an implication that the house at the front of the site is used for residential occupancy. It is not. It's used for office for ... there is a little mat in there for very young wrestlers and for parents waiting for their children. If there is ever suspicion of residential occupancy, the applicant is willing to take all actions to assure the county there will be no residential occupancy of that house. There's been several questions posed. Someone asked whether there was an HOA, there's not. Someone asked if the house was leased, Powerhouse controls both the house and the accessory building. Now the staff report doesn't really give us any guidance. If staff believes this is not a community use, they don't tell us where the bright line is. You know, what would be a community use, what would it not be? And there is nothing in the table 3.1, list of uses that says subject to the determination of the Zoning Administrator. I will tell you that Clark Leming, when he tried to figure this out initially, made multiple calls to the county to ask what this could be. And he didn't get any satisfaction. No one mentioned zoning determination. No one mentioned occupancy permit. I started asking about it when I found out I was going to be doing this at the last minute. And I went out to the site notice that there were parking spaces, but the parking spaces weren't striped. And one part of an occupancy permit is they tell you how many parking spaces you need and they usually want the parking spaces striped. The applicant tells me no one ever brought this up before issuing the violation, and I submit to you that this is not... the county really doesn't intend to issue a violation that it's an illegal commercial use. They want to submit a violation that the applicant didn't get either a zoning determination or an occupancy permit. But that would be much clearer communication and allow the applicant to make a decision on how to proceed. And how he could give the wrestler's notice because they've been calling me in and saying what if we're turned down. Where do we go when do we have to go, that kind of thing. So we are here to submit that under the definition of the Zoning Ordinance which is all any citizen has to rely on. This is a community use. A recreational use conducted by the property owner or homeowner or some similar membership organization. Wrestling meets that requirement. It's going to have to meet occupancy requirements certainly. Mr. Chairman I need guidance, I was going to call up one citizen in the audience to testify on a small point. Would you rather have me do that now or have him come up during citizens' time?

Dr. Larson: Whichever way you prefer.

Ms. Karnes: Okay, I think I'm going to bring him up now and it's my understanding that what he's going to do is testify that he lives in the neighborhood, that he sees no adverse impact from this use. He's a

***Board of Zoning Appeals Minutes  
June 25, 2019***

user of this use and there is no impact at this time to traffic. And I cannot pronounce his last name I'm sure correctly but Jeremiah, are you still here?

Dr. Larson: Okay, what we'll do is stop your time now, if we can and time the gentlemen's time separately and then come back.

Ms. Karnes: Tell them your name.

Mr. Rakoczy: I'm Jeremiah Rakoczy.

Dr. Larson: State your address please.

Mr. Rakoczy: I can't hear that well.

Dr. Larson: Your address please. State your address please.

Mr. Rakoczy: I live at the end of the road on the right side.

Ms. Karnes: I will ask questions.

Mr. Rakoczy: Okay, thanks.

Ms. Karnes: Do you use the facility.

Mr. Rakoczy: I do. They've allowed me and some of my co-workers to use the facility whenever it's available for... we train ground fighting (inaudible).

Dr. Larson: Ma'am, could you speak into the microphone as well.

Ms. Karnes: Okay. That's not guns right? That's martial arts?

Mr. Rakoczy: Correct.

Ms. Karnes: Yeah, okay. And have you made any observation as to any negative impacts traffic or otherwise from this use?

Mr. Rakoczy: No, my wife and I drive up and down the road daily, while they're using it. And there's... Tom has got everybody to park off the road. And there's never cars out on the road now blocking anybody from going in. None of the neighbors have come to me, when I've talked to them, and said anything about any issues with the road being blocked.

Ms. Karnes: And you work in law enforcement, correct?

Mr. Rakoczy: Correct.

Ms. Karnes: That's all the questions I have. If the BZA has some.

Mr. Rakoczy: Okay.

Dr. Larson: Any questions for this witness?

***Board of Zoning Appeals Minutes  
June 25, 2019***

Mrs. Stefl: Have you ever used the facility for other than training with work?

Mr. Rakoczy: No.

Mrs. Stefl: Like on a social or communal...

Mr. Rakoczy: No.

Mrs. Stefl: ... like neighborhood party or anything like that?

Mr. Rakoczy: No.

Mrs. Stefl: Okay. Thank you.

Dr. Larson: Other questions? Thank you, sir.

Ms. Karnes: Thank you.

Mr. Rakoczy: Thanks.

Ms. Karnes: I also wanted to indicate to the BZA the level of support. Could I ask everyone here who came to support this application to stand up. Oh, the records should show it's maybe 30 or more. I don't know, am I correct? Thank you. Finally, Mr. Chairman I have the applicant here. If you have any questions for him he'll be glad to talk to you. And in addition I understand the coach of the wrestling facility is here. So I will ask him to come during citizens' time and give whatever information he wants. Particularly, I don't know the answer to the corporate registration but I'm sure he could give it.

Dr. Larson: Thank you. Any questions for the applicant's representative? Adela.

Ms. Bertoldi: And... first before I ask my questions one thing that I want to make a statement that I think needs to be said at this point because I think that what the purpose of the BZA is here tonight needs to be very clear. We are not here on a special exception and we are not here on a conditional use permit. We are here on an appeal of a violation. Even your representatives' sir said that this is a due process issue. So I just want to state for the record that this might be the most perfect business and the most perfect location and something that if it came before... if it was appropriate to come before this Board on a on a special exception that we might even approve. But that's not the issue and I'm happy to see the amount of support. But whether or not we deny the appeal has no bearing on whether or not we think this is a good business or a correct place for the business. And I think that what just occurred can muddy those waters. So I want to make that very clear on our purpose for being here tonight. And with that my question is actually with respect to Powerhouse. I would like to know who is Powerhouse. Who owns it and who runs it, is my first question. No, no who owns it? Who owns it?

Ms. Karnes: So come up and speak.

Mr. Nejati. Oh that's Coach Kibbler.

Ms. Bertoldi: Okay, Coach Kibbler. So is Powerhouse an incorporated business?

Ms. Karnes: Let him answer. So, I think it would be better to ask the coach that question.

***Board of Zoning Appeals Minutes***  
***June 25, 2019***

Ms. Bertoldi: How about the lease? Who do you have... who, who, who are the... who is the lessor and leasee on your lease?

Mr. Nejait: I own the property and I lease it to Coach Kibbler.

Ms. Bertoldi: And is him as the lessor, is he lease from you individually or does Powerhouse lease it? Who is...

Mr. Nejati: I believe it's Powerhouse.

Ms. Bertoldi: I don't, I don't remember...

Ms. Bertoldi: If we can bring him up? Because I think that this is very important basic fundamental foundations for this case. Okay. And sir, make sure you state your name for the record. Sometimes we have a hard time hearing so if you can state into the mic and state your name and your address for the record please.

Mr. Kibbler: My name is Thomas Kibbler. I reside in Locust Grove Virginia.

Ms. Bertoldi: Thank you. And can you answer the question for me who is as Powerhouse, are you incorporated or are you a business entity?

Mr. Kibbler: Umm, I'm not really sure how to answer this because we started this 15 years ago. I was just speaking with my wife. I'm not really sure how to answer it. We have a tech tax I.D. number and that's what we've been using. I don't know if there was any other stuff that I've overlooked, you know.

Ms. Bertoldi: Who owns the bus.... I mean you pay your taxes?

Mr. Kibbler: I run the business.

Ms. Bertoldi: Well does the business pay taxes individually from your personal taxes?

Mr. Kibbler: Business.

Ms. Bertoldi: Okay, so you do pay a business tax. Do you have a... because when I when I look up the business it didn't even show that there used to be a business that, that, you know, didn't maintain it. There is literally no record for Powerhouse Wrestling.

Mr. Kibbler: We have tax receipts from paying taxes.

Ms. Bertoldi: And what is the name of the business that you pay taxes on? Is it Powerhouse Wrestling.

Mr. Kibbler: I think...

Ms. Bertoldi: Think?

Mr. Kibbler: ... it's Powerhouse Advance Wrestling. I would have to ask my wife, I'm not positive.

Ms. Bertoldi: Okay, Powerhouse Advance Wrestling. And is it Inc., LLC? Do you have any idea?

***Board of Zoning Appeals Minutes  
June 25, 2019***

Mr. Kibbler: No, no neither one of those. I was thinking about doing an LLC but haven't...

Ms. Bertoldi: Okay.

Mr. Kibbler: ... to this point.

Ms. Bertoldi: Are you doing... are you individuals doing business as... What does your lease say, between you and the owner? Is it your name individually or is it...

Mr. Nejati: That's a good question.

Mr. Kibbler: I write the check from Powerhouse...

Mr. Nejati: It's Powerhouse.

Mr. Kibbler: Okay, I'm not really sure how the lease is written, I'm sorry.

Ms. Bertoldi: Okay, but you don't have any ownership, Mr. Kibbler, in the property whatsoever, correct?

Mr. Kibbler: No ma'am.

Ms. Bertoldi: You just lease the property. Is that correct?

Mr. Kibbler: Correct.

Ms. Bertoldi: Okay, thank you. I don't have any other questions for you.

Mr. Kibbler: Okay.

Ms. Bertoldi: So now I have a question for you ma'am.

Dr. Larson: Before, before you sit down...

Mr. Apicella: You might want to stay up because I'll probably have a couple of questions for you.

Mr. Kibbler: Yes sir.

Ms. Bertoldi: This is a line of questioning, I'm sorry. Can I... this is... I'm leading up to what I'm going to right now.

Dr. Larson: You can continue with your line but I'd like the gentleman to stand by because there may be questions for him (inaudible).

Ms. Bertoldi: Yes. Okay, I'm sorry I don't mean to be a hog. So ma'am when you were setting forth your justification for appeal you make it very clear that you believe that this is a community use is defined as county clubs, golf course, etc. by property owner...

Ms. Karnes: Well that's what...

***Board of Zoning Appeals Minutes  
June 25, 2019***

Ms. Bertoldi: ... or homeowner. The person who actually runs the business actually leases the property and is not an owner. Correct? Yes or no?

Ms. Karnes: Yes, that's correct.

Ms. Bertoldi: Okay, thank you.

Dr. Larson: Are there any questions for either of these witnesses.

Ms. Brown: I have some.

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

Dr. Larson: Go ahead.

Mr. Apicella: So Coach, again that you may have heard ask these questions to staff. So I'll just ask him the same questions to you. Do you charge for the services you provide?

Mr. Kibbler: We have a fee that, you know, like a club fee to help keep the facility going, yes.

Mr. Apicella: Do you mind if I ask how much that is per person or is it an annual fee? What's the rate structure?

Mr. Kibbler: We do four months for \$430.

Mr. Apicella: Okay, and the club participants, do they all live in the subdivision? Do they all live in Stafford County? Or do they live outside of Stafford County?

Mr. Kibbler: All over the state. I've even had them come in from Maryland.

Mr. Apicella: And when... how often do you do your participants meet on the property?

Mr. Kibbler: We meet Monday through Thursday, 6:00 to 8:00 p.m.

Mr. Apicella: And is that all 25 or do you have 5 to 10...

Mr. Kibbler: Some nights or 10 some nights or all of them. Yeah, I mean depending on, you know, the season. Right now it's not wrestling season so the numbers kind of drop off during wrestling season they kind of pick up. So the seasons come to a close.

Mr. Apicella: And when you have everybody they're all 25 plus coaches. How many coaches have or staff?

Mr. Kibbler: Seven or eight?

Mr. Apicella: So there could be...

Mr. Kibbler: They were all volunteers.

***Board of Zoning Appeals Minutes***  
***June 25, 2019***

Mr. Apicella: But there could be as many as 30 people? Right, but there could be as many as 30 people in the accessory structure participating at one time?

Mr. Kibbler: Possibly, yes.

Mr. Apicella: And I presume not everybody, again, who doesn't live in Stafford doesn't live in a neighborhood. Is parking somewhere adjacent to the property?

Mr. Kibbler: They're all in the driveway.

Mr. Apicella: The driveway. The driveway has 20...How many parking spaces?

Mr. Kibbler: It is very big, yes.

Mr. Apicella: Okay, so nobody's parking on the street?

Mr. Kibbler: No sir.

Mr. Apicella: Okay. So this is kind of a question, I'm not sure who wants to answer but I'm going to the notice of violation because you mentioned this is an issue of due process. And I'm just going to read a couple sentences, not the entire notice violation. But it says you're currently leasing an accessory structure for a club/organization in an R-1 zoned district that is not an approved use in that district. It goes on to say that you have created a commercial use in a residential district, then it further goes on to say Powerhouse Wrestling Academy must vacate the accessory structure for the practice and training facility along with the tenants of the home and fill out the family affidavit form. So, I'm just trying to understand when you say that it's not clear what the County had intended here, what's not clear?

Ms. Karnes: I think what's not clear is that number one, it is a by-right use in R-1.

Mr. Apicella: By your interpretation.

Ms. Karnes: Well, I I'm looking at the page of the Zoning Ordinance and it's the third list down after the third item down is a by-right use after a dwelling and an accessory use.

Mr. Apicella: So you're saying that in no way shape or form can somebody have an alternate definition or interpretation of a community use.

Ms. Karnes: I would have liked staff to have discussed it.

Mr. Apicella: Okay, and so that's part of why we're here is to adjudicate whether or not...

Ms. Karnes: Right.

Mr. Apicella: ... we agree that that's your interpretation actually.

Ms. Karnes: Secondly...

Mr. Apicella: Okay.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Ms. Karnes: When I look at the definition of non-residential it says, non-residential is anything except dwellings, churches and community... what do we call you, community clubs, community use. I watched the Planning Commission, I think at its last meeting, discuss potential changes to uses in the A-1 and someone flagged the issue of non-commercial kennels. And someone made the comment, wow half of the county might be in violation of this, the way it's being interpreted because it's, you know, what 6 or more pets in the house whether they're being sold or whatever. I say it's important that the citizens know exactly what the code says and the county explain it to them so that they can comply to the extent possible.

Mr. Apicella: Well I again I'm going to read a line here it says you've created a commercial use in a residential district. So I asked the Coach whether he charges whatever wherever that money goes towards. He's got 25 participants, all paying \$400 maybe somebody can do the math for me. That's not a small amount of money. So why is his activity not a commercial activity?

Ms. Karnes: I think non-profits charge regularly to (inaudible)...

Mr. Apicella: It's...

Ms. Karnes: ... their fees.

Mr. Apicella: I haven't heard any anyone say that he's a non-profit...

Ms. Karnes: No, I didn't say...

Mr. Apicella: Is he registered as a non-profit?

Ms. Karnes: I did not say that.

Mr. Apicella: Okay.

Ms. Karnes: And I did not mean to imply that. I think an issue of whether to charge or not shouldn't alone define the use. It doesn't say anything about collecting profitable fees. It talks about community pools which normally have a membership fee.

Mr. Apicella: So again I'm going to read the definition of a commercial use. I'm not trying to be combative. I'm just trying to put this in the context of whether it is or is not an appropriate activity on a residential lot where other folks live in houses that are not performing a similar type of activity. So the county's definition of a commercial use is any activity carried out for pecuniary gain. So none of the money that is collected goes to the Coach or to his staff in terms of salaries or to defray that cost?

Ms. Karnes: I think we haven't defined the extent and limitations of community use and that's why we were very interested in seeing what the staff report said. And it's just very interesting to me that the staff report didn't do anything in terms of discussion of that. They focused on potential impact to the neighborhood and they focused on the fact that no zoning determination and no occupancy permit had been obtained. Even though when we called about it we were told absolutely and positively that a community use wasn't allowed in R-1. And I'm suggesting to you that it really would have made a lot more sense for the County to have told the applicant they need to do... and even cite if need be. The lack of an occupancy permit and it could have been further discussed from there.



***Board of Zoning Appeals Minutes***  
***June 25, 2019***

Mr. Apicella: So I'm just gonna go to the theory that this is a community use. Again the definition is can be used as defined in the Stafford Zoning Ordinance at Section 28-25 as country clubs, golf courses and similar recreational uses conducted by a property owner, homeowner or similar membership organization. So this is not a country club, it's not a golf course...

Ms. Karnes: Might be a membership organization.

Mr. Apicella: I haven't gotten there yet.

Ms. Karnes: Okay.

Mr. Apicella: So, I'm just going to the first sentence, or first part of the sentence. So, by your theory by merely putting the word club at the end of it, it somehow becomes not a commercial activity but a community use. Is that kind of where you are going?

Ms. Karnes: No, I am not looking at it in that limited perspective. Again, I also look at the definition of non-residential use in the Zoning Ordinance and it specifically excludes community uses.

Mr. Apicella: I'm sorry to say that one more time. I'm not following you.

Ms. Karnes: When you go into the definition section. They have a definition of non-residential uses.

Mr. Apicella: Okay.

Ms. Karnes: And that definition specifically excludes dwelling units, community uses and churches.

Mr. Apicella: So, I'll get... we're gonna probably have a difference of opinion on what our community uses. I see country clubs, golf courses and similar recreational uses. I think of that like a tennis court or a tot lot or something that the community can use. This is not a particular use that's used by the subdivision. It's used by people, many of whom don't live in this subdivision, who pay a fee to the service provider to participate in that activity. So again, I'm not following you and you say this is a community use like a country club or golf course or similar recreational use. In my opinion that's associate... this definition is associated with the subdivision itself.

Ms. Karnes: And then...

Mr. Apicella: So, how is... again, by your definition a dance club, a martial arts club, a singing club, a band club whether they charge a fee or not, would fall under a community use. And have nothing to do with an actual structure or facility. Not a tennis court, not a golf course, not a swimming pool, merely the joining of people together for some similar activity whether or not that activity is paid for...

Ms. Karnes: And the second...

Mr. Apicella: ... by the other participants. Is that your theory?

Ms. Karnes: Well, the second sentence of the definition also references community clubs or centers, amphitheaters, civic or cultural centers, not in public ownership including community swimming pools. Which I think assumes either a building or infrastructure.

Mr. Apicella: Right. So I'm going to use another example off Truslow Road...

***Board of Zoning Appeals Minutes  
June 25, 2019***

Ms. Brown: Mr. Chairman, I'm sorry to interrupt...

Mr. Apicella: Just on just one more question.

Ms. Brown: This is not a debate. Can we just stick to the questions and then debate later. Is that...

Mr. Apicella: I'm going to ask the questions that I would like to Ms. Brown.

Ms. Brown: But I don't think you're asking questions, I think you're debating.

Mr. Apicella: So, there's a facility off of Truslow Road. What is that called? Or Berea Church Road, not... there's a facility that's operated by a group of people that can't think of the name of it.

Ms. Musante: What did they do there?

Mr. Apicella: I guess they get together and it's for the for the benefit of the area. In fact, it was gonna be sold at some point time because I don't think they had enough funding to maintain it. Anyhow, I am just trying to say a community ... it's all in the same stream a community club or center. To me it denotes a building for the community not people who come from various parts of anywhere to participate in. So, I'm still trying to understand your logic trail, help me understand how that's the same as... this activity, this wrestling club is the same as a community club or center? Which in my mind connotes a building associated with a neighborhood for the use of that neighborhood.

Ms. Karnes: And Mr. Chairman, I guess in summary we didn't think that the definition restricted it to the immediate subdivision or neighborhood.

Mr. Apicella: Okay. Thank you. Thank you.

Dr. Larson: Thank you. Any other questions for the... go ahead.

Ms. Brown: Yes, I'll be very brief. I just have three questions. Yes or no is fine. Is there a membership fee or a club fee charged and Mr. Apicella asked that and you said yes. Is there a membership agreement for members?

Ms. Karnes: I'd have to defer to the coach.

Mr. Kibbler: Yes.

Ms. Brown: Okay, are there membership rules?

Mr. Kibbler: Yes.

Ms. Brown: And are there membership contracts?

*Inaudible, someone speaking from the audience.*

Ms. Brown: Yeah, like you, you know...

*Inaudible, someone speaking from the audience.*

***Board of Zoning Appeals Minutes  
June 25, 2019***

Ms. Brown: Okay.

*Inaudible, someone speaking from the audience.*

Ms. Brown: Okay, that's all I have. Thank you.

Dr. Larson: Any other questions? Go ahead Adela.

Ms. Bertoldi: Yeah, just a couple of more foundation questions. Ma'am would you agree that our Board standard of review is abuse of discretion? Because we are an appeal? So we have a standard of review and there's different standards of review. And it would be it would be whether or not the Zoning Administrator abused her discretion in giving the notice violation. And by preponderance of evidence would you... would you agree with that is the standard of review?

Ms. Karnes: I would describe it as it's up to the Zoning Administrator...

Ms. Bertoldi: No, no I'm asking.

Ms. Karnes: Okay.

Ms. Bertoldi: So there is different standards of review?

Ms. Karnes: Yes.

Ms. Bertoldi: And we are in an appeal.

Ms. Karnes: Okay.

Ms. Bertoldi: So, I want the record to be very clear on what our review is.

Ms. Karnes: Okay.

Ms. Bertoldi: So in... I believe that to be an abuse of discretion whether or not you're asking us because you've not said very kind things actually about staff tonight and you know we need to make sure that we understand as a Board on what we're reviewing. We are reviewing on whether or not there was an abuse of their discretion to provide and to issue actually the notice of violation. Would you agree with that?

Ms. Karnes: You know my boss would say I never say yes or no to anything. I think your description is closer to it but I think the issue of due process trumps everything.

Ms. Bertoldi: So, we have to review that by a standard of review. Okay, you're going to the meet... I'm talking procedural, okay. On a procedural, will you agree that this is by that our review of whether or not you're correct and staff is wrong or vice versa is abuse of discretion?

Ms. Karnes: I believe it is because due process is constitutional.

Ms. Bertoldi: Yes, okay. And you... would you agree that that review is by a preponderance of the evidence?

Ms. Karnes: Yes.

***Board of Zoning Appeals Minutes***  
***June 25, 2019***

Ms. Bertoldi: Okay, and who do you think bears the burden of proof that staff has violated... or has abused their discretion in providing that violation? Would that be your burden of proof proving that they violated?

Ms. Karnes: I'm going to say a sentence again. I believe that the staff has the obligation to make a prima facie case...

Ms. Bertoldi: No, no, no, I'm not talking...

Ms. Karnes: ... and then we have the preponderance.

Ms. Bertoldi: Right, you have the preponderance of the evidence. Okay...

Ms. Karnes: ... once that happens.

Ms. Bertoldi: Right. So, what I'm when I am struggling... and the only reason I'm doing that because it has to be very clear for the record since we are on appeal. I understand some of the arguments that you're making, but here is my issue that I have with it and I'll be I'll be frank. And I'm going to give you an opportunity to maybe make this really clear to me. Alright, there has been questions to ask specifically on where, you know, how is this a community use. And in your answers I've really hung on the words that you've said multiple times which is it could be this and it could be that and it could be. There's not a could be, I struggle with gets you to by a preponderance of an evidence to prove that they have abused their discretion. That's where I'm at. So instead of could be, I would really like to hear and I really would I really would like to hear how this is not a community use because this is a business for profit which I don't think anybody is going to deny. It is main purpose is not for the community. Alright, there might be some community members that use it but does it make it a community use in and of itself. And as I brought up earlier the definition of community use that you have brought up is by property owner and ownership and this is the leasee. So I just really want to hear those answered to show me, show us as the Board that you have shown to us by preponderance of the evidence that they've abused (inaudible) questions and I think that that's the meat of it.

Ms. Karnes: Okay. And Mr. Chairman, what I... what I believe is that a definition in the Zoning Ordinance applies unless something is specifically excluded. The drafters are intended to write exactly what they intend and when it says property owner or community... let me see what it says... property owner, homeowner or similar membership organizations. I believe that includes this, shall we say club, for lack of a better term.

Mr. Jenkins: Mr. Chairman?

Dr. Larson: Go ahead.

Mr. Jenkins: I think I've heard enough, sir. I'd like to go ahead and make a motion in favor of the applicant.

Dr. Larson: We have not closed the public hearing yet. Stand by. We haven't heard from the witnesses yet.

Mr. Jenkins: Correct.

Dr. Larson: Stand by. Do we have any other questions for the applicant or the applicant representative?

***Board of Zoning Appeals Minutes  
June 25, 2019***

Mrs. Stefl: Well you say... microphone... you say that the businesses are... that you've been filing for 15 years the Powerhouse Wrestling Academy, right? Where was your previous location?

Mr. Kibbler: Well, when I got into my 3 minutes, I was going to state all that. But I've been all over the place. I've been trying to maintain a wrestling program in our community and I've been trying to get a home for our kids and have been bounced around. When I first started off I was in the school system and paying \$65 an hour. That was 15 years ago. I bet it's up to \$85 an hour. You times at four days a week two hours and then that price comes about, what I'm paying now probably less. I also open up my school facility to all the high schools in Stafford County. Most of the coaches are here tonight and it is open to them anytime they need the facility. They use the facility when they have snow days and they can't train or something else is going on in their schools. Again like I said I've gone from starting off in the schools, paying rent there. I moved on to another facility where I was sharing with the MMA, that didn't work out two clubs working together. I was in Powerhouse, or I was in Power Kicks Martial Arts in Stafford for about a year and then the past eight years I was in Simon Road, which is a commercial area. And then Hamid had presented to me a opportunity where I could have my own, you know, my own facility and didn't have to worry about everybody else around me and stuff.

Mrs. Stefl: So, you were in a commercial warehouse?

Mr. Kibbler: Yes.

Mrs. Stefl: Where other, you know, ADA requirements all those, you know, are having to me and stuff?

Mr. Kibbler: Yes.

Mrs. Stefl: And you decided to go to a home...

Mr. Kibbler: Something that was our home, something that we could label as ours.

Mrs. Stefl: That that a particular warehouse or a storefront couldn't be labeled as your own?

Mr. Kibbler: Well, we. There just wasn't... believe it or not there's more parking where I'm at now than where we were at. Where we're where we were at they moved in a taxi company and they took over the entire parking, and so I had one parking space. That was it. And you know I was the very first people in this place and then it grew. Now it's all filled up and it's just it's just too crowded. And it just seemed like a place where I could run banquets where we could do other stuff. We could have movie nights and we could do other things in addition to just running wrestling.

Mrs. Stefl: Okay.

Mr. Kibbler: So.

Mrs. Stefl: Alright, thank you.

Mr. Kibbler: Okay.

Dr. Larson: Any other questions for the applicant or his representative? Thank you sir.

Mr. Kibbler: Can I say one more thing?

***Board of Zoning Appeals Minutes  
June 25, 2019***

Dr. Larson: Go ahead.

Mr. Kibbler: Stafford County should pride itself in wrestling. We have more state titles in these schools in wrestling than any other sport. We have seven alone and Colonial Forge. We have three and Brooke Point, Mountain View was runner up and that's a direct reflection of this program. And I just want to state that for the record I open up my facility to anybody that needs it. We also have students in our program, not everybody pays \$400. There's obviously sibling discounts and we also have a scholarship program. So there's several kids that wouldn't have the opportunity if wasn't for Powerhouse. I think that probably clears up my 3 minutes.

Dr. Larson: Okay, thank you.

Mr. Kibbler: Thank you.

Ms. Karnes: Thank you, Mr. Chairman.

Dr. Larson: Thank you. Is there any member of the public who wishes to speak in support of the application? If so, please come forward.

Mrs. Stefl: Mr. Chairman, did we... I guess we don't have to do a swearing in because we didn't...

Mr. Jenkins: We did it at the beginning of the evening.

Mrs. Stefl: Oh, we did do it at the beginning?

Mr. Jenkins: Yep. Yes ma'am.

Mrs. Stefl: I couldn't remember. Okay, thank you.

Mr. Supari: Hello, my name is Steve Supari. I live in King George, Virginia. I think, from what I've heard one of the key cruxes here seems to be the whole community thing. This club is very similar to a country club, Mr. Chairman, as you've pointed out earlier. I mean there are members that pay, the payment that comes in isn't for monetary gain from the owners. It's to support the club, going to tournaments, things like that. Just like in a country club. There is a facility that people pay to use. That's what happened here as well. We are very much a community, the wrestling group in and of themselves is certainly a community. That community consists of people here from Stafford from Colonial Forge, Brooke Point, from Mountain View, all come to train there as well as people from other communities. From King George, from Spotsy, as you brought up earlier. It's a very close knit community. It's small, it really is. If you guys have ever gone to a wrestling match, you know it's like a ghost town. It's a very small community but it's a community nonetheless. I think this facility really does sort of emphasize that.

Dr. Larson: I have a quick question.

Mr. Supari: Certainly.

Dr. Larson: We've gone over the name of the company. What is the name of the club?

Mr. Supari: Powerhouse Wrestling.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Dr. Larson: Powerhouse Wrestling Club?

Mr. Supari: Yes, yes Powerhouse Wrestling Club. Just like a country club, they, to me, seem almost identical in what's going on.

Dr. Larson: And when, when you go to meets, do you wrestle as members of the Powerhouse Wrestling Club?

Mr. Supari: Yes sir.

Dr. Larson: So you represent the club?

Mr. Supari: Yes sir.

Dr. Larson: Thank you. Any other questions for this witness? Thank you sir.

Mr. Supari: Thank you.

Dr. Larson: Would any other member of the public who wish to speak in favor of the application?

Mr. Steinmans: Hello everybody. My name is Jonathan Steinmans, I am the head coach for the Stafford High School Wrestling Team. Tom allows us on snow days or any times when schools closed. He allows us to use the facility whenever, you know, our schools program is closed in here. Stafford County in Stafford High School our team has dwindled down so bad, I'm in the middle of rebuilding it. And when you're trying to rebuild a team from nothing it is a great deal of help, on the days that you have off you can't use the schools, for him to allow me to bring my team there. I greatly appreciate it. My son also has wrestled for him for about 10 years through it. Everywhere we go it's good for us. So that's just my statement there.

Dr. Larson: Okay. Thank you.

Mr. Steinmans: Thank you.

Dr. Larson: Any questions for this witness? Thank you sir. Any other uh people that want to speak in support of the application?

Ms. Colbert: Good evening. Thank you for this opportunity. My name is Cinnamon Colbert and I reside in Prince William County, in Manassas. My husband and I are entrepreneurs in Fairfax County and we also started a non-profit wrestling club in Prince William County two years ago. We currently have 40 members and when we have snow days we cannot use the local high school that we have a contract with. And Mr. Kibbler has allowed our club to use his club for our children and our adults to come practice. And when we even bring our own children here our club is only during the normal wrestling season that high schools have, and outside of that season our children come from Prince William, from Fairfax, from Maryland and they come and use the club here. And wrestling at a national level really needs to have that space and those accommodations. And this club has allowed children outside of his own club to have those accommodations and we just wanted to let you know that we appreciate Stafford County hearing us today and allowing, hopefully us to continue using this space.

Dr. Larson: Thank you ma'am. Any questions for this witness? Thank you.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Ms. Colbert: Thank you.

Dr. Larson: Would anybody else like to speak in favor?

Mr. Kibbler: Hello, I am Antonio.

Dr. Larson: Could you state your full name please.

Mr. Kibbler: Antonio Kibbler.

Dr. Larson: Thank you.

Mr. Kibbler: And I'm the Assistant Coach, Head Assistant Coach at Riverbend High School, wrestling coach, and he lets us use the facility when it's a snowy day or we can't, you know, practice at high school or anything.

Dr. Larson: Okay. Any questions for this witness? Thank you sir.

Mr. Kibbler: Thank you.

Dr. Larson: Would anybody else like to speak in favor of the application? Okay, seeing none would any member of the public like to speak in opposition to the application or to the appeal? Okay, seeing none. Does the applicant wish to respond or add any additional information?

Ms. Karnes: I don't think so.

Dr. Larson: Thank you. Before I close the public hearing I just want to make another reminder of what we're doing here. My colleague tried to do that. Your boss I believe tried to do that as well. We're here to consider an appeal to the decision of the Zoning Administrator. So we're not here to evaluate the goodness or badness of a business or how it favors or doesn't favor the impact on the community. What we're here to decide is whether the Zoning Administrator was correct in her ruling that this was not an approved use for that zoning district. That's what we're here to do. It's an appeal. I just wanted to make sure everybody understood that. Okay, we'll now close the public hearing and bring the member back to the Board for discussion. Discussion, Dana?

Ms. Brown: Am I first? Okay, I agree that this use probably shouldn't be in an R-1 district but I am going to make a motion to grant the appeal and the reason I'm doing that is because I believe that the applicant does meet the county's definition of community use. I also think that the county's definition of community use is in conflict with table 3.1 one making it very confusing. I sit up here and I do this a lot and I had to read it over probably five or six times. My issue is with the words recreational use. One section says it's a by-right use. That's the first use under permitted by-right uses, another section says a CUP is required for a recreational facility. Perhaps community use should not be in the by-right uses but right now it is. The definition of community use allows recreational uses and community clubs which can also include the definition of a recreational facility. So basically on a technicality I don't agree that it should be there but I think that our code is in conflict so I am going to support the applicant on this, if I can get a second.

Dr. Larson: Is there a second to the motion?

Mr. Jenkins: I will second.



***Board of Zoning Appeals Minutes  
June 25, 2019***

Dr. Larson: Okay, there has been a motion second. Further discussion?

Ms. Bertoldi: Is it appropriate for me to offer a counter motion at this time?

Dr. Larson: Rather ...

Ms. Bertoldi: To do...

Dr. Larson: ... treat this motion first, unless you want to amend this motion.

Mr. Apicella: Yeah. Robert's Rules would require a substitute motion to be considered before a primary motion.

Dr. Larson: That's true. Are you why I'm offering a substitute motion...

Ms. Bertoldi: I am offering a substitute motion to not grant the appeal. And I also understand and I understand what Ms. Brown is saying, but I think that one thing that is very clear on the community use is that it is a recreational uses conducted by a property owner or a home owner or similar membership. Nothing has been, I mean that ownership is actually been the one consistent in the definition of community use. I have asked and did not receive any evidence because that's what we need to have is evidence, that would counter the administrators decision. And we are only allowed to overrule that by preponderance of the evidence. Whether or not we would make a different decision is not up to us. We are not a trier of fact. We are a review Board and maybe we would have made something different. Maybe we would have made that decision differently. But I feel strongly that unless there is... it's clear that it was a wrong decision, that we cannot overrule the Administrator. I believe that there was some argument with respect to due process and I think that there was even though the words weren't used, hinted at that there was constitutionality issues because there was definitions not clear. As far as I am aware there has not been a challenge and thus the ordinances of Stafford County and the way that they stand are the law of Stafford County. And I don't feel, just even just based upon who can conduct the property ... or the recreational uses is what I am having the biggest problems with.

Ms. Brown: I would just like to add Ms. Bertoldi, that...

Dr. Larson: Before you go, before you talk, is there a second to this motion on the floor?

Mr. Apicella: I'll second Ms. Bertoldi's motion.

Dr. Larson: Okay, we have a substitute motion on the floor. Now Dana, did you have a comment?

Ms. Brown: Yeah. Going back to the definitions of community use I understand you're not clear about the homeowner. It doesn't say just that it, says conducted by property owner, homeowner for similar membership organizations. Doesn't say it has to be a homeowner membership organizations it just says membership organizations. And I ask them if they had, you know, membership rules membership... I forget, I had a bunch of questions for it, and they did. Again I don't want to do this. This has a bad taste in my mouth because I don't think that this should be there but I think that our code is not written well. And based on the way it's written they meet the definition of community use.

Ms. Bertoldi: But, and I and I get that and I understand that, I really do. But as a review Board we can only overrule. The County if it is clear that they abused their discretion and because it is not clear we can't say that they abused their discretion. That is not for us. I mean if you were...

***Board of Zoning Appeals Minutes  
June 25, 2019***

Ms. Brown: I don't understand, what do you mean? Who is abusing discretion? Where did that come from?

Ms. Bertoldi: Because that's how appeals work. I mean there is, you know, when you go to trial and there's a trier of fact, which in this case would be the Administrator, they bring down and fourth decision and they come to us for appeal. Same in court you go, you go before a judge, there's a trial and then if they appeal they go before an appeal Board. The appeal only looks at the record and whether or not that the judge could have made a reasonable decision based upon the evidence that they had. And that is what an appeal Board does. That is what we are here to do, based upon what is before us and the Ordinances that are before us. Whether or not that they could come up with their conclusion and their decision and they did. And that is what our role is. I agree with you. I personally think this is a great facility.

Ms. Brown: I did not say that, I did not say that.

Ms. Bertoldi: No, and I don't know whether or not this is a great location for this or not. Maybe if they were before us looking for that, you know, those are all issues and that is not the issue here. It is what our role is and our role truly is only if it is... only if they abuse their discretion meaning...

Ms. Brown: *Inaudible, speaking at the same time.*

Ms. Bertoldi: ... that there you look at this and say...

Ms. Brown: I think it's community use; the County says it's not, I disagree. I think it meets the defi... the County's definition of community use. This thing about abuse, I don't know what you're getting that from. I'm strictly going on... my vote is because I believe it is a community use in my understanding of the County definitions.

Ms. Bertoldi: Okay.

Mr. Jenkins: And again, I'm with Dana. I do believe they've met the definition the way I read it.

Dr. Larson: Okay.

Mr. Jenkins: The property has bounced back and forth between several different things. They could just apply for maybe rezoning again. I mean maybe let them continue on as is and then apply.

Ms. Bertoldi: Yeah, I think that they have other avenues to be able to continue this. I mean, I don't think that, you know what... I don't think this is our role in telling them that you know they have to leave tomorrow.

Dr. Larson: Okay.

Ms. Bertoldi: That's not again our role.

Dr. Larson: So just for everybody else it's a here to understand we're trying we're discussing whether community use which is listed in the Zoning Ordinance as part of the R-1, which is where he lives. We're... that's where... we're discussing community use so much because that's the key. That's... whether this is a community use or not. The problem I have and we've read it before, it does say conducted by a property owner or homeowner or similar organizations, would sound like owner type

organizations. Then it says also community clubs or centers, amphitheater, civic or cultural centers not a public ownership. I don't know what public ownership, in this context means. I don't know if it means non-government, it could mean either, government or non-government. Nobody can tell me. That's unfortunate. And that's where I think the applicant's attorney is perhaps rightly complaining the code is not clear enough there. And probably deserves to be clearer. And that, we can probably take that under advisement for our advising Board of Supervisors. Okay, so I haven't... I have not heard proof of... I haven't heard a preponderance of evidence to show that the appellate has proved their case. But I see their problem. So, I'm having difficulty with this. And that's where I am right now. Any other discussion?

Mr. Apicella: I think, as with any definition, it can always be better always be clearer and when you read the definition in the context of the zoning code and what I believe was meant and sometimes that's what you have to do. It ... community use means a facility or an activity that occurs in a neighborhood for the benefit of that neighborhood. This to me seems more like a business and a great business and I have no problem with this activity occurring anywhere in Stafford County, except perhaps in somebodies backyard in an R-1, where it might be more likely to be a business than a community use as it was intended to be in the Zoning Ordinance. When my son, and I'll just give a correlate. When my son was taking a martial arts class, he was taking it in a warehouse in an urban... not an urban... in an industrial area. And I have to think that when the Board decided on this definition, as they do with any definition, they're thinking about how a particular use would impact the neighborhood. These are very small lots, R-1 one could be as small as or less than a quarter of an acre. So you're pretty close to your neighbor in an R-1 lot. And you have to ask yourself again, this might not be an allowed activity. I don't know, but if it were again a chorus club or some other club that made a lot of noise. Would that be appropriate with somebody who might be living or whose side yard I think is 10 feet away from you. And I don't think that when the Board decided on the definition of a community to use that they were anticipating this kind of an activity occurring as well intended as it is and as important as it might be, for the people who participate. We also have to look at how this activity might impact the immediate neighbors. So, I also think that when we're sitting here as an Appeals Board, as Ms. Bertoldi said it's the responsibility of the applicant and their agent by a preponderance of the evidence to demonstrate that the decision made by the staff or the Zoning Administrator was an error. And while they made a good argument I don't think it was a great argument and I certainly don't think by a preponderance of evidence that they provided, I heard a lot of could be and maybe and this is my interpretation. I didn't see any case law or any other examples provided where this occurs in the county where it has been upheld that a similar activity occurring in somebodies backyard was allowed because it was determined to be a community use. So, I have to go, based on again the evidence that was provided by staff, by the applicant and also some reasonable determination on my part where there might be some gray area as to what was intended by the Board when they adopted this definition. For those reasons, Mr. Chairman, I'm most likely going to support Ms. Bertoldi's motion to deny.

Ms. Brown: Mr. Chairman?

Dr. Larson: Any other discussion?

Ms. Brown: Go ahead.

Mr. Jenkins: Uh Mr. Chairman, I drove by the property and I sat there for quite some time but directly across the street is a business. This particular property used to be a business. It's... I mean, it's got some surrounding homes, but it's got a very large parking area. I don't see a lot of noise coming out of this particular building, if you look at the pictures of it, it's a big steel building. Whether or not the gentleman is making money, we don't know, unless he can produce some tax records. But he could very

***Board of Zoning Appeals Minutes  
June 25, 2019***

well be putting all the money back into the lease the utilities maybe insurance to cover himself. I don't know what an LLC might cost him annually. I honestly don't know. But he may very well not be making any money maybe even though he hasn't applied for a non-profit.

Dr. Larson: The one thing has been nagging at the back of my mind is does that mean that if I live in a neighborhood I can stand up a business and if I can get people to... my customers to come in and say okay, well you're part of Sam's Club or Dean's club or whatever does that make it a club and now is at a community use and that is that legitimized my business?

Mr. Jenkins: We would all see through that. I think we would all see through that.

Dr. Larson: I heard I heard legitimate testimony that that pretty much convinced me it's a club, but then okay, is it a community club? How do how do you how close do you have to be to be part of the community?

Mr. Jenkins: Again, what's the definition of community, I suppose. I mean...

Dr. Larson: And is the wrestling community a community?

Mr. Jenkins: It is a community.

Dr. Larson: So, umm...

Mr. Jenkins: From what it sounds like the folks need a place to go. This is a cost effective way, the building seems to fit the need. It was residential, it was business as it is now residential again. They could rezone. They could look...

Dr. Larson: Again, we're not here in a special exception hat. We're here to consider an appeal to the Zoning Administrator's decision. So we can't... it whether ... no matter how good this idea is, it really doesn't matter. The question is, is it allowed in this zoning district? Dana.

Ms. Brown: I appreciate what you said Mr. Apicella, I really do. Because I probably feel the same way you do, but I'm not going to second guess or try to interpret what the Board of Supervisors may or may not have been thinking when they wrote this. Our job is only to go on what's written, what's actually written in there and I think that they have proven that they actually meet that definition. I do think we need to re-evaluate as a county, perhaps maybe not putting that into by-right use, because I don't think it belongs there. And again that's listed separately as needing a CUP. But again I wouldn't put that there myself. So, I'm in disagreement with you but on that, but they meet the definition as we have written and whether the Supervisors actually, you know, meant something else. I'm only going on what's actually written and they meet what's written and my recommendation would be to grant the appeal and then perhaps have the Supervisors take another look at if they want to keep community uses in by-right.

Dr. Larson: Is there any other discussion or we'll vote on the substitute motion first via Robert's Rules. Any other discussion? Alright the substitute motion goes first, Robert's Rules and uh the motion was to deny the appeal and was seconded. All those in favor say aye.

Mr. Apicella: Aye.

Ms. Bertoldi: Aye.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Mr. Gibbons: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye.

Dr. Larson: Aye. Opposed?

Ms. Brown: No.

Mr. Jenkins: No.

Dr. Larson: The appeal is denied 5 to 2. Alright, we'll go to the next case.

Ms. Musante: Mr. Chairman, can we take a five minute break?

Dr. Larson: Yes, we certainly can.

Ms. Musante: Great, thank you.

*Recessed at 8:30 pm*

*Reconvened at 8:39 pm.*

2. A19-02/19152747; H. Clark Leming agent for Barrie Peterson - Per Stafford County Code, Sec. 28-349, "Appeals to board generally," the applicant is appealing a notice of violation dated March 28, 2019, regarding noncompliance with Stafford County Code, Sec. 28-39(o), "Cemeteries," on Tax Map Parcel No. 36K-C. The property is zoned A-1, Agricultural, and is located in the Liberty Hall Estates Subdivision.

Dr. Larson: I'll now ask the secretary to read the next case.

Ms. Musante: A19-02/19152747, H. Clark Leming, agent for Barrie Peterson. Per Stafford County Code, Sec. 28-349, "Appeals to board generally," the applicant is appealing a notice of violation dated March 28, 2019, regarding noncompliance with Stafford County Code, Sec. 28-39(o), "Cemeteries," on Tax Map Parcel No. 36K-C. The property is zoned A-1, Agricultural, and is located in the Liberty Hall Estates Subdivision. You have the application; owner's consent form; a copy of the violation notice dated March 28, 2019; photos of the cemetery; headstone placement from May 6, 2019, inspection; copy of construction plan; Stafford County Code Section 28-39(o); Stafford County Code Section 28-349; copy of the tax report record; and copy of the public notice. The cemetery is located on a 1.5-acre parcel in the Liberty Hall Estates subdivision. This parcel is designated as Common Area C on the recorded plat. The attached pictures depict the current conditions of the cemetery. The Property is zoned A-1, Agricultural, and is part of the recorded subdivision named Liberty Hall Estates. The cemetery is known as the Wallace Cemetery and is located in the recorded subdivision Liberty Hall Estates. The cemetery is located on a separate lot recorded as Common Area C and consists of 1.5 acres. The construction plans were submitted April 25, 2016, and reviewed by all the applicable county departments. Comments were made concerning items that needed to be corrected prior to approval of the plan. One of the comments stated the need to add the location of the cemetery, the 35-foot buffer, and the fence on the plans. Final approval of the development plan was on December 12, 2016. The plats were recorded in October 4, 2108. A complaint was received in March 2019 stating that the cemetery had been disturbed.

Staff conducted a site visit on March 27, 2019, and documented the condition of the site. It was observed that the cemetery had been disturbed and a Notice of Violation was issued to the property owner via registered and first class mail. According to the USPS tracking system, the Notice of Violation was delivered on April 4, 2019. Shortly thereafter, the property owner contacted the County and voiced his disagreement with violations listed in the Notice of Violation. The property owner contracted with an attorney, Leming and Healy, PC, who filed an appeal of the Notice of Violation on behalf of the applicant. The applicant, Barrie Peterson, Jumping Branch Farm, LLC, is appealing the Notice of Violation received on April 4, 2019. The Notice of Violation states violation of Section 28-39(o) "Cemeteries" was noted and the following corrective measures were required. In the justification for the appeal, the applicant responded to these corrective measures as shown in italics, and the staff responses to the applicant are listed below in bold italics.

1. An archaeological delineation conducted by a professional to determine the limits of the cemetery needs to be submitted.
2. *An archaeological delineation was submitted and reviewed by the county in 2016. It is attached as an exhibit.*

*An archeological delineation was submitted with the construction plans as requested by the plan reviewer at the time of review.*

3. Ensure all headstones and footstones are in original locations and match all footstones to an appropriate headstone.

*The applicant has not disturbed or removed any headstones or footstones. Some are not present, and were not present when the applicant acquired the property.*

*The zoning inspector conducted a site visit on May 6, 2019. During that visit, it was observed that the names on the headstones did not match the location of those shown on the archeological delineation survey; therefore headstones appeared to have been relocated. Attached is the survey with the notes of the inspector's findings.*

4. Go through debris pile and obtain all missing pieces of headstones/footstones.

*Debris piles did not contain missing pieces of headstones/footstones.*

*The existence of a debris pile indicates that disturbance did occur which is a violation of Sec. 28-39(o)(2)k. and such disturbance, which appears to have been grading conducted within the cemetery buffer area, is the reason for all the corrective measures. Sec. 28-39(o)(2)j. states "preservation of grave markers, including repair or cleaning shall comply with the Virginia Department of Historic Resources standards." According to photos taken on June 6, 2019, the debris pile has been removed making it impossible to retrieve any missing pieces of headstones/footstone unless the debris pile has been safely relocated elsewhere, but staff has not received any indication that the missing pieces may be retrieved by applicant. No information has been provided by the applicant to substantiate such claim that missing pieces of headstones/footstones are not in the debris pile nor has any statement been made that a thorough search of the pile was conducted and, therefore compliance with this measure will not be possible and the applicant is in violation of these Code sections.*

5. Repair all broken head and/or footstones.

*Repair is not possible because applicant does not have missing pieces.*

*Sec. 28-39(o)(2)j. states “preservation of grave markers, including repair or cleaning shall comply with the Virginia Department of Historic Resources standards.” No information has been submitted to this office to validate the status of repairing broken head and/or footstones. As stated previously, the debris pile has been removed and the possibility of finding missing pieces in the debris pile is no longer possible. Therefore, the applicant is in violation of this Code section. Additionally, applicant has already violated Sec. 28-39(o)(2)k., which violation is impossible to undo through a corrective measure since grading has already occurred inside the buffer and cemetery area.*

6. Install temporary fencing around limits of cemetery prior to any further construction activity, in accordance with County Code Sec. 28-39(o)(2)f.

*The site plan did not require temporary fencing. The applicant has now installed temporary supersilt fencing, even though it was not required during site plan review. Subsection f of the cemetery ordinance requires installation of temporary fencing only when shown on the construction plan or plat. Staff did not require the applicant to install temporary fencing.*

*The comment indicating the location of the cemetery, the required buffer, and the requirement to install the fencing was made in both the Planning and Historic review of the construction plan. The construction drawings approved in December 2016, page 4B of 19 shows the cemetery, the 35-foot buffer, and a fence with the comment: “fence in accordance with Stafford County Zoning Ordinance Sec. 28-39(o).” This section of the Code includes the regulations for the temporary fencing as well as the permanent fencing. The requirement was addressed and acknowledged by placing the information regarding such requirements on the plans. Not installing said fencing is a violation of Sec. 28-39(o)(2)f, and g. as stated in the NOV.*

7. Replace the existing fence that was originally on site, in accordance with County Code Sec. 28-39(o)(2)g.

*There was not a complete existing fence when the Applicant acquired the property. The delineations refer to the existing remnants of the iron fence. Subsection g. of the Cemetery Ordinance does not require replacements of the original fence. It requires installations of a permanent fence after all development is complete. Such a fence is referenced on page 12 of the site plan. Development is not complete.*

*Replacement of the existing original fencing is to correct the actions of removing it, which is a violation of County Code Sec. 28-39(o)(2)k., which specifically states that no grading shall occur inside the buffer and cemetery area. The existing original fence would not need to be replaced if such prohibited grading and disturbance of the cemetery had not occurred. According to the photos dated June 2010, the fence was not complete but was upright and in the ground. The photos taken on March 27, 2019 shows the fence no longer in the ground but twisted and in between headstones.*

8. Install a sign identifying the family association by name, in accordance with County Code Sec. 28-39(o)(2)h.

*Subsection h of the cemetery ordinance does not identify a time of erection of the sign. The sign will be erected upon completion of the development.*

*The sign design, location, and size are included on the approved construction drawings and placement of such sign upon completion of the development will be in compliance with this measure.*

9. Plant grass seed upon completion.

*Grass seed will be planted upon complete of development.*

*Photos taken on June 6, 2019 shows seeding has been done and the site is stabilized.*

The applicant states that he is in compliance with Sec. 28-39(o) and that issuing the Notice of Violation was premature, reckless, and unreasonable. However, the applicant ignores the citation included in the Notice of Violation of County Code Sec. 28-39(o)(2) k.: *No grading shall occur inside the buffer and cemetery area.* Grading shall not be sloped at a ratio more than 3 to 1 from the existing grade of the cemetery for a distance of 50 feet beyond the perimeter of the buffer area. The photos taken in June 2010 show a cemetery that has fallen trees, overgrown vegetation, and head/ footstones upright and located at the appropriate gravesites. The wrought iron fence sections are upright and in the ground. There are concrete slabs located throughout the site and a few unrooted trees. The photos taken on March 27, 2019, show all vegetation removed from the site, track marks from equipment or vehicles are visible throughout the site, portions of the wrought iron fence removed and the remainder twisted and leaning up against a headstone, headstones pulled from the ground, and no temporary fence in place. The photos taken in March 27, 2019, illustrate a site that is not in compliance with the code and Sec. 28-39(o)(2)k. has already been violated. The site has not been protected by a 35-foot buffer and a temporary fence. The disturbed soil, the removed vegetation, concrete slabs, and wrought iron fence, the headstones/footstones pulled from the ground, and the impermissible grading are just a few examples of activities which are a violation of Sec. 28-39(o). Issuing the Notice of Violation was not premature, reckless, or unreasonable. It was done in a timely manner to prevent additional damage to the site and properly cited violations of the Code that had already occurred.

Dr. Larson: Any questions for staff?

Ms. Brown: Yes, I have a couple.

Dr. Larson: Go ahead.

Ms. Brown: This is a corner lot, Melody. How many public hearing notice signs should have been up?

Ms. Musante: First of all, we are not required by code to install or put up public notice signs. So, the one was fine. We possibly should have put the two up there but, again, we are not required by code to install the public notice signs at all.

Ms. Brown: Okay. And then the last question I had is do you know when Mr. Peterson of Jumping Branch Farm acquired the property? I looked at the tax records and all the parcels just showed like 2019. And I... I don't think that that was when they were, you know, split and cut off. I couldn't find out when he actually bought the property. Okay, so a better way to rephrase that is when did the current owners acquire the property?

Dr. Larson: Are you finished?

Ms. Brown: Mm-hmm.



***Board of Zoning Appeals Minutes  
June 25, 2019***

Dr. Larson: Any other questions for staff?

Ms. Bertoldi: Yeah, I just have a quick question because I really don't know the answer. When a cemetery is purchased, and maybe you don't know the answer either, is there a requirement that they're... like in a purchase of a cemetery, that there be documents about plots and names that are associated with it? Like is it regulated or can someone just buy a cemetery and as is so to speak? Does my question makes sense?

Ms. Musante: Mm-hmm. We don't know the answer to that right offhand.

Ms. Bertoldi: No, I would appreciate an answer because I think that that will help in this case. Thanks.

Dr. Larson: While she's looking, any other questions?

Mr. Apicella: I guess this would kind of go into both the questions that were just asked and answered. So, at some point time, was the applicant the owner of the parcels that included the cemetery both at the time the development was established up to now? Or was there some other owner of the property prior to that point?

Ms. Brown: Thank you, Mr. Apicella, that's why I asked when he acquired it.

Ms. Musante: Can you repeat the question?

Mr. Apicella: I guess I'm trying to understand where they fit into the history of this subdivision and cemetery. So, have they been the owners of the property from the time that the site plan was developed to now or was there some other property owner prior to that point?

Ms. Blackburn: It's my understanding that they were the owners when they submitted for the construction drawings for the subdivision.

Mr. Apicella: Okay. If you'll bear with me. So ,it's my understanding that the county's cemetery requirements are under Section 28-39 part o and part 2 gets into the preservation of existing cemeteries; is that right?

Ms. Blackburn: Yes sir.

Mr. Apicella: Can I read or at least paraphrase some of these and tell me if I'm correct in the way that I'm reading it. Parcels containing cemeteries and, I'm going to the end of the sentence, shall be required at the time of site or subdivision plan review to have a professionally prepared archaeological delineation of the limits of burials within the cemetery.

Ms. Blackburn: Yes.

Mr. Apicella: Is that correct? B says the perimeter of cemetery shall be indicated on the site development plan, subdivision plan, and subdivision plat.

Ms. Blackburn: Yes sir.

***Board of Zoning Appeals Minutes***  
***June 25, 2019***

Mr. Apicella: Part D says a minimum 35-foot wide buffer area shall be established around the perimeter of the cemetery as delineated per sections... subsections 2A and B directly above and indicated on a site development plan, subdivision plan, and subdivision plat.

Ms. Blackburn: Yes sir.

Mr. Apicella: Temporary fencing shall be installed around the perimeter of the cemetery and buffer area as indicated on the plan or plat prior to receiving construction or grading plan approval. The fence shall be located outside the exterior edge of the buffer area and not within the buffer area.

Ms. Blackburn: Yes.

Mr. Apicella: Perimeter fencing between 2... 3 and 4 feet tall shall be placed around the boundary of the cemetery including the buffer after any surrounding site work is completed. The fencing shall be located outside the exterior edge of the buffer area and not within the buffer area.

Ms. Blackburn: Yes sir.

Mr. Apicella: Part H says signage identifying the cemetery by its family association as recorded in the Stafford County Cultural Resource database or by any other name deemed appropriate by the county agent. It goes on to talk about the signs. Cemetery grounds, fence, and buffer area shall be maintained and the responsibility for maintenance shall be established either on the site plan, subdivision plan, or subdivision plat or by a separate recordable document submitted to the county agent along with the plan and plat.

Ms. Blackburn: Yes sir.

Mr. Apicella: Let me go back to that one in a bit. But preservation of grave markers including repair or cleaning shall comply with the Virginia Department of Historic Resources standards.

Ms. Blackburn: Yes sir.

Mr. Apicella: No grading shall occur out... inside the buffer and cemetery area.

Ms. Blackburn: Yes.

Mr. Apicella: Grading shall not be sloped at a ratio no more than 3 to 1 from the existing grade of the cemetery for a distance of 50 feet beyond the perimeter of the buffer area.

Ms. Blackburn: Yes sir.

Mr. Apicella: All cemeteries shall be recorded at the county and state level.

Ms. Blackburn: Yes sir.

Mr. Apicella: Going back to the maintenance, who... who is identified as the party responsible for maintenance of that cemetery?

Ms. Blackburn: Well, it's the owner of the property in which the cemetery is delineated.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Mr. Apicella: So, that's what it says on the subject... on the site plan, subdivision plan, or subdivision plat?

Ms. Blackburn: Um, I'll have to look and see.

Mr. Apicella: Or a separate recordable document submitted to the county agent along with the plan and the plat.

Ms. Blackburn: Yes. Excuse me?

Mr. Apicella: I'm just... there's more to it; it's not just those documents that says it can be on a separate recordable document.

Ms. Blackburn: Right, yes.

Mr. Apicella: So, it meets one of those. Whoever is responsible for the maintenance...

Ms. Blackburn: Yes.

Mr. Apicella: ... was somehow established by some document.

Ms. Blackburn: And that was reviewed at the time of site plan (inaudible).

Mr. Apicella: Just two more questions, Mr. Chairman. So, I'm looking at several photographs that were provided, I'm going to reference to you right now Attachment 4, page 6 of 58, and Attachment 4, page 1 of 58... and I'm saying that out of order but... are these... am I citing the right photographs? So, these were... this was the cemetery at some point in time prior to any disturbance on that cemetery.

Ms. Blackburn: Yes.

Ms. Musante: Correct.

Mr. Apicella: There are certainly a lot more pictures about the cemetery prior to any disturbance as well in our packages. But I'm also now looking at two more photographs, Attachment 4, page 18 of 58, and Attachment 4, page 19 of 58. Are these the two photographs showing disturbance on the property?

Ms. Blackburn: Yes sir.

Mr. Apicella: And this is in part why the notice of violation was issued?

Ms. Blackburn: Yes sir.

Mr. Apicella: Alright. Thank you, Mr. Chairman.

Dr. Larson: Any other questions for staff?

Ms. Bertoldi: I think she's still looking up the answer of my question.

Dr. Larson: Is she still looking?

***Board of Zoning Appeals Minutes  
June 25, 2019***

Ms. Bertoldi: Do you even remember my question?

Ms. Blackburn: Can you repeat it please?

Ms. Bertoldi: Do you know whether or not the sale of a cemetery, whether or not it's required that there be documentation regarding the plots? And kind of as a tag along question to that is, is Stafford County at all involved in the, you know, purchase sale of a... an existing cemetery? Like do they have to set anything up? Like is it heavily regulated on a private sale of a cemetery? I'm trying to understand the...

Ms. Blackburn: Well, as you saw in the ordinance, we require an archaeological study. We have a cemetery committee who does have a database of the known cemeteries that we have. And as far as all the legal documents about when you... when you purchase cemeteries, Mr. Harvey might be able to answer this better. He's been much more involved with cemeteries in the county.

Ms. Bertoldi: Okay. Alright, and then archeological review has to be done every time it's purchased or at what point? Like how often does it have to be done? Like when it goes from one owner to another, does it have to be another review?

Ms. Blackburn: When we end up with a development plan it would be done. That was one of our requirements that when you come in with a development plan that you do do a current study so we have a baseline for when you (inaudible).

Ms. Bertoldi: Okay. So, if you buy one and you do nothing with it... so if you buy a cemetery and you said you're not going to do anything in it, you're not going to do any development plan, you don't need to do that. You can just leave it there and it's on your property?

Ms. Blackburn: Again, Mr. Harvey knows much more with the cemetery committee.

Ms. Bertoldi: Okay.

Dr. Larson: Any other questions for the applicant? Or I'm sorry, the staff?

Mr. Apicella: Mr. Chairman, it's not really a question per se. We were provided at our desks tonight a copy of an email from Miss Anita Dodd who's the Chairman of the Stafford County Cemetery Committee. I would ask if it hasn't already been provided to the applicant and their agent, if we could do that, and also if we could add it to the record of tonight's case.

Ms. Musante: It has been provided to the applicant.

Mr. Apicella: Okay, thank you.

Dr. Larson: Okay, any other questions for the staff? Hearing none. We go to, since this as an appeal, jurisdiction and standing. Any comments on jurisdiction? I believe we had... we have jurisdiction. It's an appeal to the Zoning Administrator's decision. I think we have jurisdiction. Any comments on standing?

Ms. Bertoldi: I think they have standing.

Dr. Larson: I agree. Any disagreement? Okay, jurisdiction and standing are valid. I'll now open the public hearing. Will the applicant or his or her representative please come forward and state the case.

Ms. Karnes: Good evening Mr. Chairman, members of the BZA, staff. My name is Debrarae Karnes. I'm a planner and an attorney and I work for Clark Leming. So, first of all, point of clarification. Mr. Chairman, I'm going to try to progress through this at my best pace possible. I'm not sure I'm going to make it in 10 minutes. Could I have extra time if I need it?

Dr. Larson: Please try and we'll see where it goes.

Ms. Karnes: Okay, I'll try. Okay. So, as a preliminary matter, I'm going to answer two questions that were asked. Jumping Branch Farm, who owns the subdivision, acquired it in 2015. A question was asked, what is the responsibility of maintenance? Now, for your ordinary cemetery in the middle of the woods, there is no responsibility of the owner to maintain. That's why so many of these old family cemeteries are falling in disrepair because the families aren't around. In addition, they're subject to vandalism. So, the County passed an ordinance a few years ago that requires certain additional safeguards when the property is developed. And so the obligation is usually triggered at site plan or at rezoning. Really it's because, you know, there is this requirement of a buffer outside of the cemetery area; it used to be that people would bury people outside of the perimeter of the cemetery for various religious reasons, and so no one was really sure, even with a delineation done by an archaeologist, that they were protecting all the graves. And so the protection requirements that Mr. Apicella read were passed, adopted by the County, and they are enforced as they should be. The... this is a cluster subdivision with the cemetery and its buffer and additional land placed on its own open space lot which will ultimately go to the homeowners association. This I know because I drafted the documents. But the homeowner... the lots have not been sold yet and so the obligation to do the routine maintenance falls on the developer... the company, Jumping Branch Farm. Now, one of my concerns about speed is I was trying to identify the issues that the County is still concerned with. I believe, and the County may correct me if I'm wrong, that there are five issues on the citation that the County is no longer concerned with, some of which were done but the County apparently didn't know it when they issued the citation. The archeological delineation was done, reviewed, and accepted by the County. The installation of temporary fencing was done after the citation was received. The installation of permanent fencing, which is sited, I think the County has now conceded that can be done at the end of... at the completion of development. Same goes with installation of the sign identifying the name of the family cemetery at the completion of development. And planting grass seed, the ordinance says upon completion of work but it's done. Okay. These... am I accurately representing the County here? The citations that the staff believes are not resolved is they are asking the relocation of the headstones and footstones to their original positions. The applicant... the manager of Jumping Branch Farm says that he did not relocate the headstones. He says nobody that worked for him on the property relocated the headstones. He's not required to maintain those headstones in their exact location. He just is prohibited from touching them... or anyone under his direction. And the reason I'm making such a big deal of this is simply that doing so in addition to being a violation of the county ordinance is a violation... is a criminal violation of state law, and it might get so bad if it's willful as to be a level 6 felony. So, these are serious accusations the County is leveling. I will tell you right now that the applicant has told me he's willing to work with the County to get what the County desires in terms of improvements, but he did not disturb the cemetery. The second issue, the County says go through debris piles and locate missing headstones. He's gone through them. He says the missing headstones, the material of the headstones, is not there. The debris pile is still on the property. I have talked to an archaeologist who says maybe the concern is that people, amateurs are distrusted because they may not recognize what would be material that would be relevant. The County is welcome to come on the site and look through. The applicant does not believe there is any portions of any headstone, footstone, whatever, in the debris pile. So, this is my question on these

***Board of Zoning Appeals Minutes  
June 25, 2019***

two and the other two points. What evidence does the County have that the developer, or any of his employees or contractors, moved anything... disturbed anything? What's their evidence? One of the things I'm going to ask you, Mr. Chairman, is the ability to cross examine the zoning inspector and Miss Dodd. Neither are here. So it's really not possible, even though we would characterize their reports as hearsay. But moving forward, because I'm trying to move on, the accusation is that Jumping Branch Farm disturbed not only the headstones but the 35-foot buffer. They deny it. I'm going to bring up an engineer in a minute. He says there's no evidence of disturbance. You don't know when the disturbance happened. Was it before 2015 or earlier? Again, what proof do you have Jumping Branch Farm did it? The County is asking the developer to repair all broken headstones. The developer is not an insurer of headstones, some of which were documented to be broken in the cemetery delineation. Excuse me. Replace broken fence. The fence was broken previously. The photos in the delineation study showing... show it lying on its side curled around a headstone. What proof is there the developer, his agents, or contractors did this, because you're talking about potential criminal charges occurring if you find, um, on behalf of staff's allegations. Okay. Now, what I'd like to do at this time is bring up an engineer who did a site visit last week. His name is Ryan Foroughi and he's going to keep it real short he's promised me. Okay, and I'm going to ask the questions...

Mr. Foroughi: Let me say who I am.

Ms. Karnes: Okay.

Mr. Foroughi: Ryan Foroughi, Professional Engineer with Bagby, Foroughi and Goodpasture. Stafford County resident.

Ms. Karnes: Mr. Foroughi, you're an engineer, correct?

Mr. Foroughi: Yes.

Ms. Karnes: Okay. And you oftentimes turn in site plans and you have worked on portions of this development as well, correct?

Mr. Foroughi: I am currently the engineer of record for this project.

Mr. Grimes: Ms. Karnes? When you prompt him with a question, can you speak in the microphone? You guys are gonna have to share it but...

Ms. Karnes: I'm sorry.

Mr. Grimes: ... this is a unique approach to actually ask questions of somebody you're bringing up to testify so.

Ms. Karnes: I'm usually accused of having too loud a mouth.

Mr. Grimes: Not this time.

Ms. Karnes: Okay. So, did you have occasion to... okay, I've asked you did do a site inspection last week. Was a 35-foot buffer there surrounding the perimeter of the cemetery?

Mr. Foroughi: Yes.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Ms. Karnes: Was a temporary fence erected in closing the cemetery and buffer?

Mr. Foroughi: Yes. There's a combination of supersilt fence and silt fence.

Ms. Karnes: Did the buffer area and cemetery, including the headstones, appear to have been disturbed?

Mr. Foroughi: It did not appear that the physical cemetery had been disturbed. The grass was about 5-foot tall. The buffer area did appear that it looked disturbed in the fact that it looked like trees and just lapped wood and just rubbish was pulled off the buffer area.

Ms. Karnes: I mean dead trees?

Mr. Foroughi: Dead trees it appeared.

Ms. Karnes: Did the... are you familiar with violation number 8 which reads, grading shall not be sloped at a ratio more than 3:1 from the existing grade of the cemetery at a distance of 50 feet beyond the perimeter of the buffer area. It... from... it's not supposed to be disturbed with a grade more than 3:1.

Mr. Foroughi: So, I visited that site Friday afternoon. I've probably submitted more development plans in this County than most engineers. That site does not have any disturbance within 50 feet at a 3:1 slope, existing, proposed, or otherwise. It's not there.

Ms. Karnes: Now, when we were talking in the hall, the developer pointed out that where there is... there is higher slope on one side of it that was pre-existing slope prior to development. He... he described it as a ravine. I don't think that's what these regulations are supposed to be in controlled. They... they are intended to prevent grading so that the property, the cemetery, can be easily accessed from the road to allow visits by the family. So, Mr. Foroughi, are you familiar with the construction plan?

Mr. Foroughi: Yes.

Ms. Karnes: And is the cemetery, the buffer, and the grading outside of the buffer consistent with the approved construction plan?

Mr. Foroughi: It does appear so. The buffer area, as indicated on sheet 4b of the construction plan, prepared by the previous engineer. The buffer is right on the right-of-way line, so it does appear to be constructed correctly or consistently with the construction plan.

Ms. Karnes: And that's my... my questions. If the BZA has any other questions, he's very knowledgeable.

Dr. Larson: Any questions for the witness? Robert?

Mr. Grimes: Yes. So, Jumping Branch owns the property, correct?

Ms. Karnes: Yes.

Mr. Grimes: And they're fully aware that the code states that as the owner of this cemetery, because they are the owner of the cemetery until the subdivision is done...

***Board of Zoning Appeals Minutes  
June 25, 2019***

Ms. Karnes: Right.

Mr. Grimes: ... that they are responsible for the preservation of grave markers including the repair and cleaning and shall comply with the Virginia Department of Historic Resources, correct? They understand that. They're responsible for the upkeep of this.

Ms. Karnes: They are responsible for the upkeep. But I disagree they're responsible for rebuilding markers or cleaning them.

Mr. Grimes: It says, preservation of grave markers, including repair or cleaning, and it goes on that they comply with the Virginia Department of Historic Resources. I think that's pretty clear. Whether they were broken before they bought it or not, they could have identified that, noted it, even gone through when they were doing the plan, plat submittal, and talking to the County that here's the existing conditions that we're taking over. They could have documented it some way but right now the code says they're responsible for it so.

Ms. Karnes: I believe...

Mr. Grimes: Go ahead, I'm sorry.

Ms. Karnes: I'm sorry.

Mr. Grimes: No, no.

Ms. Karnes: I believe that the code is very clear. The... an owner is not responsible for rebuilding markers. And I suggest to you that staff misspoke on this point.

Mr. Grimes: Based on...?

Ms. Karnes: I interviewed an archaeologist last week and that's what I was told.

Mr. Grimes: What did they tell you?

Ms. Karnes: They said that...

Mr. Grimes: Did they provide a letter confirming those facts?

Ms. Karnes: No, and so just like Anita Dodd's letter, this is hearsay. So I'm telling you this to back up my understanding and nothing else. I was told that the concern was the apparent movement of headstones, but not necessarily repair. And that this language was in error. That's kind of why I would really like to cross-examine Ms. Dodd. Now, again, when we first got this violation, I notified the planning office, or maybe I should say the zoning office, that Mr... the Jumping Branch... I need to keep the corporate name in use here... would be willing to work with the County and see what could be done to... because it is in their interest to make this cemetery a pleasant place. And it also... cleaning it up under CPTED principles discourages vandalism. But you are -- hmm, that's not a good way to start a sentence, is it -- the violation makes Jumping Branch a guarantor even when the damages occurred prior to their acquisition of the property, and even though some of the damages are noted in the delineation study. This just simply is not fair when you were talking potential criminal violations. Again, where's the evidence that anyone associated with Jumping Branch Farm either disturbed the cemetery, by omission failed to stop disturbance of the cemetery, by anyone that they have any responsibility for...



***Board of Zoning Appeals Minutes  
June 25, 2019***

Mr. Grimes: Ms. Karnes, I think you've stated that before. I think you've answered the question I have. I have another one for you.

Ms. Karnes: Okay.

Mr. Grimes: I think you stated that the debris pile is still on site.

Ms. Karnes: Yes.

Mr. Grimes: And you made a statement that the Jumping Branch developer, one of their employees, has gone through this debris pile and said that there are no more stones associated with that cemetery in that debris pile.

Ms. Karnes: The material of the headstone or the footstone, that's correct.

Mr. Grimes: Okay. Is that person an archaeologist?

Ms. Karnes: No it's not. No he's not.

Mr. Grimes: So, we have no way to know... you don't have any factual information that a professional went out there that knows what to look for to see if anything was in that debris pile?

Ms. Karnes: And that's why we're offering the opportunity to the County, either through the Cemetery Commission or the Historical Commission who have offered to do that.

Mr. Grimes: But if they offered to Jumping Branch to do that, why didn't Jumping Branch have them come out and do it?

Ms. Karnes: We... we invited the County. If you read Anita Dodd's letter, she off... she indicates continued interest in doing that, and she indicates that she recommended that to the County.

Mr. Grimes: Well, and I understand that but Jumping Branch could have gone directly to the cemeteries committee and asked for their help, professional help, going through that pile.

Ms. Karnes: So, I understand they did contact Anita Dodd.

Mr. Grimes: Okay.

Ms. Karnes: Okay. And then nothing happened.

Mr. Grimes: Did they follow up?

Audience member: Yes.

Mr. Grimes: Do we have that documented how many times this person was contacted to do this?

Ms. Karnes: I don't have that documentation.

Mr. Grimes: Okay. That's all the questions I have. Thank you.

**Board of Zoning Appeals Minutes**  
**June 25, 2019**

Ms. Karnes: Okay. Did I hear a question?

Dr. Larson: Question?

Ms. Bertoldi: I had it on then I turned it off. I actually had a question for the witness. I thought that's what we were doing at the time, so I'm sorry. I had... come back up... when you were up there on Friday, did you happen to take any pictures?

Mr. Foroughi: I did. I actually have... sorry, I do have two or three on my phone.

Ms. Bertoldi: Yeah. Because I think that, you know, when we sit here and have these pictures that are Attachment 4 that show clear grading, you know, of the property and... or of the cemetery and you're saying that there has been no disturbance whatsoever. I mean, are these incorrect? I mean, I am very curious.

Mr. Foroughi: No, no. I'm not stating that there was not any ground disturbance.

Ms. Bertoldi: Okay, then I misunderstood, because I thought you said that there was no ground disturbance.

Mr. Foroughi: No, no, I admit that... I mean, I don't know if I can approach or I can show you...

Ms. Bertoldi: Well, I think it's up to the Chair but I don't mind. I'd like to see what he has from Friday.

Ms. Brown: I've got some, too, from Sunday.

Ms. Bertoldi: Okay, good.

Dr. Larson: Let's see the witnesses from Friday.

Ms. Bertoldi: If you want to hand it to the Chairman first, that's fine.

Mr. Foroughi: *Inaudible - at the dais showing pictures from his phone.*

Ms. Bertoldi: So he is... we're passing those around. How did you determine that there was no disturbance?

*Speaker inaudible - microphone not on.*

Ms. Bertoldi: Oh, that would be great. How do you... how did you determine that there was no... I'm assuming then you meant there was no disturbance to the actual grave markers; is that what you're saying, that were already there?

Mr. Foroughi: Can I have one second just to email these real quick to her? I'm sorry.

Ms. Bertoldi: Then while you're doing that, I actually have a question for you ma'am. You made a couple of arguments about hearsay and I just want to make sure it's clear on the record. Are you saying that just the email is hearsay or did you also state that the Notice of Violation prepared by the zoning technician was also hearsay? Because you said you wanted to cross-examine both of them and then you said there was a hearsay. So, I just want to make sure that we're clear on what you're alleging is hearsay.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Ms. Karnes: And I will, at the end of this, make a formal...

Ms. Bertoldi: Right, mm-hmm.

Ms. Karnes: ... objection on this.

Ms. Bertoldi: But... no, no, you're right. I understand what hearsay is. I'm asking you what are you calling hearsay? Are you calling the notice of violation... are you calling the notice a violation hearsay?

Ms. Karnes: Yes.

Ms. Bertoldi: Okay.

Ms. Karnes: And for the reason that there's no opportunity to get further information or clarification, or to judge the demeanor of the person who (inaudible).

Ms. Bertoldi: Okay, so... so... so ma'am, you do know that there is an exception to the hearsay rule; it's called a business record.

Ms. Karnes: I still maintain (inaudible).

Ms. Bertoldi: Okay, but you do know... you are aware that there is an exception to the hearsay rule that is a business record which is documentation that's kept in the ordinary course of business in the way that it's normally done in a business and that is an absolute exception to the hearsay rule. You do know that, right?

Ms. Karnes: *Inaudible, not at microphone.*

Ms. Bertoldi: Right. And that is... right. Okay. So, you do not think that a notice of violation is kept in the ordinary course of Stafford County?

Ms. Karnes: I do not think that a staff report that refers to the inspector's notes that just includes pictures and is not addressed...

Ms. Bertoldi: No, no, no... a notice of violation, which is a notice of violation that is... that is used...

Ms. Karnes: The one-pager.

Ms. Bertoldi: Right, right. Which by the way, this is the first time you've made this argument this evening which I find interesting. But you think that the notice of violation, whether you disagree with the content, that an actual notice violation is not a exception to the hearsay rule as a business record.

Ms. Karnes: I would probably focus in on the violation as combined with the inspector's report that is attached.

Ms. Bertoldi: Okay, but if they attach it as part of the notice of violation... I mean... So, that is what I want to know. So you're claiming though, we can take this up later then if you're planning on making a formal, but I wanted it for the record that you think that the actual notice of violation does not meet the standards of a business exception rule for the hearsay exception.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Ms. Karnes: No, no, you're putting words in my mouth. Now, I'm just saying that there is a problem because I cannot cross-examine the witness that's claiming he observed disturbance just as you had the opportunity to ask Ryan Foroughi why he felt there was no disturbance.

Ms. Bertoldi: Okay.

Ms. Karnes: That's all.

Ms. Bertoldi: Alright, so, but again that's a witness that you brought forth and throughout the whole definition of a cross-examination is to cross-examine that somebody else brought up for direct.

Ms. Karnes: It is... it is my job as an attorney to raise any possible (inaudible).

Ms. Bertoldi: Right, right, but that's the reason why we get to ask them questions. But I think that we can go down this rabbit hole later on if it goes. But I just wanted... I didn't know she was gonna do that later on or I would have saved it for them. But I just wanted to make it clear for the record of what she was claiming was a hearsay.

Dr. Larson: Okay, thank you. Any other questions for the applicant or representative?

Ms. Brown: Yes, I have two.

Dr. Larson: Dana?

Ms. Brown: In my packet is Attachment 1, page 17 of 27, it's called the Virginia Department of Historic Resources Architectural Survey Form. Did your client pay for that and commission that?

Ms. Karnes: I believe that was done prior to my client's acquisition. Is that true, Mr. Peterson?

Mr. Peterson: No, I commissioned that... the cemetery report's commissioned by me, Jumping Branch Farm.

Ms. Brown: Yeah, it's dated 2016.

Mr. Peterson: I'm sorry.

Ms. Brown: It's dated in 2016; June 15, 2016.

Ms. Karnes: Okay.

Ms. Brown: Okay. So, you did commission it?

Mr. Peterson: Yes ma'am.

Ms. Brown: Okay. And I guess the survey or assessments, I don't know if you aware of this, but they describe what the graveyard looked like at the time and they say that no vandalism was noted and they say that it's covered with the two inch layer of cement and there's trees growing through it. So, that documents the condition at least in 2016 after you owned it.

Mr. Peterson: There's actually pictures on the last page (*inaudible - not at microphone*).

***Board of Zoning Appeals Minutes  
June 25, 2019***

Ms. Brown: Yeah. Who... who took the trees down? Because they were... according to the survey, they were there in 2016. And when I was out there on Sunday I could see clear tracks of heavy equipment going from the markers to the debris pile.

Ms. Karnes: I was advised that dead trees would come down... had... were taken out, and limbs that had fallen off were taken out. But no live trees were taken out. I was specifically asked that question.

Ms. Brown: Okay, because when I went out there on Sunday, the only thing out there right now is weeds. There was no trees, no fence, no concrete. All the things that the survey form said was in place on June 15, 2016. So, okay, that answers my question. Thank you.

Mr. Apicella: Mr. Chairman, I have a follow-up on the same page going back to the sentence I think Ms. Brown was alluding to or indicated several of the tombstones have toppled, no vandalism was noted. What I did see in the staff report was that some of the gravestones, and I don't see it here in the... in this in this document, some of the gravestones are not in the same place that they were originally. So, I just want to point that out as a... as an issue. So, can you speak to why that would be? Why it's not in the report but now some of the gravestones don't appear to be in the right place?

Ms. Karnes: We don't know. The developer went out to the site today and he didn't see anything amiss, but I get ... the point I'm making is that he did not relocate these tombstones. Nobody that he supervised did.

Mr. Apicella: In our package, attachments 6 page 2 of 2. This is the site plan or at least one page of the site plan.

Ms. Karnes: Right.

Mr. Apicella: Is that correct?

Ms. Karnes: Yes.

Mr. Apicella: And the perimeter, it says on it fence in accordance with Stafford County Zoning Ordinance Section 28-39(o). So where is the fence?

Ms. Karnes: Well, the temporary fence that they are complaining about in violation is now up.

Mr. Apicella: So, the code speaks to a temporary fence and then it speaks to a permanent fence. So...

Ms. Karnes: And the permanent fence is to be erected at the completion of development. And I believe staff even concurs with that conclusion at this point.

Mr. Apicella: I understand. But the temporary fence at least in the picture is not there. Is that true?

Ms. Karnes: It's there.

*Speaker from the audience: No, it's there.*

Mr. Apicella: In the picture that we have. Are you telling me these are not pictures of the parcel? This this is this is not the cemetery?

***Board of Zoning Appeals Minutes  
June 25, 2019***

Ms. Karnes: The temporary fence was erected, I believe, after the fence was... after the pictures were taken. What is the date on...

Mr. Apicella: So it says May 27, 2019. So, when you got that... when the applicant got the Notice of Violation, okay, this is a true and accurate depiction of the site as it existed on May 27... not May, on March 27, 2019.

Ms. Karnes: Mr. Foroughi, when was the fence erected? Do you know?

Mr. Foroughi: I don't. I'm not aware but there is a temporary fence erected now that can be seen in the pictures that that I have.

Ms. Karnes: It was not erected...

Mr. Apicella: I'm just going to when the Notice of Violation was issued, there was no temporary fence.

Ms. Karnes: That's correct.

Mr. Apicella: Okay. Can you help me understand then, this is a picture of the cemetery back from 2010. I realize there's some time that had elapsed. This is a picture again of March 27, 2019. Who did that?

Ms. Karnes: 2019, I believe it was the Zoning Inspector.

Mr. Apicella: No. The ground is clearly not the same. There is a huge difference between this picture and this picture. And I'm not an expert but it sure looks like somebody took a bulldozer or a grader and went through the par... I don't know how you do that without a piece of equipment, a heavy piece of equipment.

Ms. Karnes: The developer denies doing it.

Mr. Apicella: So, somebody disassociated with the property came over with a bulldozer and did that? That's, that's what ... that's what's being asserted here.

Ms. Karnes: I have no better answer for you. My question is.

Mr. Apicella: If a fence had been there... was a fence there before this happened? No. So wasn't it the responsibility of the developer to have a temporary fence there, so this... at least if somebody else did it, that it wouldn't happen.

*Speaker from the audience: No.*

Mr. Apicella: No it's not... Sir, you need come up if you're going to speak.

Dr. Larson: You cannot respond from the audience. You'll be given an opportunity after this.

Ms. Karnes: I should address comments to the Chairman, I am sorry. But Mr. Chairman, there was normal upkeep of the cemetery. Removal of dead trees. My client has advised me they did not disturb the land. My only question is what evidence the County has to the contrary.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Mr. Apicella: Okay, thanks.

Ms. Musante: Ms. Karnes, would you please speak into the microphone. Thank you.

Ms. Karnes: Sorry.

Dr. Larson: Are there any other questions... are there any other questions for the applicant's representative?

Ms. Brown: Maybe one more.

Dr. Larson: Go ahead.

Ms. Brown: For clarification. Ms. Karnes you said that the applicant did not do it. Is it possible that the applicant's employees who were out there doing the grading did it?

Ms. Karnes: The applicant questioned the employees and they deny it. The contractors.

Ms. Brown: Okay.

Ms. Karnes: Is it possible they did it? Anything's possible.

Ms. Brown: We've had a lot of rain lately. So, it kind of gets things muddy and washes stuff away. But when I was out there on Sunday night I clearly saw tracks of heavy equipment going from the headstones to the debris pile. And I took some pictures of those. But so that indicates to me they were fairly recent.

Ms. Karnes: So, I guess my whole point is that five of the nine violations have been either resolved by the applicant, were already taken care of before the violation was issued, or the time hasn't come for them to be done. The other four, he hasn't... he tells me he hasn't... there is no responsibility for Jumping Branch. I like to pursue things on a win-win basis. I believe it's important to preserve cemeteries. The developer has told me he's willing to work with the County. He's willing to meet with Anita Dodd and the County and do whatever is necessary to make the County feel that he's done his part. Although I don't know about remaking headstones that apparently were damaged before 2010, but that's the point I want to make. Let him, with the assistance of the County's professionals try to work out a solution satisfactory to him. And maybe that means deferring this until Anita can come in and testify, and until I can have an opportunity to examine the Zoning Technician that issued this. That's my suggestion to get to the purpose of this ordinance.

Ms. Bertoldi: If I may?

Dr. Larson: Go ahead.

Ms. Bertoldi: Yeah, the only part of the request that I want to comment on right now is with respect to counsel's repeated requests to cross-examine Ms. Dodd. We are not a trier of fact. This is not a place to be examining and cross ...for her to be cross examining someone who might be a witness. I'm not saying that maybe Ms. Dodd should come in or not. Okay, and testify, but we don't do that. We don't let counsel just cross-examine members of the County, you know, and such. And so I think that, you know, in that format you keep saying cross-examine, cross-examine. All questions are supposed to go through the Chairman and everything comes through the Board not direct cross-examination by an

***Board of Zoning Appeals Minutes  
June 25, 2019***

attorney of somebody else. And so that's what I want to say about that, I'm not saying that she shouldn't come in or not. I'm just saying that that is not something that I think that we should entertain.

Dr. Larson: That really isn't our procedure.

Ms. Karnes: And Mr. Chairman, to be frank, I just mention it because as an attorney I'm expected to request it ... make a record of requesting it at the end of the session, or I haven't done my job that's all. But I do think Ms. Dodd has valuable information that would share some insight as to what would be done. I believe she was instrumental in working through the passage of the Cemetery Ordinance.

Dr. Larson: Right. We um... every meeting we read through what we call the preamble and it verbalizes as our procedures.

Ms. Karnes: Mm-hmm.

Dr. Larson: And I'm sure you're familiar.

Ms. Karnes: Yes. Review your by-laws.

Dr. Larson: If we bring a person from the County in to testify before us they'll answer our questions and then you can respond to her. But you can't question her.

Ms. Karnes: Okay.

Dr. Larson: We ask the questions.

Ms. Karnes: And I'm looking at Ms. Dodd's letter now that was given to you. And she talks about some disturbance, now the cemetery presented unique problems as someone down... up poured concrete around the grave markers in an attempt to keep the vegetation down. This only created a bigger problem. It would be really interested... interesting to hear her comments. And I don't think we're getting the full comments here on this very short e-mail message.

Dr. Larson: Okay, thank you.

Ms. Karnes: Okay.

Dr. Larson: Any other questions for the applicant's representative? Okay, hearing none...

*Unknown speaker: When you are done, I would like you to testify.*

Ms. Karnes: Okay, well they're citizen's time. Thank you very much. We're willing to try to rectify the violations but we don't believe it's fair without evidence that the developer did this stuff, which could be a criminal offense, that the violation be found. Thank you very much.

Dr. Larson: Thank you. Would any member of the public wish to speak in support of the appellant?

Mr. Peterson: I think I can clarify a number of things that unfortunately she's stuck with without the knowledge of. So, I did buy the property in 2014.

Dr. Larson: I am sorry sir, your name and address please.



Mr. Peterson: Barry Petersen, Fort Lauderdale, Florida, and another address up here as well. But that's my primary address. I bought the property in 2000, excuse me, late 2014/2015. It did have a cemetery on it at the time. The first thing we did was a cemetery study which was required by the County when we put the thing in. When we got the violation, obviously you see the first thing on the violation is you have to go to a cemetery study. We go like, guys we gave you a cemetery study two years ago. Nobody read it. No we looked at it. Nobody knew it existed. When you do a cemetery study the first thing you do at the edge of that cemetery is you bring in a bulldozer. Not me now, this is the State people that do it. And you bulldoze down to bare ground, got plenty of photographs for you can show you how it's done. And that's the only way they can recognize if there is another grave that's outside of that cemetery. All those trees you're looking at got pushed out of the way but a bulldozer. And we have no problems bringing the people that did the report in here to demonstrate that and show you how they're required to do it... norm ... do intelligent cemetery study. Plenty of photographs here if you'd like to see them now. So they come back in to what they actually see is the cemetery which is the 16 graves you see there, right at the edge of those graves they stripped the ground down 6 inches below the topsoil and apparently, not a grave expert, the soil discolors even 6 feet above it. If it's a different color, and that's how they start to recognize whether or not there could be another grave that's not in that same line of graves with the other graves. That takes us back up into the time when... So, that's all cleared around the edges. Apparently nobody either photograph that or cared about it at that time but it was done it was certainly a larger disturbance then, than the disturbance that the contractor did. Three guys went out their hand raked, no machinery was ever taken over a grave site, a body. Nobody knocked over headstones. We're trying to do a \$600,000 house subdivision out here. It's to our advantage to make this thing look is absolutely exquisite as we possibly can, you know, to the point where we had ... we're spending \$100,000 on the entrance sign, getting in the road. We had the same guy, we had him do a stone wall around the cemetery, a little podium that was going to be like this, with a brass sign on it that gave the wall a cemetery history that, you know, all to be done. These guys went out there. They cleared everything by hand. To my knowledge, no headstones removed. I spent last week out there I was out there again today. Now somebody said that there's stones in the debris pile. I've looked three different times. I told the County go out there and look if there's a damn stone thing, take the stone out put it back someplace else where we can put it and figure out what's going on with it. If it's my job and I think, you represented that it's my job to maintain it and I don't probably disagree with that at all. That's all we did. There's no shovel marks, we didn't dig anything, nobody drove equipment over headstones. I mean they wouldn't even exist if that was the case. More importantly you can take that same study and I've got photographs from today, every... to my knowledge the only thing I've saw different from when my guys left that site, not my guys but Steve's guys, is two of the headstones had laid down. Now whether that's the rain, the weather the wind, whatever it is I don't know. Another lady here says one of them broke 10 years ago. It's my understanding that if I stand there and rebuild the headstone if I didn't pick it up she's going to write me a violation say I'm in violation of the Cemetery Ordinance. I'm not allowed to do that. I can mow over the top of it, I can stand there and dig around it, I can take weed whackers to it I can pull the roots out with rakes, I can't play with the headstones. And to my knowledge nobody ever has. And that cemetery study right there that was done in 2016, I'll show you the photographs that were taken out today named by name. All those headstones are in the same place. That's, you know, the only thing ... the only thing I saw different is two of those headstones that were standing up ones like a heart shaped like this. It's somehow been knocked down. But I have a picture of the day my guys left that thing with the inspector there. They were standing up then, they're knocked down now. How that happened, who did it or whatever, I have no idea. But that's as easy as taking them and tilting them back up. There is nothing broken out there. I did it a million photographs again today. Every single crack on every single headstone. I'll show you the pictures of it. It's all weathered it's been that way for 10 years. There's not a new broken piece of granite out there. Really easy to go look at it. You pick the thing up. You look at the side of it. You can tell in two minutes whether it's new broke or it's been that way for 10 years and whether. It's all weathered. I have no problems. I've

***Board of Zoning Appeals Minutes  
June 25, 2019***

got three other projects I've done cemeteries long in Prince William County. I moved 18 bodies at the county's request, right there on Darby Brook Court. This is the first time I've ever seen anybody complain about getting something cleaned up and not, not sure why.

Dr. Larson: Sir, I going to have to... you have used your time allotted.

Mr. Peterson: Can I have another two minutes?

Dr. Larson: One minute.

Mr. Peterson: One minute. So, this didn't start off as a zoning violation. Started off as an environmental violation. I called the zoning guy up when he sent me the violation. He said well the environmental people told me to give you a violation. I said, what do you give me in violation for? He said, I don't know. Three conversations, that same individual. I got the receipt back he says you need to call Anita Dodd because nobody in Zoning knows the Cemetery Ordinance well enough to tell me how to correct what was done. Called Anita Dodd three different times, had a lovely conversation with her. She was going to get back to me and set up a meeting with me and the County, never heard back from her. We did as much as we can do. If the County wants to take that cemetery and do the bloody heck it wants with it, I couldn't care less and they have my blessing. But tough to ask somebody for me to clean it up on one side and be responsible for things that we haven't done. Thank you.

Dr. Larson: Okay, are there questions?

Ms. Brown: I do.

Dr. Larson: Sir. Sir, could you come back? We have a few questions for sure.

Mr. Peterson: Sure.

Ms. Brown: Thank you for coming back. So you're saying that all the trees are gone due to the delineation... the boundary survey that you had to do the trenches?

Mr. Peterson: Yes ma'am we have pictures of you if you'd like to see them.

Ms. Brown: Okay, because I... in your in the report it says that the west side was excluded from that due to the precipitous drop off.

Mr. Peterson: Yes, the west side...

Ms. Brown: (Inaudible) the trees on the west side.

Mr. Peterson: Right. The west side is the side that the attorney was talking about that drops off so steeply into a ravine, that's never been touched the trees are still there everything else is there so.

Ms. Brown: Because I was looking at the map and to me when I was out there...

Mr. Peterson: It's actually the north side.

Ms. Brown: Well the west side, well it says west in here. The west would be toward the driveway of the new house that's there. Kind of angles.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Mr. Peterson: Right, you are correct. That would be west.

Ms. Brown: Yes.

Mr. Peterson: The ravine, obviously the ravines where the ravine is, it's actually in the north. It doesn't, you know.

Ms. Brown: Yeah. Because the...

Mr. Peterson: You can't change the ravine.

Ms. Brown: Well, the report said the west side was excluded to this grading to find out delineation so I just wondered what happened to the trees on the west side. And it also says you did trenches.

Mr. Peterson: I think if you look in the photograph on the west side, there's only those two trees that come out on that side and then the rest of it was just grass. There was no there was no trees there. So maybe it was cleared or pasture once upon time. The whole first hundred acres coming in was all pasture.

Ms. Brown: Yeah, it's talks about them when they do the trenches that they go up in a row. They don't like clear cut. It was just like they'll do it. They'll do a row.

Mr. Peterson: Well, they take it... it was a D-4 bulldozer with a 10-foot blade and they just went pshhhh (sound effect).

Ms. Brown: It says a 3-foot bucket was used...

Mr. Peterson: No.

Ms. Brown: ... to investigate the area starting near the southwest corner.

Mr. Peterson: That's the backhoe bucket. That's not the dozer that cleared the ground.

Ms. Brown: I don't know, it says a mini excavator.

Mr. Peterson: That's the... yeah. Mini excavators... hydraulic excavator with the bucket on the front. But to clear the ground to get to the bare ground using a dozer.

Ms. Brown: Yeah, I didn't think you had a clear ground but okay. That was my question. I just wondered what happened to the trees on the west side. Thank you.

Dr. Larson: Sir, I had a question as well.

Mr. Peterson: Sure.

Dr. Larson: The plowing that was done to delineate, I think you used the word, was that outside the 35-foot buffer?

Mr. Peterson: No it's actually ... if these are... where the gravestones are, they start at the last visible gravestone because what they're really looking for is more graves.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Dr. Larson: Okay, so you're saying it was plowed up to pretty much the existing graveyard itself.

Mr. Peterson: That's correct. Would you like me to show you a photo?

Dr. Larson: Yes please.

Ms. Brown: Dean, it does say in the report 10... a maximum of 10 feet from the perceived cemetery edges.

Mr. Peterson: I'm sure you saw this in your report as well which is the body markers. That's the pile of debris that's still there as of today.

Ms. Brown: Can you hold that up? I couldn't see.

Mr. Peterson: Sure. Yes ma'am.

Ms. Brown: Okay.

Mr. Peterson: I apologize, I got a...

Ms. Brown: When was that picture taken of the debris pile?

Mr. Peterson: I'm sorry. Pardon me.

Ms. Brown: When was that debris pile picture taken again? The one you just held up, yeah.

Mr. Peterson: I'm not sure today or Friday.

Ms. Brown: Okay.

Mr. Peterson: When we were up there Friday or today, one of the other. It's still there. I mean you can know...

Ms. Brown: No, I was out there on Sunday night. That's why I wanted to look at it.

Mr. Peterson: Yeah, it's right there at the corner next to the big oak tree.

Ms. Brown: Yeah, it looked a little bigger than that on Sunday night. But maybe I am mis-remembering.

Mr. Peterson: Well, it's spread out. It looks like somebody went through it...

Ms. Brown: It looked pretty high to me, it didn't look spread out. It looked kind of high and, but...

Dr. Larson: Dana, where in the report does it talk about the 10 foot?

Ms. Brown: *Inaudible, microphone not on.*

Dr. Larson: I see it.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Ms. Brown: It's in the second paragraph.

Dr. Larson: Yep, I got it. Okay, thank you. Any other questions for this witness?

Ms. Bertoldi: I have one. Just for clarification, are you, and just for the record I am referring to Attachment 4, page 18 of 58 and page 19 and page 20, specifically. But when you were talking about the State that you said came out with their big heavy equipment. Are you saying that they're the ones that did this?

Mr. Peterson: No ma'am. No. What they... they didn't. They did the perimeter, in other words, if this is what you're looking at in this drawing with the shows the grave... in this drawing right here.

Ms. Bertoldi: Okay.

Mr. Peterson: Okay. So, they came out and went to the edge of the headstones and did an eight foot wide swath around the whole thing with the exception of the north side, which drops off so fast that they didn't think it was practical to think a body was buried there.

Ms. Bertoldi: Okay, so these pictures of the 18, 19... page 18, 19 and 20 of Attachment 4 that I'm referring to and you've seen these you know which ones I'm talking about right? This one.

Ms. Peterson: Yeah, I've got very similar photographs.

Ms. Bertoldi: And this one, okay...

Mr. Peterson: And then we took all the foliage with hand rakes, off...

Ms. Bertoldi: Okay, you say hand rakes. But there are and I really I'm just trying to clarify. But, I mean, there's clearly like marks of heavy equipment there.

Mr. Peterson: There may be a wheelbarrow mark. But there's no heavy equipment going across any stone there. And if it was, you see on narrow those stones are and close together they are? Heavy equipment would break them up in three minutes. You couldn't drive a piece of heavy equipment over it if you wanted to.

Ms. Bertoldi: What about all these stones that are laying flat?

Mr. Peterson: If you look in the in the original photographs from the cemetery study.

Ms. Bertoldi: Yeah.

Mr. Peterson: They were laying flat. Now, in a photograph taken the day my contractor's people finished, which is this one you'll see two stone standing up there.

Ms. Bertoldi: Mm-hmm.

Mr. Peterson: These two stones right here.

Ms. Bertoldi: Mm-hmm.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Mr. Peterson: Those stones for some reason are now laying flat.

Ms. Bertoldi: If you had a guess what would you think hap... I mean obviously something happened to them maybe it would do you...

Mr. Peterson: Well, the wind could have gotten them. It's potentially possible. You know, whatever.

Ms. Bertoldi: Because I think you said earlier, I think you said earlier that to knock these over would take something heavy to do.

Mr. Peterson: No, not these stones because these are just marginally there. These right here, where you're seeing somebody moved stones, nobody can move those stones.

Ms. Bertoldi: What's the difference between the marginal stones and then the other stones?

Mr. Peterson: These right here are 2 inches wide and they're kind of placard type things. These other things are huge granite markers. I mean me and every guy in this room can't move them. And if you look at them, they are in the exact same position and the exact same tilt that they are in the cemetery study.

Ms. Bertoldi: What about this fence on page 20, it's mangled. Was that like that before when you purchased the property?

Mr. Peterson: Yes, again if you take a look at the bottom of the cemetery study the little, the little picture down on the right hand corner. I think it says southwest view or something like that. If you look real hard you'll see a portion of that fence. Now understand this fence, there's only half of it there. It's 50 years old. It's wrought iron. It was in 4-foot sections. To my knowledge, during the cemetery study there was only one piece of 4-foot that was standing.

Ms. Bertoldi: Okay, and my last question with respect to the headstones is, there is one headstone its page 21 of Attachment 4. And it's actually one of those that think big ones you were talking about they are directly behind the other ones that fell over.

Mr. Peterson: Right.

Ms. Bertoldi: And the cross is completely severed off and broken itself.

Mr. Peterson: It is.

Ms. Bertoldi: Do you know what happened to that?

Mr. Peterson: Yes ma'am. It fell on her foot in 2010.

Ms. Bertoldi: And it....

Mr. Peterson: And it's been like that ever since.

Ms. Bertoldi: And how... so it was... so it fell... what caused it to fall?

Mr. Peterson: I wasn't around in 2010 ma'am, you would have to ask her.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Ms. Belles: It was already busted, it's been busted. I've been there since 2000 and it's been...

Ms. Bertoldi: She has to come up here.

Ms. Brown: Can she step up, yeah.

Ms. Bertoldi: Yeah, can you come ... step up ma'am?

Ms. Belles: Okay, my name...

Ms. Bertoldi: State your name, yeah.

Ms. Belles: Okay, I'm going to get a turn. Just I want my turn. But that made sense, okay. Anyway I've...

Dr. Larson: I am sorry, you were just about...

Ms. Bertoldi: Your name and address.

Ms. Belles: Linda Belles in Hartwood. Okay, I've been going to that cemetery off and on for like since 2000, and it was all concrete around it. Heavy duty concrete didn't make any sense. It looked like... the concrete is healthy, like really thick. And somebody had to... that cross was broken. It's in so many little sections that anything a tree branch, anything could and did over in sections and trying to be a good doer, I picked up the top put it up there and it fell my foot and broke it a bunch of spots, and now I have a plate in it. But it was busted, so the only thing that was really busted that he's talking about is that cross. But I have pic... I must have 50 - 60 snapshots of that cemetery. I've been there so many times that the pieces that... whoever got that concrete out there, there is no way of moving the concrete without disturbing the headstones. Not all of them just some because you couldn't have gotten it up. I've got the pictures, I mean real clear of everything. Now, I don't know which ones are yours that... but...

Mr. Peterson: (Inaudible) the same.

Ms. Belles: Oh yeah, yeah. The ones that are really old, 1822 I believe, that lay flat, those have been like that. It's the standing ones; if you look at the footstones and you look at the... and you look at the headstones, they're not in the same area. There's... it's like somebody re-put 'em in because they had taken up the concrete and they scooped them around, didn't know where to put them. Some were laying against... where they weren't. I've been... I've got a survey from 2006, 2010, and pictures from 2000, and the concrete was there till now. And there's no way in God's green earth that you could have gotten that concrete out of there. I'm not saying you did it. I'm just saying somebody did it. Got that concrete out that there, maybe a 3-foot bucket loader. I'm not talking about the big scooping... what is it, a bulldozer? I'm not talking about that. Somebody, whoever carried that concrete over to the pile, had to have had some of these headstones in it. In fact, on the way over, which I didn't move, I have a footstone that was busted, laying in the ground. I got a picture of it, I even got a GPS to the inch of where that piece is. It's busted into, not that...which is marble footstone that is halfway between the pile and the graveyard. And right in where the tracks are. Somebody had it in a bucket loader or something and it fell out when they were moving the concrete.

Mr. Jenkins: And it's still there?

Ms. Belles: It's still there. I could take you there with flashlight tonight and true, I know exactly.

Mr. Peterson: Then you need to pick it up. I mean if...

Ms. Belles: Well I'm not allowed, I am not allowed to touch anything without okay with everybody or I would be in trouble. But I can tell you I got pictures of everything. So somebody came in with something and it is very obvious as they were getting the concrete out they had to. It was so thick, so touching the headstones that they had to have like knocked them over. There are two missing pieces of footstones, one is granite I believe and ones like sandstone, and they're missing. And as what you were saying trying to get a hold of Anita, I just saw Sunday that is first thing I knew about everything. So she's... and everybody blames everybody else, but she has been trying... she said none of this would've happened, I tried to get everybody together, nobody would get in contact. The usual stuff, nobody would call anybody nobody would get together. She said if we all could have sat... I'm sorry, I've lost my voice from yakking, but if everybody would have sat down at the table to begin with and she said the County, the developer, her and a couple of people, I don't know who all is involved. But if they would have done that, none of this would've happened. But it didn't happen, nobody would communicate. Everybody says...

Mr. Peterson: I gave her a bunch of phone calls.

Ms. Belles: I know, and she said she called you and see here we go. He said, she said. But you know it goes, unfortunately with the County, nobody gets back with anybody. And so here we are. Anita is at conference, she left yesterday morning. She said would you go in, they've got the info they need. Anything above my pay grade I'm not involved. I go to all the cemeteries and I've been too personally, in this county alone 450 cemeteries, not headstones and they're all documented are on 3<sup>rd</sup> floor of the Courthouse. And all our surveys, I've got 50-60 pictures of this cemetery because I do stone rubbings on some of them, the (inaudible). So what we personally want is what you just said, we just want to go through the pile. And I think when I first saw that now... I can't remember for sure because I wasn't paying that much attention, it was taller.

Mr. Peterson: The pile.

Ms. Belles: The pile. But tha... I could be wrong on that big time.

Ms. Brown: I agree with you.

Ms. Belles: You thought it was bigger?

Ms. Brown: Just in disclosure, this is the lady they ran to on the road on Sunday night.

Ms. Belles: And I found that so, as you walk, the grass is high, as you walk between all the cement that's in the pile, and there had to be more than that because there is so much in there, so thick. But I don't know. I don't know who to accuse, but I'm saying it was moved and if it wasn't moved recently and the pile wasn't there a while back. How did he get there? It had to have gotten there recently.

Mr. Peterson: Oh no, I'll give you pictures, three guys broken up with sledgehammers. It's not that thick. The concrete is still there, so you can see how thick it is. It's actually not concrete it's slurry.

Ms. Belles: Whatever it is.



***Board of Zoning Appeals Minutes  
June 25, 2019***

Dr. Larson: Okay.

Ms. Belles: My time's up by now, but I am just saying...

Mr. Peterson: There's just being difference.

Dr. Larson: I have questions for the...

Ms. Belles: Me?

Dr. Larson: Yes.

Ms. Belles: Oh sure.

Dr. Larson: Does anybody have any questions for the gentleman.

Ms. Brown: I have some questions.

Mr. Apicella: Yes, I have some.

Ms. Belles: Yes. Yes. Stay put, we're both getting it.

Ms. Brown: Well I am for the gentleman.

Ms. Belles: Okay, if I'm...

Dr. Larson: Okay, I think Steven (inaudible).

Mr. Apicella: I am going to go back through some of the ordinance requirements. So again, the perimeter of the cemetery shall be indicated on a site development plan and subdivision plan. So this is the subdivision plan, and I... would you agree that the inside box, I know it's kind of hard to see, that's the perimeter of the cemetery, the inside box on the site plan.

Mr. Peterson: Whatever, yeah. I'm going (inaudible) that from here.

Mr. Apicella: Well it's in the package. I mean your attorney has it. She can obviously show it to if she if need be. But again there's a box inside, that internal box is this the boundary of the actual cemetery, okay. Then it says a minimum 35-foot wide buffer area shall be established around the perimeter of the cemetery as delineated per subsections 2A. So that's the second box, okay, that's the bigger box.

Mr. Peterson: Okay.

Mr. Apicella: Okay? And then it says temporary fencing shall be installed around the perimeter of the cemetery and buffer area as indicated on the plan. And then there's a note on the site plan that says fence in accordance with Stafford County Zoning Ordinance Section 28-3(O). That's on the site plan.

Mr. Peterson: Two different fences, yes. That's the permanent fence that goes around the cemetery when all... everything's done. Okay? And the other 35-foot buffer fence that is a silt fence was asked for by the erosion control people, not by Zoning, because he wanted to protect the soil in the cemetery from running off. I go like, it's a 35-foot circle how much soil are you...

***Board of Zoning Appeals Minutes  
June 25, 2019***

Mr. Apicella: Okay, I'm gonna have to disagree with you. It's this temporary fencing shall be installed around the perimeter of the cemetery and buffer area. It says and, it doesn't say one or the other it says both.

Mr. Peterson: No, but on the site plan that's actually, I believe, bigger than 35 feet. If you look at the flight plan I think that's 60 feet and takes you all the way to the road edge.

Mr. Apicella: Well it's 35 feet from each one of the corners of this of the cemetery.

Mr. Peterson: Yes.

Mr. Apicella: I am just reading you what the code says and what's on the site plan, okay.

Mr. Peterson: But what I'm saying is that the 35 feet is where the silt fence is now. When you put the permanent fence in there it will be larger than that.

Mr. Apicella: I'm just trying to go to what the code says and what's on the site plan. That's all I'm trying to establish at this point time, respectfully. So if you just bear with me, okay. And the last thing I want to want to point out is, it says no grading shall occur inside the buffer and cemetery area. Grading shall not.... Well, again no grading shall occur inside the buffer and cemetery area. So I'm looking at this picture,

Mr. Peterson: And if somebody has hand written something, is considered grading? Because if that's the case...

Mr. Apicella: I'm looking at this picture would you say that the orange clay area is inside the cemetery perimeter? Not the boundary but the cemetery perimeter?

Mr. Peterson: I promised not to ask you any stupid questions if you don't ask me...

Mr. Apicella: I don't think it's a stupid question because it's inside... it's pretty close to me...

Mr. Peterson: Gravestones all around.

Mr. Apicella: I see a gravestone right there. It's pretty close to the edge of the boundary of the cemetery...

Mr. Peterson: But even inside the cemetery it's the same orange color.

Mr. Apicella: That's not what I'm getting to. I'm just saying is the orange area, would you say that's inside the cemetery perimeter?

Mr. Peterson: And the cemetery, the whole thing is all right?

Mr. Apicella: Sir. I see... I see a potential box, imaginary box like you were playing football and you're watching a Sunday night game and they were showing you where the 30 yard line is. Anyhow...

Mr. Peterson: You are correct.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Mr. Apicella: I am getting to a point here, the orange area seems to be inside the cemetery perimeter. On this picture I see, and maybe you're your attorney can pull it up, its Attachment 4, page 19 of 58. I see what clearly looks like a heavy equipment tread inside the cemetery boundary. That's not a wheelbarrow.

Ms. Brown: *Inaudible, microphone not on.*

Mr. Apicella: It's clearly a piece of heavy equipment...

Dr. Larson: I'm sorry, could you tell us again what picture you're looking at.

Mr. Apicella: I'm looking at Attachment 4, page 19 of 58.

Dr. Larson: Okay, thank you.

Mr. Apicella: If you look to the right hand side, I mean it's the closest thing I can see in the picture.

Mr. Peterson: And that's in this package?

Mr. Apicella: In our package Attachment 4, page 19 of 58.

Mr. Peterson: I apologize (inaudible).

Mr. Foroughi: It might help if that could get put on the screen.

Mr. Apicella: I'm not sure how we do... I mean it's in the package so...

Mr. Foroughi: His is just not color. That's, I think it's all...

Mr. Peterson: The pages aren't numbered.

Mr. Foroughi: Right, yeah.

Mr. Apicella: You can have my copy.

Ms. Bertoldi: You can have mine.

*Discussion from the audience, no microphone*

Mr. Apicella: You look to the right hand side close to where the date is, 03/27/2019 and you can clearly, see in my opinion, a heavy equipment tread.

Mr. Peterson: (Inaudible) stand here and tell you, my company does not have a piece of equipment to its name. We don't own anything.

Mr. Apicella: So some nefarious person decided to drive a bulldozer around the cemetery. That's what you all are...

Mr. Peterson: Let me say this, it wouldn't be a bulldozer no matter what happens.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Mr. Apicella: So nobody affiliated with your company, no direct staff, indirect staff, contractor, subcontractor would have had any reason to be on the parcel anywhere with a piece of heavy equipment in the last couple of months.

Mr. Peterson: That's correct.

Ms. Belles: (Inaudible).

Mr. Peterson: I am not saying they weren't, I'm just saying, certainly not in my direction and I don't know when it was done. If I had seen it I would have told them...

Mr. Apicella: But as the developer, aren't responsible for any activity that occurs on the site?

Mr. Peterson: I have no idea, no.

Mr. Apicella: No.

Mr. Peterson: If a guy gets his hand caught a piece of equipment that's not my fault. But I... we paid 3 off of the billing list that was supposed to do that all by hand, with sledgehammers and wheelbarrows. That's how they were...

Mr. Apicella: That may be how they were supposed to have done it. But you paid somebody to do some kind of work on the cemetery parcel.

Mr. Peterson: Yes I did.

Dr. Larson: In the interest of time, could we wind this up?

Mr. Apicella: I am done Mr. Chairman.

Dr. Larson: Okay. Any other questions for this witness? Quickie?

Ms. Brown: Mine are always quick. Why did you take up the concrete with the slurry? Why did you do that?

Mr. Peterson: Just because it was a concrete truck, when they clean their drum they spray water in it and then they dump the slurry out. And it's in that, you'll see it, it's in that concrete pile because you can't plant grass, you can't make anything neat, you can't maintain it with broken concrete on it.

Ms. Brown: Okay, good. The only reason I was... I was reading the section of code, 18.2-127, about what can and cannot be disturbed and touched. So, that's why I was asking. Okay, thanks. Done.

Dr. Larson: Okay, if there are no questions, more questions for this witness, I'd like to ask...

Ms. Belles: Me?

Dr. Larson: ... you, I forgot your name. I'm sorry. Could you restate your name again for the record?

Ms. Belles: Oh, I'm sorry.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Dr. Larson: So they know who you are. State your name please.

Ms. Belles: Linda Belles. It's Linda.

Dr. Larson: Linda, okay Linda. My question is, you seem to be really familiar with not only this cemetery, but I think you do a lot of this. So you mentioned the cement layer around the cemetery which is consistent with the Wallace cemetery boundary investigation where it says the cemetery had been paved, parenthesis, overlaying in cement into which a bow and picket fence had been set along the outer perimeter. So, could you describe what that meant? Was there cement supporting the headstones?

Ms. Belles: They were, the headstones apparently, a course with their first and then somebody... I don't know how else it could be, and then somebody put cement in there, it however they did it. But every headsto... the entire area in 2000 and even up 2010 was... if you would just put grass there and it was real nice imagine cement there in place of it. Some of the stuff is that thick and it started eroding because it's the ground shifted and stuff started cracking, but not all of it but a good portion of it.

Dr. Larson: I think what I, at least I have seen in some of the refuse piles appear to be chunks of cement in the pile.

Ms. Belles: Okay,

Dr. Larson: I would guess.

Ms. Belles: Yeah, in 2000 that wrought iron fence was really nice but trees had knocked everything over and the fence was, some of it was up, some was laying down. But none of it was, you know, messed up, all twisted and stuff like that was very nice. It was like somebody would have a good time grabbing that and taking it to an antique place.

Dr. Larson: Do you have any idea when the cement may have been disturbed?

Ms. Belles: No. I know in 2010 it was fine. I mean it's still there. And after that I think I have some pictures of 2016, but I'm not positive on that.

Ms. Brown: Dean, in our report, the historical report, it says...

Dr. Larson: I just read it.

Ms. Brown: ... that it was there.

Dr. Larson: Yeah, I just read that part.

Ms. Brown: Oh, okay. Did you say you have pictures?

Ms. Belles: I have like that much.

Ms. Brown: How it looked? Did you bring them with you?

Ms. Belles: Oh yeah. They're not in order but I do have. And I just know that one so well because it was a farm, you know, an active farm, not cattle and hunters. And that was scary but there was no road

***Board of Zoning Appeals Minutes  
June 25, 2019***

leading to the cemetery in 2000. Everything was overgrown. There was an old little shanty house behind. And that went down, it was so bad.

Dr. Larson: Okay, let me let me interrupt you.

Ms. Belles: Okay.

Dr. Larson: Because we are running late. So my I guess the gist of my question is do you know what time period between this report which is 2016 and now when the cement may have been disturbed.

Ms. Belles: No, I would have no idea.

Dr. Larson: Okay, thank you. That was my question.

Ms. Belles: But it definite...

Ms. Brown: Are you part of the cemetery committee?

Ms. Belles: Yes.

Ms. Brown: Or were you? Okay, thank you.

Ms. Belles: Still am, that's why I'm here. Anita will be back on the 5<sup>th</sup>. But just one statement, what we really wanted, I don't know about this whatever they're going to after you guys, court thing. But really what we wanted was access to the cemetery and because now that they own, it we kind of have that permission unless your family then you don't have to get permission. We wanted to go up there have pictures, many pictures and diagrams of where each stone should be, where each footstone should be, what's missing, so when someone goes up and says it doesn't... it matches. No it doesn't, it didn't match when I saw you there. I don't know if you noticed but some of the footstones didn't belong with those headstones, where they did before.

Dr. Larson: Okay, so you're saying you have a record of what it should be.

Ms. Belles: Many.

Dr. Larson: And you're willing to help...

Ms. Belles: That's what we wanted to do. We wanted permission to go around and to the pile, in the pile because a lot of people look in there. And it doesn't look like anybody looked it it's got hard dirt growing and it just dumps. It doesn't look like... it looks like someone might have scanned over it and said, no I don't see anything. Well, if you don't know what you're looking for, you don't know what kind... if it's busted, you don't know what you're looking for.

Dr. Larson: Okay, thank you.

Ms. Belles: As the stone slinging halfway there.

Dr. Larson: Okay. That's good information.

Ms. Belles: Okay.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Dr. Larson: Does anybody else, Adela?

Ms. Bertoldi: Yeah, I just want to ....

Ms. Belles: Be nice.

Ms. Bertoldi: Yeah, I'm nice. Are you still wanting to work with...

Ms. Belles: Absolutely.

Ms. Bertoldi: ...them? I mean do you think that this can be resolved...

Ms. Belles: Absolutely.

Ms. Bertoldi: ... and that everybody can walk away and...

Ms. Belles: Happy, yes. Because a delineation was done. So, nobody was on the outside of it. It's just whoever did that concrete screwed it up. I mean why would it not be in that... why would it be in that pile if it wasn't just done? That pile hasn't been forever. So it's been done. But if we can get stuff back and put it everything where it belongs and as far as that fence it's been so... you know, wrangled and missing. There's nothing can be done with that. But you know there's cheap, nice looking iron ones that are hollow and a sign. Even if we were just thinking it was...

Dr. Larson: Okay.

Ms. Belles: ... be a nice gesture....

Dr. Larson: I'm sorry...

Ms. Belles: ... if they'd fix the stones, that is what we were saying.

Dr. Larson: We need to get on with the hearing.

Ms. Belles: Oh good, because I got a headache.

Dr. Larson: I very much appreciate you... very much appreciate your testimony.

Ms. Belles: Any pictures you want Dana, any pictures I can show to you.

Dr. Larson: Thank you very much. Okay, we're still in the public hearing. Would anybody else like to speak in opposition to the... I guess it was in opposition. Sir.

Mr. Silleck: Opposition?

Dr. Larson: Okay, I think that's where we were.

Mr. Silleck: I hate to follow that. My name is Gordon Wallace Silleck and my family owned the cemetery. And I can corroborate everything Linda has said 100%. I retired down to Fredericksburg, I'll try to make this quick, and the first thing I want to do was to take care of the cemetery. And I contacted Anita Dodd and I said what do I have to do, what are the laws and all this. And at that point it was

***Board of Zoning Appeals Minutes  
June 25, 2019***

overgrown, there was the concrete that was broken and looked very heavy to me. And there were three stones that were on the ground at that time. And I told a friend of mine I was going to help restore it, and he said oh they're doing work on it. Are you doing the work with them? And I said what. I'm thinking of anybody is doing work. And I went up there and saw that it had been totally graded off. Everything was gone and there was a large debris pile which is about half the size right now. And a construction worker, I was with on one of the visits, said there is definitely marble pieces and granite pieces in that pile. He knows the difference between concrete and stuff that would be in the cemetery. I have pictures of those pieces of marble and in the field and I did notice that the footstones were in the wrong places and it looked to me like the entire thing... I don't know how you get around those stones with the concrete and all that. And I have to say this is hearsay now, I was with somebody the very first time when I saw this and he said he saw people moving the stones into a pile. And that was just outrageous to me. I didn't get his name unfortunately, so I can't corroborate but that's... it makes sense when you think about everything that was done to it.

Dr. Larson: You said that when you... at one point you said everything was gone. Does that include all the grave markers and everything?

Mr. Silleck: No, the stones were there.

Dr. Larson: Stones were still there.

Mr. Silleck: Somebody told me that they had moved them off in order to do that grading.

Dr. Larson: And well it's...

Mr. Silleck: But its hearsay, I can't...

Dr. Larson: Okay, in what timeframe was that?

Mr. Silleck: I would say last November.

Dr. Larson: Okay, did you... when you when you were there last November.

Mr. Silleck: Yeah.

Dr. Larson: And what you saw. Did you see this cement still laying there or was it graded off at that point into the pile.

Mr. Silleck: It was in the pile then.

Dr. Larson: Okay.

Mr. Silleck: Yes, yes. There was nothing but the headstones and the footstones there. But you could tell by the red dirt that, if you know anything about Virginia dirt, you got to dig down a certain number of inches to get that red dirt. And it was totally red. They had gone... and how do you do that with stones? I don't know if that's... it doesn't make sense to me.

Dr. Larson: Thank you. Any other questions for this witness? Thank you sir.

Mr. Silleck: Okay.



***Board of Zoning Appeals Minutes  
June 25, 2019***

Dr. Larson: Alright. I don't know if I missed anybody, but does anybody else want to speak on this topic? That hasn't spoken yet. Okay, thank you. Okay. Does the applicant wish to respond to anything said by the opposition?

Ms. Karnes: (Inaudible) just leave. Mr. Chairman, I'll make this short and sweet. I think the issue is whether the applicant, the developer has intentionally and willfully disturbed, damaged and I think he's shown a willingness to work with these people. And although, I got to tell you I'm I admit that this is very unusual. I think that fact finding and fairness would allow all these people to meet and make recommendations. And see what the developer is willing to fund. And that is going to be more productive than issuing a citation at this point.

Dr. Larson: Any questions for this witness? Thank you.

Ms. Karnes: Thank you.

Dr. Larson: I am going to close the public hearing and bring it back to the Board.

Mr. Apicella: Mr. Chairman, may I ask some questions of staff?

Dr. Larson: Go ahead.

Mr. Apicella: On page 2 of the Notice of Violation, it identifies what the County believes are corrective measures. Can you go through that list and from your vantage point indicate which ones you think are still operative? Yes, it's Attachment 1, page 26 of 27.

Ms. Blackburn: Okay, I am on that page...

Mr. Apicella: Yeah, I'm asking which ones you think still need to be taken care of.

Ms. Blackburn: Well, if you go back to the staff report, there was a request for the archeological delineation and that was found.

Mr. Apicella: So that one's been taken care of.

Ms. Blackburn: Then it was to ensure all headstones and footstones are in the original location.

Mr. Apicella: And that's not been from your vantage point.

Ms. Blackburn: Yes, that statement was that we do not believe that that's where they're supposed to be. Then it was to go through the debris pile and obtain missing pieces.

Mr. Apicella: So, you think that still needs to be done?

Ms. Blackburn: Yes.

Mr. Apicella: Okay.

Ms. Blackburn: And repair all broken head or footstones.

Mr. Apicella: Still needs to be done.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Ms. Blackburn: Yes.

Mr. Apicella: That's what I'm asking, whether it's been done or not done.

Ms. Blackburn: Install temporary fencing. The fencing that now has been put up appears to be part chain link and part silt fencing. And silt fencing is when you... is required when you do a disturbance. So as far as the chain link fencing, we haven't gone out to totally inspect that but it would be you know a chain link fence and can be temporary fencing. But it was not up at the time when the notice was done.

Mr. Apicella: So that's still questionable whether that...

Ms. Blackburn: Yeah.

Mr. Apicella: ... the type of fencing and how much of it has been provided.

Ms. Blackburn: And which it was required on the site plans. And replace existing fencing that was originally on site, that we see in one of the pictures is one piece of twisted fencing so that is potentially in the debris pile also. But we don't see it anymore. So, that one still needs to be addressed. The sign that is, excuse me, that is included in on the site plan. So that will at least have been addressed. But it does need to be installed when the development is done and the grass seed upon completion that has already been done for stabilization.

Mr. Apicella: Thank you.

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

Dr. Larson: Go ahead Dana.

Ms. Brown: I'm looking on the memorandum that they wrote to the County on June 25<sup>th</sup>, page 7 of 9 under number 7. The County had listed what was wrong and it looks like the applicant out here responded in italics. And one thing that caught my eye was that it says it requires installation of a permanent fence, after all development is complete. Such fence is referenced on... When I looked at the ordinance the ordinance says after any surrounding site work is complete. So there is a discrepancy on that. And to me, I don't think any surrounding site work means when the development is complete. They are still building homes, they're still grading. That was something that they added so I did want to point that out that that's not what the ordinance says. The ordinance says after any site work is completed... after any surrounding site work is completed. So I think that needs to go up now and the plaque.

Dr. Larson: Okay. Any other discussion or motions?

Ms. Bertoldi: I just want to ask staff a question it's real fast.

Dr. Larson: Go ahead.

Ms. Bertoldi: So, I know in testimony it seems like there was, you know, phone calls made and people not getting back, this, that and the other. What is staff's response to that? I mean, is... was there ... is there ever a point where this needs to be addressed or is there still an open avenue to work together and try to solve this issue? Did they ask for more time than the 30 days that was given to them and the

***Board of Zoning Appeals Minutes  
June 25, 2019***

notice? Like what... where are we at and like.... because at the end of the day this is what still has to be done right? So.

Ms. Blackburn: To my knowledge no additional info... I mean I was not asked about doing additional time and once you do notice its 30 days to correct that...

Ms. Bertoldi: Right.

Ms. Blackburn: ... violation or to submit for an appeal. And once an...

Ms. Bertoldi: Okay...

Ms. Blackburn: ... appeal is submitted...

Ms. Bertoldi: ... so that's why we're here...

Ms. Blackburn: ...then all things stay.

Ms. Bertoldi: That's why we're here because they did not get it done within the...

Ms. Blackburn: Yes.

Ms. Bertoldi: ... 30 days. Okay. Thank you for that clarification.

Dr. Larson: I have a question for staff. Is there an avenue that can be used to work with the developer to correct these remaining discrepancies and maybe facilitate cooperation with the Cemetery Committee to do their work on the cemetery?

Ms. Blackburn: That I do not have the answer for. I think that's a legal question at this point in time. Because we have issued a notice, they have appealed it. And I do not know the legal answer to that.

Mr. Apicella: I would think that could happen regardless of how we adjudicate this matter tonight.

Dr. Larson: Well what I'm wondering is if... if we... although we've heard this case for quite a quite a period of time now. If we gave them more time, say a deferment until next time, to work with the County to correct what needs to be corrected. And work with the Cemetery Committee to get the information that they need so they can correct what needs to be corrected. We might be in a better position to maybe come up with a win, win.

Ms. Brown: Mr. Chairman I think we still need to decide if there was damage done that he needs to be corrected... that he needs to correct. Right?

Dr. Larson: Well, there is an appeal. The question is do we want to defer it until next time and make a judgment based on what's left? Or do we want to do it now?

Ms. Brown: Can we ask the gentleman what he's willing to do.?

Dr. Larson: Certainly.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Ms. Brown: Earlier I think your counsel had stated that she had to talk to you to decide what you were willing to pay.

Mr. Peterson: I'll gladly give the cemetery to the County. Not a problem. I mean I won't, you know, originally we've already paid to have drawings done, stonewalls we're gonna be done. Somebody else can have this problem. I've done three other cemeteries in three other counties and gotten accolades for the job I did a Derby Brook Court. This is kind of like backwards to me.

Ms. Brown: Are you gonna pay to do all of this?

Mr. Peterson: Pardon me?

Ms. Brown: Are you going to pay to correct all of this?

Mr. Peterson: To do what?

Ms. Brown: To correct the violations.

Mr. Peterson: Sure. There's no... I don't think any of those violations are expensive to correct. I mean, certainly I'm responsible under my bond to put the fence up around the cemetery at the end anyway.

Ms. Brown: When... when... when do you... that's what I disagree with. You think the end is after the development is complete.

Mr. Peterson: Well, after grading is complete on the lot next door or across the street. I mean, if you want the fence up tomorrow I couldn't care less about a chain link fence. That's not an issue except for me, if it was me and I were you people I'd go like, take a look at the chain link fence you've got around cemeteries now right there on the corner of Truslow or Becca Church Road, is that the correct name?

Ms. Brown: How about this. We meet in the month...

Mr. Peterson: They turn ugly. Why doesn't somebody do a nice stone wall that accomplishes the same thing because a 3-foot high fence anybody is going to jump over it, just like they could... do a nice stone wall, make this thing look...

Ms. Brown: Can I ask you this?

Mr. Peterson: ... really beautiful and classic.

Ms. Brown: Can I just ask you this? We meet once a month. Are you willing to comply with all of these violations in the next 30 days before we meet again?

Mr. Peterson: Absolutely. Okay, thank you.

Dr. Larson: Robert, did you have a question?

Mr. Grimes: No, not a question. I have further discussion for the Board since that's where we're at, I believe.

Dr. Larson: Yes. Thank you, sir.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Mr. Grimes: Mr. Chairman, I have to disagree with this discussion of deferring the decision. This Notice of Violation was issued in March of this year. Correct? March 28<sup>th</sup>.

Ms. Blackburn: Yes sir.

Mr. Grimes: We are now 3 months and the applicant didn't ... with a Notice of Violation in hand, wasn't standing in the Planning office and the Cemetery Commission office every day trying to quote work this out. I'm not seeing a commitment and I know Dana asked the question, are you willing to pay for this. I believe that the...

Ms. Brown: I am not saying I am willing to do that Robert, I just wanted to ask.

Mr. Grimes: No, no, no, I'm saying you asked the question. That's all. The comment from the applicant was that he doesn't feel like he has to do some of these things. He doesn't feel like they're his responsibility. So he may in his mind be answering Ms. Brown's question 100% truthful. He believes he can pay for this stuff, because it's nothing. He said its low dollar stuff. Well does that include fixing the stones? He's already said he doesn't think he has to do that. He thinks that is previous damage therefore he's not responsible for it. So I'm not sure if we're on the same page. I know, even though you ask that question. So, and I'm also again of the opinion that we're three months out since this notice of violation. I know everybody says they all want to work together but we had three months to work together and it didn't happen. There's some reason for that. And I'm not going to assign a motive to it all, because I'm not here to figure that out. I just know that there's a notice of violation, there was 3 months to potentially correct this before it even got to this Board and it wasn't done. Again, I can't speak for the motive of the owner or the owner's representative or the applicant. If it's me with a Notice of Violation I'm standing in that office every day to find out what I need to do to make it go away. And I just I don't see that. So, as we move forward first I'm inclined to make a decision tonight, is my first opinion. And then the second one is that I'm also of the opinion that I want to uphold the Zoning Administration's decision to issue this Notice of Violation.

Ms. Brown: Is that a motion?

Mr. Grimes: No, I'm just making my statement. That's all I have, Mr. Chairman. Thank you.

Dr. Larson: Anybody else?

Mr. Apicella: Mr. Chairman? I think the real question in front of us is whether it kind of like what the last case was this Notice of Violation properly issued. Were these issues that were mentioned, did they in fact occur at this at this site. And I believe they did, with the exception of the archaeological delineation, I think that was in fact prepared back in 2016. I think there's no... my ... a picture paints a thousand words. This picture paints a thousand words for me. That site was disturbed, the site ... the cemetery, not just the perimeter, not the buffer, but the cemetery itself was disturbed. The picture clearly shows a piece of heavy equipment. The applicant is indicating it wasn't him. I find it hard to believe that anybody in Stafford County would get a bulldozer and drive on to somebody else's cemetery and disturb it. To that end the fact that concrete was there and is not there anymore is in the debris pile and the applicant has said that they were responsible for the debris pile. I have to connect those dots. You don't pick up cement with your bare hands. You use a piece of heavy equipment to make that happen. I'm not attributing malice either. The only issue is whether or not the code was comply with or it wasn't complied with I have no reason to believe that some outside party is responsible for what happened here and every reason to believe that the applicant was responsible. And I find no further evidence to disprove that they're not responsible. So I think it's important for us to sustain the Notice of

***Board of Zoning Appeals Minutes***  
***June 25, 2019***

Violation because we don't want this happening elsewhere in Stafford County, for people to disturb... that's why the ordinance is there. That's why the State has its own requirements that cemeteries not be disturbed, and I can't say why that happened in this case. But it certainly looks like it did. And even getting the applicant another 30 days doesn't absolve them of the fact that these really egregious things happened at this cemetery, and maybe they wanted it to look nicer. I don't know for the benefit of selling parcels outside of the cemetery. Again, I don't know why it happened but it clearly looks like it did happen and I think we need to make an important judgment call here.

Ms. Brown: Okay, well, then I'll make a motion to uphold the Zoning Administrator's decision then.

Dr. Larson: Is there a second?

Ms. Brown: Because I do agree.

Mr. Grimes: I'll second.

Dr. Larson: Any more discussion? I'm going to support the motion because I agree there's pretty clear evidence that the Zoning Administrator was correct.

Ms. Bertoldi: You know, I am also going to support the motion. You know they can work together and I'm glad that they can get it done and correct the violations. But you know again, they can do that under the Notice of Violation. I have to say just for the record though there was, I think, an argument made that in order to be a violation that had to be willful violation. I don't think that that is a requirement of the ordinance. I believe that the cemetery ordinance would be classified as a strict liability. You do it in your lot. You know, it's ... you don't have to have the intent to do that. I believe that that was an argument. I did not find that persuasive and I don't think that is consistent with the ordinance. Also my last point is, I know it's late, is that you know the owner owns the property and he's responsible. If someone did this on his behalf even if he didn't know that they did it he's still responsible because he owns the property. He used the example of someone got their hand caught new equipment he wouldn't be responsible. That is apples and oranges. That's called worker's comp. You know, they go through the employer. So, I mean, there are instances but, you know, that's not one of them. If it's related to your land, you are responsible. So, for those reasons, I am going to also support the motion.

Dr. Larson: Any other discussion? Okay, the motion is to uphold the Zoning Administrator's determination and deny the appeal. All those in favor say aye.

Ms. Brown: Aye.

Mr. Jenkins: Aye.

Mrs. Stefl: Aye.

Ms. Bertoldi: Aye.

Ms. Grimes: Aye.

Mr. Apicella: Aye.

Mr. Gibbons: Aye.

Dr. Larson: Aye. Any opposed? Motion carries 7-0. Next item Zoning Administrator's Report.

UNFINISHED BUSINESS

ZONING ADMINISTRATOR'S REPORT

Ms. Blackburn: Mr. Chairman, Board members, I have thoroughly enjoyed working with you all. It's been a very nice seven and a half years. And I want to thank you for making things easy for me. And we've been through some extremely interesting cases and I think we've all learned stuff from it. And I just thank you for being such a good Board.

Dr. Larson: And again Susan, thank you.

Ms. Bertoldi: Thank you so much.

Mr. Grimes: Absolutely.

Ms. Brown: I'm going to miss all your animal stories how you rescue people... animals in the back. I have learned a lot about caring for strays.

Dr. Larson: Okay, if you'll allow me...

Mr. Grimes: She gives me... she gives me my puppy fix since I don't have one anymore.

Dr. Larson: In view of the time and I know some people actually have to work tomorrow morning, the only other thing I want to really cover tonight is discussion of FOIA procedures and really all that is, is I've been trying to arrange maybe a class for a better word of somebody that's a specialist in the FOIA procedures and to bring the BZA perspective to the meeting. I understand that Andrew may be capable of doing both. But what I want to hear is a dialogue between those two on some of our question. And what I need from the BZA is either yes or no, do you want to do it or not?

Ms. Brown: Yes.

Dr. Larson: Because it's going to spend funds, but I think the funds are available to spend.

Ms. Brown: I'd like to do it like the School Board does. Once a year they have FOIA training and they hire an attorney who specializes in FOIA, not a general attorney. And they.... some years they have good ones, some years they have ones...the one they had this year not so good. They were out of Harrisonburg. But somebody who actually handles FOIA cases, I think is better. Because we've had a little bit of FOIA training from the County, but it's very general and they're very reluctant to advise us because we are the BZA. So, I would like to get money for a FOIA specialist attorney.

Dr. Larson: Anybody else?

Ms. Bertoldi: I agree.

Dr. Larson: Okay, hearing no dissension, I don't think we really need a vote. But as long as everybody concurs with this I think I think we can do it. Okay, that's really all I want unless...

Mr. Apicella: Mr. Chairman, can I recommend just so the staff can post it because it's an issue.

***Board of Zoning Appeals Minutes  
June 25, 2019***

Mr. Grimes: Thank you.

**ADOPTION OF MINUTES**

*March 26, 2019*

Mr. Apicella: If you want to adopt the minutes I wasn't here, so I'm gonna abstain.

Mr. Grimes: That's what I was gonna bring up. Thank you, Steven.

Dr. Larson: Oh, you want to adopt the minutes now?

Mr. Grimes: Yeah.

Mr. Apicella: Yeah. You said there's no other business. I think that's probably... if we are going to adjourn.

Mr. Grimes: I move to approve the minutes from March 26, 2019, for the BZA meeting.

Ms. Brown: I'll second it.

Mr. Grimes: All, oops, sorry. Habit, I apologize.

Dr. Larson: I have one correction. I'll give it to you off line. It's basically an an to an on. So it's not a huge change. All those in favor of approving minutes say aye.

Ms. Brown: Aye.

Mr. Jenkins: Aye.

Mrs. Stefl: Aye.

Ms. Bertoldi: Aye.

Ms. Grimes: Aye.

Mr. Gibbons: Aye.

Dr. Larson: Aye. Any opposed?

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

Dr. Larson: Very well. Okay ladies and gentlemen, the meeting is now adjourned.

**OTHER BUSINESS**

- Discussion on FOIA Procedures
- Legislative Update



***Board of Zoning Appeals Minutes  
June 25, 2019***

- By-Laws
- Briefing on Changes to Home Business/Home Occupation

**ADJOURNMENT**

With no further business to discuss, the meeting adjourned at 10:47 p.m.

## Melody Musante

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**From:** Kathy C. Baker  
**Sent:** Monday, June 24, 2019 7:59 PM  
**To:** Melody Musante; Susan W. Blackburn; Jeff A. Harvey  
**Subject:** Fwd: BZA meeting

FYI

Sent from my iPad

Begin forwarded message:

**From:** [anita.dodd@yahoo.com](mailto:anita.dodd@yahoo.com)  
**Date:** June 24, 2019 at 7:55:13 PM EDT  
**To:** [KBaker@staffordcountyva.gov](mailto:KBaker@staffordcountyva.gov)  
**Subject:** BZA meeting

Kathy,

I spoke with Melody this morning about the BZA meeting Tues night. I will not be able to attend because I will be out of town. She asked me to send you an accounting of what I have seen and what I think of the subject of the Wallace/Hansford Family Cemetery at the Liberty Hall subdivision. Also, Debra Rae called me Friday, and except for the "look back", I told her my knowledge of what happened and how I felt.

I don't know if others have looked back to the beginning of this project, but I thought I would refresh everyone's memory.

In late summer of 2016 I attended a technical review meeting for what was then called Jumping Branch Farm. Recommendations about the cultural resources on the property were discussed with the engineers present.

A letter from the Stafford County Historical Commission, dated August 3, 2016 was then sent to Jonathan Fairbanks of Fairbanks and Franklin concerning the cultural resources at Liberty Hall. In this letter an offer was made to discuss the management of the cemetery and its clean up.

Around this time I also had a phone conversation with Mr. Peterson concerning the treatment of the cemetery, and offered to meet with him. The cemetery presented unique problems, as at some point someone had poured concrete around the grave markers in an attempt to keep the vegetation down. This only created a bigger problem. The meeting did not happen.

Then a few months ago I was contacted by a family member of those buried at the cemetery, wanting to help with its clean up and maintenance. At about this point was when it was discovered that an extensive compromise to the cemetery had occurred. I went out to the cemetery. I observed the following:

An aggressive clean up of the cemetery, using heavy equipment that went over the cemetery pushing over and removing trees while removing all vegetation, had been conducted. It was obvious to me that in order to conduct this activity the headstones would have had to have been moved out of the way. All the markers, except one, appeared to have disturbed soil under them.

When the markers were replaced, they were not put back in the correct order. An other indication that they had been moved. The correct lay out of the cemetery and the correct placement of the markers is recorded in an April 2010 survey conducted by the Stafford County Cemetery Committee (SCCC). The correct sit plan for the cemetery is also recorded in a 2016 cemetery delineation report done by Browning & Associates, LTD for Mr. Peterson. I obtained my copy of this report from Mr. Peterson.

When comparing the SCCC's survey with the current lay out of the cemetery it was also apparent that at least one of the granite foot markers is missing and other sandstone foot markers were not to be found as well. For this reason I would recommend that the debris pile from the cemetery be investigated to determine if any of these missing markers can be found there. I would recommend that the SCCC be involved with this activity as they are familiar with what to look for.

I would also like to say that early in the conversations about the cemetery, I suggested that all interested parties come together to discuss how best to move forward. Having all the interested parties at the same meeting would have, hopefully, clear up any misunderstandings about accepted cemetery treatments.

As I said before, I can only comment on what I saw and what I know about the cemetery.

Anita Dodd, Chairman  
Stafford County Cemetery Committee