

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
August 27, 2019

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) of Wednesday, August 27, 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: Adela Bertoldi, Dana Brown, Robert Gibbons, Robert Grimes, Brian Jenkins, Dean Larson, Heather Stefl

MEMBERS ABSENT: Steven Apicella, Jeffrey Spinnanger

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

DECLARATIONS OF DISQUALIFICATION

Dr. Larson: Good evening ladies and gentlemen, and welcome to this meeting of the Stafford County Board of Zoning Appeals. The BZA is a quasi-judicial body whose members are volunteers appointed by the Circuit Court of Stafford County. The purpose of the BZA is to hear, 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. Then we also hear and decide upon requests for variance from the Zoning Ordinance, when a literal enforcement of the ordinance would result in an unnecessary hardship to the owners of a property. And the BZA also hears and decides on requests for special exceptions where the Zoning Ordinance allows for special exceptions. The Board consists of seven regular members and two alternates. An alternate member may be called upon to participate when a regular member is unable to hear a case. Let the record show that we have seven voting members present; six are regulars and one is Mr. Gibbons here filling in for Mr. Apicella. In addition... okay, strike that. The County staff is presented... represented tonight by Melody Musante, the Deputy Zoning Administrator, Stacie Stinnette, the Associate... Administrator's Associate, and Denise Knighting, Office Manager, correct?

Ms. Keith: No. That would be Evelyn Keith.

Dr. Larson: I'm sorry, I'm sorry.

Ms. Keith: I'm a Zoning Reviewer.

Dr. Larson: I'm sorry. But you still are the Office Manager.

Ms. Keith: I am not.

Dr. Larson: Okay, what's your job?

Ms. Keith: Zoning Reviewer.

Dr. Larson: Zoning Reviewer?

Ms. Keith: Yes.

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Dr. Larson: Thank you. 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 Board will then discuss the jurisdiction and standing of the case. The Chair shall ask the applicant or their representative to come forward and state their name and address, and present their case to the Board. The presentation shall not exceed 10 minutes unless additional time is granted by the Board. Members of the Board may ask questions of the applicant to clarify or better understand the case. The Chair will then ask for any member of the public who wishes to speak in support of the application to come forward and speak. There shall be a 3 minute time limit for each individual speaker and a 5 minute time limit for a speaker who represents a group. After hearing from those in favor of the application, the Chair will ask for any member of the public who wishes to speak in opposition to the application to come forward and speak. After all public comments have been received, the applicant shall have 3 minutes to respond and provide closing remarks. We ask that each speaker present their views directly to the Board and not to the applicant or any other members of the public. We require applicants, speakers, and presenters and the audience... in the audience to act with a level of decorum and respect appropriate to a courtroom setting. After the applicant's final response, the Chair shall 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 order for any motion to be approved, four members of the Board must vote for approval. In order to allow the Board time for appropriate review, the applicant or applicant's representative is required to submit relevant material to the Department of Planning and Zoning 10 business days prior to this hearing to be included into the staff report. The Board may then 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. And I mentioned we have 7 voting members present. The applicant may withdraw his or her application at any time prior to a vote to approve or deny the application provided that the applicant has not withdrawn a substantially similar application within the previous 12 months. Any person, or persons who, does not agree with the 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. I now ask that anyone who has a cell phone or other electronic device to please silence it. The Board requires any person who wishes to speak before this Board shall be administered an oath. Therefore, I ask that anyone who wishes to speak tonight to stand and raise your right hand. Do you hereby swear or affirm that all the testimony before this Board shall be nothing but the truth?

From the audience: I do.

Dr. Larson: Thank you; be seated. The Chair asks that when you come down to the podium to speak, please first give your name and address clearly into the microphone so that 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 or additions to the advertised agenda?

Ms. Keith: Yes there is. Under Other Business, we have switched By-Laws to be second and the Potential Changes to the Zoning Ordinance first.

Dr. Larson: Thank you. Before we hear the first case, does any Board member wish to make any declaration or statement concerning any of the cases to be heard before the Board tonight?

Ms. Brown: I do.

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Dr. Larson: Go ahead, Dana.

Ms. Brown: I just wanted to say that I did go out and visit the property this past Sunday around 11 o'clock. I did not speak with anybody, but I... I did take a good look at the neighbors and the property in question, and I walked back toward where the water was. And the sign was down. And I... I put the sign back up.

Audience member: I put it back up myself.

Ms. Brown: Okay. It was hard; there's a lot of rock in there. Thank you.

Dr. Larson: Any other Board... any other members? Go ahead, Robert.

Mr. Grimes: Yes, I called Jeff to ask some background questions on this application after speaking to Melody to find out that Mr. Harvey was the one that put together the report. I will ask the same questions that I asked him on the phone in here so that all the members hear the answers that I received.

Dr. Larson: Okay, very good. Thank you. Anybody else? I note, for the record, that Mr. Jeff Harvey is here; he's Acting Zoning Administrator, as well as Planning and Zoning. Welcome Jeff.

Mr. Harvey: Thank you.

Dr. Larson: Okay, I also visited the property Monday. I didn't talk to anybody because it's an empty lot. But I walked the lot, including back near the river there... or the canal I guess it is. And took... I didn't visit the other properties, the adjacent properties, but I looked at how the lot in question abuts them. Okay, any other members? I'll now ask the secretary to read the first case.

PUBLIC HEARINGS

1. V19-01/19152867; America's Home Place, Inc. - Requests a variance of Stafford County Code Section 28-57(K) "Flood Hazard Overlay District," "use and interpretation of FIRMS" to construct one single-family dwelling on Tax Map Parcel No. 21B-1123. The property is zoned R-1, Suburban Residential and is located at 115 Channel Cove.

Ms. Keith: Okay. Case V19-01/19152867; America's Home Place, Inc. - Requests a variance of Stafford County Code Section 28-57(K) "Flood Hazard Overlay District," "use and interpretation of FIRMS" to construct one single-family dwelling on Tax Map Parcel No. 21B-1123. The property is zoned R-1, Suburban Residential and is located at 115 Channel Cove. Tax Map Parcel 21B-1123 is located within the Aquia Harbour Subdivision. It was created as a residential lot by subdivision plat that was recorded on November 17, 1970. The property has 80.0 feet street frontage on Channel Cove. The lot is 170 feet deep with the back of the lot being located on a man-made channel which provides water access to Aquia Creek. The property is relatively flat with the highest elevation of approximately 8 feet along the frontage of Channel Cove to an elevation of 0 at Aquia Channel. Public sewer and water utilities are available to serve the property. There are single-family dwellings on each of the adjacent lots to the north and south. These lots generally have an elevation of 8 feet surrounding both dwellings. Commissioner of the Revenue records indicate that the home on lot 21B-1122 was constructed in 1985. There is a small boat dock along the shoreline. The home on 21B-1124 was constructed in 1983. It has a sizeable dock with a hardened shoreline with a bulkhead. The Applicant's Variance Application. The applicant is requesting a full variance and relief from the elements of Sec. 28-57, Flood Hazard Overlay District (K) Use and Interpretation of FIRMS. This code section reads as follows:

“(k) *Use and interpretation of FIRMs [44 C.F.R. § 60.3]*. The floodplain administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:

- (1) Where field surveyed topography indicates that adjacent ground elevations:
 - a. Are below the base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area and subject to the requirements of these regulations; or
 - b. Are above the base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a letter of map change that removes the area from the SFHA.
- (2) In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a federal, state, or other source shall be reviewed and reasonably used.
- (3) Base flood elevations and designated floodway boundaries on FIRMs and in FISs shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.
- (4) Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in FISs.
- (5) If a preliminary FIRM and/or a preliminary flood insurance study is provided by FEMA:
 - a. Upon the issuance of a letter of final determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided by FEMA for the purposes of administering this section.
 - b. Prior to the issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to county Code subsection 28-57(q)(3) and used where no base flood elevations and/or floodway areas are provided on the FIRM.
 - c. Prior to issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change by and/or appeal to FEMA.”

The issue at hand is that the FIRM Map 51179C0134F identifies substantial portions of the subject property to be located outside of the designated AE zone (100-year floodplain). The Zoning Ordinance defines FIRM as “*Flood Insurance Rate Map (FIRM)* - An official map of a community, on which the FEMA has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that is available digitally is called a Digital Flood Insurance Rate Map (DFIRM). However, the Flood Insurance Study has identified the AE flood elevation in this section of Aquia Creek and Aquia Channel to be 7 feet. The FIS is defined as “*Flood Insurance Study (FIS)*. A report by FEMA that examines, evaluates, and determines flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudflow and/or flood-related erosion hazards.” The applicant contends that imposing the FIS elevation of 7 feet poses a hardship on the ability to construct a single-family detached dwelling on the property and are seeking a variance of the FIS requirement. The Evaluation is the standards for evaluation and approval of a variance request are set forth in Virginia Code § 15.2-2309(2), which provides that:

[To] grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

To grant a variance, the BZA must find that:

- 1) The applicant met its burden of proof by a preponderance of the evidence;
- 2) The application meets the definition of a variance as set out by Virginia Code § 15.2-2201; and
- 3) The application meets the criteria of a variance as set out by Virginia Code § 15.2-2309(2).

If the BZA finds that the statutory requirements are met, the BZA shall grant the variance. The BZA may impose conditions necessary in the public interest when it grants a variance. It may also require a bond or guarantee to ensure compliance with the conditions. However, if any provision is not fully and sufficiently met, the BZA should deny the variance request. Number 1, Applicant's Burden of Proof. When an applicant requests a variance from a zoning requirement of a locality, the applicant, not the locality, has the burden of proving the variance should be granted. The applicant must meet that burden by a preponderance of the evidence. Black's Law Dictionary defines the preponderance of the evidence as "[the] greater weight of the evidence...; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other." The strict application of the terms of the ordinance would unreasonably restrict the utilization of the property *or* that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance... *As applied to the Property, the applicant believes that the terms of the ordinance would unreasonably restrict the utilization of the property. Review of the remaining specific criteria of Virginia Code §15.2-2309(2) and the application follows:*

- (i) The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.**

Dr. Larson: Evelyn, if I could interrupt. We're going to refer for the record that the definition of a variance and the criteria for the variance are in the code. And the BZA is well aware of those things. If the applicant has any questions, we can certainly go over that. Okay, so if we could... we'll end it up then.

Ms. Keith: Okay, so now we're on, *The application indicates that "The owners purchased the property in July 2016, and procured a construction loan in August 2018, on the basis of the information received from Stafford County that the lot was not in a floodplain, indicating that there was no FEMA process involved in obtaining a building permit for this lot..." The applicant did not create the hardship.*

- (ii) The granting of the variance will not be of substantial detriment to adjacent and nearby property and nearby properties in the proximity of that geographical area.**

The application indicates that "The variance will increase the value of adjacent properties by construction of a single-family detached home on a currently vacant lot, which should increase the real estate comps."

The application states "The rear portions of other lots along Channel Cove, outside of the buildable area, appear to be near or on the line between the Zone AE and Zone X floodplains. All other lots in the vicinity have already been built."

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A single-family detached dwelling is a permitted use in the R-1, Suburban Residential Zoning District and the FH, Flood Hazard Overlay District.

The application stipulates that there is no other administrative or procedural remedy to relieve the hardship.

Summary: To find in favor of the applicant's request for a variance from the provisions of County Code Sec. 28- 57(K), the Board of Zoning Appeals must find that, by a preponderance of the evidence, the applicant proved its request, met the State Code definition and required criteria for a variance.

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

Mr. Gibbons: I've got a couple of quick ones. This thing was platted in 1970, correct?

Ms. Keith: Yes. November 17, 1970.

Mr. Gibbons: When did the ordinance go in effect?

Ms. Keith: If you can direct your questions to Jeff Harvey please. Thank you.

Mr. Gibbons: Mr. Harvey.

Mr. Harvey: Mr. Chairman, Mr. Gibbons, I believe the flood insurance program first started in Stafford County in 1978.

Mr. Gibbons: I didn't hear.

Mr. Harvey: I believe it was 1978.

Mr. Gibbons: Okay, and the property was purchased in 2016?

Mr. Harvey: By the current owners, yes.

Mr. Gibbons: And when did the staff meet with the builder, with the applicant?

Mr. Harvey: Mr. Gibbons, I'm not aware of a specific date. The applicant may be able to provide more information in that regard.

Mr. Gibbons: Was it before your time?

Mr. Harvey: No sir, I've been with the County at that point in time; however, it was likely discussed with staff from the Public Works Department, which I was not privy to that discussion.

Mr. Gibbons: I guess my question, Mr. Chairman, if you're creating a hardship, you must have known ahead of time what you were proceeding with. Now if you owned the property and then zoned it, but... I'll just listen.

Dr. Larson: Okay, thank you. Robert?

Mr. Grimes: Mr. Harvey, so who spoke with Mr. Gallagher?

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Mr. Harvey: Mr. Grimes, I'm not directly sure on the initial discussion that's referenced in the report...

Mr. Grimes: I'm sorry, let me rephrase that. Who spoke to Mr. Gallagher to come to this decision to bring this up as a variance in lieu of just having a ruling made by your office?

Mr. Harvey: Mr. Grimes, that was in a discussion with myself, several members of the Public Works staff, their civil engineers that handle the flood review for building permits, as well as Mr. Gallagher and several members of his team, including his civil engineers.

Mr. Grimes: Okay. And who is the person at the County that is the designated floodplain administrator?

Mr. Harvey: By code, that is the Zoning Administrator.

Mr. Grimes: Okay, and who is the Zoning Administrator at the moment?

Mr. Harvey: At the moment, it's myself.

Mr. Grimes: Okay. And, during the presentation from the County, it mentions the DFIRM documentation, which I believe is represented in a printout that was prepared by Bowman. I think you've seen this?

Mr. Harvey: Yes sir.

Mr. Grimes: Okay. So, on this printout that Bowman prepared, this looks like a screen capture from that electronic flood insurance map system, correct?

Mr. Harvey: That is correct.

Mr. Grimes: Okay. And the black line that's shown on here is... is Zone X, which is considered the 500-year floodplain.

Mr. Harvey: Yes.

Mr. Grimes: Okay. And the cyan line is Zone AE.

Mr. Harvey: Yes.

Mr. Grimes: Now, I'm not a hundred percent sure, but is this rectangle shown with... inside the plot for this house development, the footprint of the house or was this just a generic...? Because it doesn't appear to be the actual house plan that was presented on the construction documents.

Mr. Harvey: Correct.

Mr. Grimes: Okay.

Mr. Harvey: My interpretation of this drawing is that it's showing Zone X in relation to the property. You can see property lines and it looks like that they're showing a building envelope based on setbacks.

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Mr. Grimes: So, the BRL is basically the footprint in which a constructible dwelling could be built on this lot.

Mr. Harvey: Correct.

Mr. Grimes: Okay. Now, is that BRL, was that provided from Bowman or is that part... because I don't think that's part of the DFIRM system, correct?

Mr. Harvey: That is... that is correct. That would be information that would be provided on a building permit application to show that they're complying with the zoning regulations for front, side, and rear setbacks.

Mr. Grimes: Okay. And, so the one question that I asked you on the phone and I'll ask you again for the benefit of the rest of the members, so, because as I read through the specific code section 28-57, specifically section (u)3, it appears as long as the property or the home residence is built inside the AE Zone, it's allowed to be built there as long as the finished floor level is 3 feet above whatever the grade is noted one of the FIRMs, DFIRMs, whichever one is referenced. So, why did this case end up coming to the BZA?

Mr. Harvey: Well, Mr. Grimes, in discussion with the applicants, we were noting subsection (k)1 in particular, where it says, *where field survey topography indicates that adjacent ground elevations are below the base flood elevation, even in areas not delineated as special flood hazard area on a FIRM, the area shall be considered as a special flood hazard area and subject to the requirements of these regulations.* So, we have a situation where the FIRM map says that this is in Zone X, it's in the 500-year floodplain. However, when you look at the map and you look at the cross section elevations, it shows the AE Zone elevation at 7 feet. The topographic information provided with the building permit applications shows that there are substantial parts of the property that are below 7 feet. So, in essence, we have a situation where the map is saying one thing and the flood study is saying something else, and there is a conflict. So, my discussion with the applicant was the way to resolve that conflict would be consider filing for a variance of the flood... FIS elevation.

Mr. Grimes: Now, do you... is it possible, and I'm not sure if you can answer this, but is it possible that when the original developer for the lots in Aquia Harbour, that map and the elevation data on the original map was based on something before the lot was "finished or ready to build" and that might be why it's lower?

Mr. Harvey: Mr. Grimes, Mr. Gibbons was eluding to the fact that these lots were probably created before we had a flood hazard program in the County. Also, the flood hazard maps are updated periodically through time based on work by the Corps of Engineers and their contractors. The most recent map was done in 2015. So, the map boundaries actually change over time based on actual field conditions and improved data.

Mr. Grimes: Now, when the Corps of Engineers are doing the survey work, aren't they just surveying flood and water levels, not actual taking survey data from land heights and elevations?

Mr. Harvey: The Corps of Engineers typically is interpolating topographic data in relation to flood elevation data. So, in the case of Stafford County, our topographic data is on 2-foot contour intervals. So, in this particular case, we're talking about sometimes the differences of 1 foot in elevation could be quite a distance in land area. So, that does create, what the applicants indicate, a hardship in their case.

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Mr. Grimes: The issue of the elevation difference on the lot, and it could have come from the original developer changing the elevation of the property but, this builder could add fill, something to the lot to bring this elevation up, correct?

Mr. Harvey: Correct, because it's currently not in an AE Zone so they could provide fill on the lot.

Mr. Grimes: Okay.

Mr. Harvey: And they could also provide fill on a lot in an AE Zone but it does require going through a map amendment process with FEMA.

Mr. Grimes: Okay, so if they change the grade of the lot, then they've got to go to FEMA and get a map change.

Mr. Harvey: If it was in an AE Zone.

Mr. Grimes: Okay.

Mr. Harvey: And that's part of the problem we have right now; it's not in an AE Zone, but the elevation says it should be in an AE Zone.

Mr. Grimes: Right. And how long does that process take to have the FEMA maps updated or adjusted based on new data?

Mr. Harvey: I understand it takes several months, but the applicants' engineers may be able to give you more definitive information because they've gone through that process a number of times.

Mr. Grimes: Okay. Those are all the questions I have for the staff.

Dr. Larson: Mr. Harvey, I have one quick one, then I'll defer to Dana. You mentioned the Corps of Engineers doing interpolation study and coming up with the elevations on the lot that are below 7 feet; is that what I heard?

Mr. Harvey: Seven feet is what the flood insurance study says that the flood elevation would be in this area.

Dr. Larson: And what is... what defines the AE Zone?

Mr. Harvey: That is the 100-year floodplain. That's that flood elevation of 7 in this case.

Dr. Larson: Seven feet.

Mr. Harvey: Yes.

Dr. Larson: So, the Corps of Engineers, when they did their study or measurements or interpolations, they came up with something less than 7 feet in places on the lot? Is that what you're saying?

Mr. Harvey: No. In fact, the map would imply that they're interpreting most of the lot being above 7 feet in elevation. However, when we looked at the building permit application with the data provided by the engineers for the applicant, substantial portions of the property are below 7 feet.

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Dr. Larson: Okay. Hmm... we'll get there. Okay, Dana, you were next.

Ms. Brown: Hi Mr. Harvey. A couple questions. Have there ever been any other plans submitted for building on that lot since 1985? Has anybody ever submitted anything and then it got denied or they pulled it back or anything?

Mr. Harvey: Ms. Brown, we're not aware of any prior zoning actions that have gone to the BZA on this property, and staff has not researched it where there were other building permits ever filed for this property. We do know, by looking at aerial photography, at one point in time there was a shed or some outbuilding on the property.

Ms. Brown: Okay. And then, in an RPA, are... is there fences, sheds, swimming pools, things like that, are those allowed in an RPA?

Mr. Harvey: In a Resource Protection Area, water dependent uses are allowed. So it depends if some of those features are part of a water dependent use. Water dependent uses, a lot of times, will be focused on bulkheads, piers, walkways that provide access to the water; so a shed could possibly be part of a water dependent use if it was associated with a boat lift or something like that.

Ms. Brown: And fences?

Mr. Harvey: Fences typically are not water dependent uses and are not things that you'd normally see in a Resource Protection Area.

Ms. Brown: Okay. And then when we were just talking about how FEMA thinks it's... the property is higher than it actually is, if FEMA had the correct elevation of 7 feet, would that have changed their designation from X to AE?

Mr. Harvey: It would have adjusted the map more than likely, yes.

Ms. Brown: Okay. And then the last thing is, and I don't know if you know this, if we approved a variance for this property with the property being so low, what would the County's liability be if the property were to flood or cause flooding to the neighbors?

Mr. Harvey: Ms. Brown, I'm not exactly sure I can give you a direct answer on liability for the County. I would say more than likely the applicant would be providing fill material for when they build their house, because when they build the house they also have to provide positive drainage away from the house which would add more soil to the lot. So, in essence, the house is probably going to end up getting built up higher than 7 feet on the lot anyway when they go to construct it.

Ms. Brown: But with them changing things and adding fill, that's going to change the way the water is draining to the neighbors I'm assuming.

Mr. Harvey: It could have an effect for immediate drainage to the neighbors. As far as overall impact for flooding in the area, it'd probably have very minimal, if any, impact because the Aquia Creek watershed is such a large watershed and this body of water is a channel that's manmade so it really doesn't have a floodway. So, if there was any increase in flood elevation, it'd probably be very nominal.

Ms. Brown: Okay, thank you. Thanks a lot.

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Dr. Larson: Mr. Grimes, did you have a question?

Mr. Grimes: No, I was actually making an observation that I didn't need to share out loud.

Dr. Larson: Okay, are there any other... Bob?

Mr. Gibbons: Mr. Chairman, have you decided that this applicant has standing?

Dr. Larson: We haven't... we haven't gotten there yet.

Mr. Gibbons: Can we get to it?

Dr. Larson: That's right after this part.

Ms. Bertoldi: Can I just ask one... you know, I just... some of these terms I think not all of us, including myself, want a hundred percent be comfortable with the terms that we use. So, sorry if this sounds like a stupid question, but the Zone X that we're talking about that's the 500-year plain, that essentially mean that it's considered to be a moderate or low risk area, correct?

Mr. Harvey: Correct. And typically, Ms. Bertoldi, it implies that flood insurance is optional rather than required.

Ms. Bertoldi: Right. So, knowing that then, so if the... let's say they looked up the map... we haven't talked to them to see if they even looked up the map before they purchased the property or after, and they saw that they were in a Zone X. If they called their insurance company, the insurance companies typically... would you know this?... would typically go off of the FIRM map. Is that what they would go off of?

Mr. Harvey: Correct, unless they had a question and they may ask the County to provide them with an elevation certificate as to what elevation the house was built at relative to the flood elevation.

Ms. Bertoldi: Okay. Alright, thank you.

Dr. Larson: Any other questions for staff? Hearing none, thank you, Mr. Harvey. Okay, now we have time for discussion of jurisdiction and standing. Does anybody have any... anything to bring up on jurisdiction?

Ms. Bertoldi: Are we talking about standing?

Dr. Larson: Jurisdiction first.

Ms. Bertoldi: Oh, just jurisdiction.

Dr. Larson: Do we have the jurisdiction for this?

Ms. Bertoldi: I would say yes.

Dr. Larson: Does anybody not think we have jurisdiction? Alright, let's go to standing then. Would you like to say something on standing, Adela?

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Ms. Bertoldi: I just have a, I guess, some questions of the applicant that I think that I would like to ask before I can really determ... you know, decide on standing, if, if... is that okay?

Dr. Larson: That's fine.

Ms. Bertoldi: Or should we defer it to the...?

Dr. Larson: No, no. I think... I think... let me just explain to the applicant what we're doing here. We're trying to decide if you have standing to come and ask for a variance. In other words, are you qualified to do that? And yes, I would definitely think the applicant can speak during this discussion. So we won't be talking about anything to do with the property as far as the variance itself, but whether you are qualified to ask for a variance. Okay?

Mr. Gallagher: Can I approach?

Dr. Larson: Yes, please.

Mr. Gallagher: Good evening, my name is Greg Gallagher. I'm the Construction Manager for America's Home Place, the builder, representing the Mercers, the property owners.

Dr. Larson: Thank you. Adela, proceed.

Ms. Bertoldi: Yeah, so I just have... the reason why we... I think that, at least I can speak for myself that I want to ask questions so you know where I'm from with respect to standing, is typically the owner of a property is the one that comes and asks for a variance, not... or their lawyer... not a construct... you know, a construction company or a construction manager. So, I just would really love to have some background with respect to why you're the applicant. So, why are you bringing... why are you and not the owner bringing the application?

Mr. Gallagher: So, Mr. and Mrs. Mercer had a discussion as to who the applicant would be. And certainly, as logic would dictate that they are technically the applicant, they're the owner of the property. When they entered into a contract with us to build them a home, we took over... not took over but we assumed responsibility for the application and the approval needed by Stafford County, and other jurisdiction necessary to build this project.

Ms. Bertoldi: So, before you continue, by assuming, you mean in your contract with them to build the house. The contract says that you are going to be the one that's taking care of any permits, anything that has to do with the property in getting the home built, that is what your contract says?

Mr. Gallagher: Correct.

Ms. Bertoldi: So, you are their agent? Is that basically what you're saying?

Mr. Gallagher: Yes, absolutely.

Ms. Bertoldi: Okay. And that is the discussion that you had. When did... are you receiving any compensation at all from them with respect to representing them here tonight?

Mr. Gallagher: Not representing them here tonight specifically, but we are receiving compensation...

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Ms. Bertoldi: For the contract.

Mr. Gallagher: ... for the contract of building the home, yes.

Ms. Bertoldi: Which includes being their agent with respect to that. Okay.

Mr. Gallagher: Yes. And sometimes, I'll expand on that a little bit, sometimes in entering into that contract with our customers, sometimes they're very simple and the permit process is quick and easy. And sometimes they're complicated and we run into issues such as we're speaking about tonight. I have another project in Stafford County where we found a cemetery on the project which my customers don't know how to proceed in that area. Honestly, neither do I; I'm learning a lot about it. But acting as their agent or their builder, I'm facilitating those approvals in that process.

Ms. Bertoldi: Right. And so, okay, that actually answers a lot of questions for me. But, just for clarity though, you're asking for this variance not on behalf of yourself. So, if we grant the variance, we are granting it to the owners. Because yours doesn't say as agent. See, my issue is, is that, you know, your application just says you, in particular...

Mr. Gallagher: Sure.

Ms. Bertoldi: ... are asking for it. You're acting actually as their agent. So, I mean, are you representing tonight that... that the, and maybe, Jeff, you can answer how we proceed with that; if they're acting as an agent we want to make sure if we decide that we're going to grant a variance, how the variance is actually going to be granted and who to, because I'm not sure how we grant a variance to a party who's actually not named on the application.

Mr. Gibbons: It goes to the land.

Mr. Grimes: A variance goes to the land.

Ms. Bertoldi: Well, it goes to the land but the land... so it doesn't matter.

Mr. Grimes: It doesn't matter who the agent is.

Ms. Bertoldi: Okay. I thought it was both. Okay, so it's not the owner and the land, okay. That's my mistake then.

Mr. Gallagher: But I would say that... that I would say that the variance would be granted... you know, if you're granting it to the applicant, I would grant it to America's Home Place. I'm America's Home Place's representative.

Ms. Bertoldi: Well, if it goes to the land then I guess it doesn't... I thought it was to both...

Mr. Gallagher: Okay.

Ms. Bertoldi: ... the owner and the land. So that's my mistake.

Mr. Gallagher: No, I don't need the variance. Greg Gallagher doesn't (inaudible).

Ms. Bertoldi: Well, which is why... yeah, exactly. Okay.

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Mr. Gallagher: I might be able to use it in the future somewhere but, you know.

Dr. Larson: Are there any other questions for the applicant pertaining to standing? Thank you, sir. Is there any other discussion among BZA pertaining to standing?

Mr. Gibbons: We ought to vote on it.

Ms. Bertoldi: I would just say that I think that their explanation is reasonable. It is very common for a contract to... you know, I know when I hire contractors, I make sure I don't deal with any of this and they are agents and having recently hired one, I understand it and I think that they're standing here based upon what they say.

Mr. Gibbons: Second.

Dr. Larson: I agree with that and... well, okay. So, are you moving to approve standing?

Ms. Bertoldi: I do move... yes. Then I move to affirm standing in this case.

Mr. Gibbons: Second.

Dr. Larson: Bob's a second. Okay. I agree. It's unusual, but I think that the builder has standing; definitely an interest in getting the house built. All those in favor of approving the standing say aye.

Mr. Grimes: Aye.

Ms. Bertoldi: Aye.

Mr. Gibbons: Aye.

Mrs. Stefl: Aye.

Mr. Jenkins: Aye.

Ms. Brown: Aye.

Dr. Larson: Aye. Any opposed? Okay, it passes 7-0, so you do have standing sir. Okay, so I will open the public hearing. Will the applicant and/or his or her representative please come forward to present their case?

Mr. Gallagher: Again, good evening. As I stated before, my name's Greg Gallagher. I am the Construction Manager at America's Home Place. We are the general contract for Jamie and Crystal Mercer, the owners of the property in question. Tonight with me I have Jamie Mercer, the owner, and I also have Chuck and Bill with Bowman Consulting; they're the engineers on the project that have been designing and helping and going to the meetings and so on and so forth, providing the technical expertise that neither Jamie nor myself have in this area. My expertise is in general construction of homes, the sticks and bricks guy, if you will. And so there's many facets of building projects that, you know, extend past my expertise where we bring in the experts. I do want to start off by reading something. Crystal Mercer really wanted to be here this evening, but she was unable to attend. But she... she wrote a letter that's pretty chronological and kind of how I was going to present our case.

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And, as Jamie presented this to me earlier when we met, I think I'd like to just read that. This is written from her perspective, if that's okay.

Mr. Gibbons: Do we have a copy of it?

Mr. Gallagher: I can certainly give a... I didn't bring multiple copies of it, but I could bring copies of it.

Dr. Larson: We'll need a copy, but go ahead and read it.

Mr. Gallagher: Alright, thank you. So, again, this is from her perspective so just keep that in mind. She said, well I thought I would start by sharing how my family got to this situation of asking for a variance. We feel that we did more than our due diligence while exploring the purchase of the property. Something that's already been discussed here a little bit as to how we got to this point and I feel it pertinent to get to the... to understand how we got to this point. We looked at the lot in June of 2016 and talked to neighboring property owners about the street, and asked if they were required to have flood insurance. They both said no. We went home, talked through everything you do when you're making a huge decision and purchase. We looked up the FEMA flood maps using both the County GIS maps and the FEMA.gov maps. They confirmed what both neighbors said that this parcel is not in a flood zone and no flood insurance would be required, zoned X. We found a letter dated February 12, 2015, addressed to Gary Snellings, the Chairman of the Board at the time, from FEMA addressing a new revised National Flood Insurance Program Map panels for our area. These superseded the prior maps from 2005. This 2015 map revision, that was completed less than 5 months prior to us considering the purchase of the lot, clearly showed the property and home site maintained its zoning of X and that flood insurance was not required. So, they saw a lot, they knew it was on waterfront, they knew that a floodplain was a thing and it was an issue, so they did their due diligence before they purchased the property and said, okay, is this in a floodplain and, if it is, I would imagine they probably wouldn't have bought it. Obviously, that's speculative. Moreover, after they confirmed, through their own investigation, they called the County. I don't have a name. I don't have a date. I don't have a title of anyone that they spoke to; it was many, many years ago. But they called the County and they said, is this property in a floodplain, and they were told... I won't say emphatically, but they were told that it was in floodplain X. Their next step was to call insurance companies. I'm not sure how many insurance companies they spoke with to say hey, we're thinking about purchasing this property. If we build a home, will you require flood insurance? That's something that you had mentioned earlier, and they were told no, you will not be required to have flood insurance because it's not in the flood zone A or AE. The next step was, a couple of years later, you know, life kind of got in the way of building the new house. They had the property, they owned it, they maintained it. They had a child and so they weren't ready to build immediately. And when they were ready to build, they called a lender, several lenders, contacted lenders and specifically brought that up as well. And the lenders told them that they would not be requiring flood insurance. Obviously, the one entity that probably has the most at stake, aside from the homeowner, is the lender who's giving them, you know, the money to build the home. So, we decided to pursue making it our home and close on the purchase of a lot after contacting the County, the insurance company, and our lenders. We kept hitting roadblocks trying to find a contractor that was willing to work in Stafford; it was incredibly frustrating. We welcomed our first child that following January of 2017, so we decided to delay the project. When we got the newborn phase fog, we got back to trying to find a builder and house plan that worked for our needs. We firmed up our house plans, secured lending, and closed on a construction loan in August of 2018. The lender did not require flood insurance. So, they have a construction loan in place, already closed, ready to fund this project that is not requiring flood insurance, nor is their permanent lender, once the construction loan is finished, requiring flood insurance. We had unexpected costs and delays due to requirements for obtaining an approved RPA waiver and landscape plan which we thought would satisfy the requirements

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and constructions would start soon after. An engineered stamped site plan to the County was submitted initially and I know there was some question about the site plan that was submitted by Bowman Consulting and showed the line of where that floodplain X was versus the floodplain AE. Well, the initial site plan that we submitted on or about March 23rd showed the floodplain in the very back of a lot, just like the FEMA map, just like the county GIS map, just like what the Mercers had found out when they did their investigation, just what the insurance company told them, what the lenders told them. We put the line where it was on the map. It was all the way out of the build area, therefore not having to build a house per the flood regulations. So, we submitted that and received... we received comments back from the Stafford County reviewer that said that that was incorrect and that we should put the floodplain on elevation 7. Well, elevation 7, as he alluded to on these maps, you know, a 2-foot contour can be a hundred feet. And in this case, if you guys have seen the lot, it's a very small lot; it's .3 acres. So, a tenth of a foot makes a huge difference in where that floodplain is. So, my engineers, you know, from the comments based on the County reviewer, they put what they were told to put on that site plan which is the one that you have. I do have copies of the original site plan that was submitted that will show the floodplain, and I have copies for everybody here, and it shows the floodplain all the way the back of the lot. All right? So, that was submitted, that was rejected along with some other comments. Can I present those to you guys? Is that okay?

Dr. Larson: Yeah, go ahead.

Mr. Gallagher: It's just one submitted. Ooo, 10 minutes goes fast. I thought I was gonna finish in like 2 minutes. Holy mackerel, I better speed it up. So, anyway, this is the initial site plan that was submitted to the County. It shows the floodplain on the very back of the lot. It actually shows the floodplain just a couple feet from the edge of the channel. That is the line that's on the FEMA map. That's the line that's on the County GIS map. We were told to revise that and put the floodplain line where you currently see it on your site plan that's in your packet, which puts the floodplain right through the middle of the house, which now brings us into a situation where for construction to meet construction code we have to... we would have to flood proof the structure. We would have to put in flood vents. We have to do flood proofing. We'd have to move the HVAC out of the crawl space and put it upstairs somewhere. There's a whole bunch of other criteria that we would have to do in order to build it if that was where the floodplain was. So... not to mention the letter of map revision because of the grading that would need to be done. So, our contention is that, you know, we did our due diligence, that the homeowners did their due diligence. They called everybody that they could possibly call. They were told unequivocally that it was not in a floodplain, that none of this stuff will be required. They purchased the land. They contracted with the builder, myself. We did all the design. We submitted it. It was rejected and then, you know, a few months later we're told no, no, sorry, you are in a floodplain and you have to do all of this different stuff. If we have to, you know... in order to build outside of the floodplain, we just wouldn't be able to build a house of any kind of size. It wouldn't be approved by Aquia Harbour to meet their HOA regulations as far as size and so on and so forth, so it deems the property unbuildable at this point. Just to finish up, since I have a minute, um, doo doo doo doo doo doo... one of the reasons, the biggest reasons that we're here today is because Jeff recommended that this was the process that we could go through. We had several meetings... we had three different, actually four different meetings with the County, starting with the plan reviewer and then we got the building involved, and the zoning; and then the final meeting was with Jeff and Trent, Jim Rakestraw, we had building there, we had Joe Fiorello from the RPA waiver board, myself, the engineers, Jamie was all there and this was kind of the resolution as to how do we proceed from here. You know, he recommended that we apply for a variance and so we did apply for a variance and here we are. And I didn't cover half the stuff I wanted to but my time is up now.

Dr. Larson: Okay, thank you. Any questions for the applicant? Robert? I looked this way first, sorry.

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Ms. Brown: No, that's okay.

Ms. Bertoldi: I just... I just want one clarification question. I think it might help with maybe some of the questions of other people. I just picked up on part of your story where you said that, you know, after they've done all their due diligence, you know, all the maps, all the government maps, all these maps all said it was in Zone X. That it wasn't until, now I'll elaborate, who came out and at what part of the process did someone from staff... is after they purchase the property, someone from Stafford came out to do what? Did they... why were they out there?

Mr. Gallagher: They didn't come out. So, the way it came to light was we submitted the engineered plan to the lot grading division. It was reviewed by the plan reviewer in Stafford County. The plan was rejected for multiple reasons and that's a standard process when you submit a lot grading plan. You know, you've got to adjust this and move this and do that stuff. But one of the comments on that review from the plan reviewer was your flood line, to paraphrase, and I have the comments here I can read it verbatim if you want me to, but to paraphrase, your designation of the flood zone is incorrect. You need to use this this flood zone. So, no one went to the property.

Ms. Bertoldi: So, it could not have been determined beforehand that it was incorrectly designated until after the plans were submitted to the building department to get approval to build the house is what you're saying. I mean, I'm trying to understand.

Mr. Gallagher: My answer to that wouldn't be what I want it to be, but my answer to that would be yes, it could have been found out prior to; but there was no reason for them to do further investigation. They contacted the County. They said, you know, as a homeowner who's a novice in building and a novice in floodplains and all, and even I am and I've been building houses for 30 years, they asked, they were told it was not in a flood zone, that it was in flood zone X. They asked their insurance company. They asked their mortgage company. They asked the neighbors. Everybody told them that they contacted that they could think to contact told them it was not in a floodplain. So, they could have if they had said, well, you know what? We're just not quite believing everybody. Let's go spend a couple thousand dollars and hire an engineer and find out. They just would never have thought to do that, because of the information that they got. If they got information from the County or from someone that says well we don't know it's, it's close but we're not sure. Then I am absolutely 100% sure knowing the Mercers as well as I do at this point, they wouldn't have purchased the property; they would have done further investigation.

Ms. Bertoldi: Right. Okay, thank you.

Dr. Larson: Alright, I'm going to go to Dana. Go ahead.

Ms. Brown: Well, you answered a lot of my questions. I appreciate that because that will make it go really fast. A couple of things. Does the homeowner have insurance on the property now?

Mr. Gallagher: I will... this is Jamie Mercer, so I'll introduce everyone that's me because you may ask some questions that I can't answer and I may refer to them. Is that okay? Is that acceptable? So, this is Jamie Mercer, the homeowner.

Ms. Brown: Mr. Mercer, hi. Are you currently carrying insurance on the property?

Mr. Mercer: No, we don't carry insurance on the property.

Dr. Larson: Let's... let's let him introduce himself and give his address.

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Mr. Mercer: Jamie Mercer, Stafford, Virginia.

Dr. Larson: Thank you.

Ms. Brown: Okay.

Mr. Mercer: Yeah, we don't carry insurance on the lot. We're not even aware that that's something we would have to do. Typically it's on the house itself.

Ms. Brown: Like if somebody got hurt on the lot? I mean...

Mr. Mercer: What's that?

Ms. Brown: If somebody was hurt on your lot, you have the liability. So, you don't have no insurance at all.

Mr. Mercer: No.

Ms. Brown: Okay. So, my other question was, did you notify the insurance company that the elevation was wrong? So I guess no. I had asked Mr. Harvey about what could, you know, be allowed in an RPA. And I thought I had a pretty good idea but I noticed on your plans in the very back, I know there's a silt fence and a super silt fence, I did see that, but I noticed there's also a regular fence going cross in the 50-foot water side of the RPA. Why is that? Because that... I didn't see that approval in your letter from the County that said you could encroach into the RPA. There was nothing about the fence.

Mr. Mercer: Right. Well, as you heard from Crystal's letter, we have a small child and we live on the water, so we decided at some point we want to put a fence back there. So, we had that put into the plan and it was not disapproved by Joe, the RPA guy. So, that's why that's in there. But for us, it's just for protection to keep our child from falling into the creek.

Ms. Brown: Well, he was very specific. Um, you know, the permission was for part of the house to encroach into the RPA and it says it shall not encroach into the seaward 50-foot part of the CRPA, which is where your fence is, your proposed fence. So, I would gather that you probably would need to go back and get permission for that or not build it, so.

Mr. Gallagher: And I can answer that. That's absolutely correct. So, because we want to have full transparency, we put a proposed fence on the site plan. So, they very much want to have a fence; the neighboring properties all have fences and it was their intention to also have a fence to protect their child from the waterway. That wasn't something that they nor I wanted to just do after the fact, once we're done and we have our approvals. You guys, obviously more than anybody, understand that once the County approvals are finished and done, people do what they want to do on their property and they don't get the proper approval sometimes. We didn't want that to be the case here. We knew that we were going for all these approvals and we wanted to make it known that a fence was desired. And at the end of the day, if it's not approved, we're not building it with the project. It's just a proposed fence. So, we're not building it during the construction of the home. But we wanted it to be known that it is a desire for them to get approval to build a fence in the RPA.

Mr. Grimes: And I'd like to make a clarification and maybe Mr. Harvey could speak to this or other County staff. I do believe a fence is allowed to be built in an RPA as long as it's not solid, water can pass through it, and you're not disturbing -- or if you do disturb -- any vegetation, it has to be replaced,

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which is why, if you look at the landscape plan, they've had to provide a certain amount of vegetation to replace what is being displaced in the actual RPA. And the only reason I know that is because I haven't RPA on my lot.

Ms. Brown: I have an RPA as well. And I asked Mr. Harvey that question at the very beginning of the meeting, and he said fences were not typically allowed in there. And I know that from the RPA that we're familiar with. So, I disagree with you on that.

Mr. Grimes: Well, I'm asking the County to provide other County staff to provide some feedback on that or clarification.

Ms. Brown: Okay. Well, now I forgot my other question so I'm sorry.

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

Mr. Grimes: Yes, I have a couple.

Dr. Larson: Go ahead.

Mr. Grimes: So, on the site plan, this final site plan that was submitted after the original one was asked to be revised, just so everybody on the Board knows, the grade elevation shown in the light gray are the existing elevations, correct?

Mr. Gallagher: That is correct.

Mr. Grimes: And those were shot and verified as part of...?

Mr. Gallagher: Field verified, yes sir.

Mr. Grimes: Okay. So, when the County made the comment that you needed to adjust the flood zone X line, they based it on the 7-foot grade line on the lot?

Mr. Gallagher: That is correct. And one of our... just on that point, I'm glad you asked that question... one of our... one of our responses to that comment about the base flood elevation being at 7, apparently the base flood elevation is 7 feet about, what would you say, two or three hundred feet down the channel, and at 6, about two or three hundred feet up the channel. So, the reviewer was holding us to the higher flood elevation which is 300 feet downstream when we're way up here. We wanted to interpolate that to say if we're a 300-foot this way and it's 7 feet, and we're 300-foot this way and 6-foot and we're kind of in the middle, then it's not 7 feet. It's probably 6½ feet. So, that was part of our discussion at the meeting was interpolating that base flood elevation instead of going with the stricter or the higher base flood elevation which was 7.

Mr. Grimes: Right, and that's why I'm kind of asking the question because, looking at these existing grade elevations, you know, this property seems to have this little teeny bump in the middle at 8 feet. It's the only spot on the property that's spotted at 8 feet. Well, there's two of them, basically at the front door and at the back door. But everything else is 7.5, 7.0, and, I mean, that... if we were to go to the true 7 line, I don't even see where that exists. So, I'm trying to figure out how you got to draw it based on this decision that 7-foot was the number.

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Mr. Gallagher: So, part of the comment from the plan reviewer was to use the NAV 88 datum. And what that NAV 88 does, and again I'm very novice in this and they could probably explain it better, but what that does is it ties elevations into structures such as sewer manholes that have been verified and GPS'd by, you know, surveyors to say that this manhole right there is at 6.23 feet above sea level. And then, you know, you have these different benchmarks around the County that you can tie into, but say when you get out in the woods or in places like this there's no benchmarks to tie it into. So, coming... so when you go out and you survey the land, you're basically relying on information -- and again, someone throw something at me if I'm saying something wrong -- but you're basically looking at the County GIS map to see what the topo shows on that map; you're looking at other maps and other information to try to verify what elevation we're actually talking about. And in some cases, we were asked to tie that elevation, that plate base foot elevation, into benchmarks, which is what we had to do. We had to send the surveyors back out there and they went... I don't know where they went to find these benchmarks. Bill, do you want to speak to that? This is Bill Pyle. He's an engineer with Bowman Consulting who's been intimately involved in the project and development of the site plan.

Mr. Pyle: Good evening members of the Board of Zoning Appeals. My name is Bill Pyle with Bowman Consulting. Yes, our survey crews went out and tied down the field run topography, the existing topography, to a... I don't know exactly off the top of my head what benchmark they tried to, but they tied down the topo that they had previously shot to a benchmark to get it on an NAV 88 datum to correlate the as-built topo to the propose... the interpolated floodplain elevation. And to clarify on what Greg said, there's actually a... there's a 6.4 elevation and a 7.0 elevation. And at the meeting that we... that has been referenced, the floodplain reviewer agreed that the interpolated elevation of 6.7 for the 100-year floodplain elevation is what we should... what should be shown and I believe that's what Tom... what Todd has shown on the latest submission of the house grading plan.

Mr. Grimes: And grading two-tenths of an inch is insane. I mean, that's like... that's like building to an eighth of an inch, right?

Mr. Pyle: Yeah, it's an extra shovel full of dirt.

Mr. Grimes: Are you required to note which datum are you referencing when you're shooting these on this site plan? Because I didn't see that in any of the notes.

Mr. Pyle: It depends on... a lot of it depends on the, I'll say the precision to which the review needs to be held. On something like this where we're trying to figure out the floodplain elevation, that was one of the comments from the reviewer. So, this has been verified to be an (inaudible). Technically it was I think .013 feet off from an NAV 88 but you're not going to see any changes at that (inaudible - talking over one another).

Mr. Grimes: Yeah, you stop at one decimal is fine. Okay. Next question, this will be for Mr. Gallagher I'm sure. So, on this floor plan or this plan that was submitted that shows the grading, the grading plan, you note a finished floor elevation of 10.10. Is that to the finished floor of the crawlspace or the finished floor the first floor?

Mr. Gallagher: The finished floor of the first floor.

Mr. Grimes: Okay, so the crawlspace finished floor will be based on the number of risers that you're showing, I guess 4; that's going to put that basically down to eight something?

Mr. Gallagher: Yeah.

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Mr. Grimes: So, the finished floor to 8 feet. And that crawlspace, and based on the hatch plan that you provided in the construction site, obviously that's going to be inside of that flood zone, so that crawlspace, because it's not built 3 feet above the floodplain that's noted in that section I referenced earlier, 2857U3, that is subject to flooding. Are you making provisions for that in the construction?

Mr. Gallagher: Well, that's part of our... part of our reason for being here today is that we don't believe that that's necessary. So, the amount of water that we're talking about that is going to be up against this structure in a 100-year flood is about 2 inches... 2 to 3 inches of water up against the foundation. The building code requires us so that if we're in a floodplain that we have to flood-proof the foundation. There's a lot of different components that go into that. One component that goes into that is flood vents, these breakaway flood vents that you put on the foundation. If the water comes, the vents blow out, the water flows through the structure, it doesn't flood the structure away. The flood's never gonna get to the flood events. The flood vents are at the top of... at the top of the foundation. Sometimes they're in the middle, but they're not at the ground level, these flood vents. So, in essence, the building code is going to require us to put in flood vents that in a 100-year flood is gonna be ineffective because the flood will never get up that high. So, and then there's some other components that go into that as well. We looked at a number of different alternatives, you know. We looked at building the house on piers like you would see at the beach, you know, and they do that all the time. They build them on pilings, they build them on piers so that when the ocean backs up it flows under the houses. The homeowners didn't want to do that and I didn't really recommend that because selling that kind of a home 10 years down the road, if they ever try to sell that home, people are gonna go look at this home and say I'm not building... I'm not buying this, this looks weird. It's gonna be sitting on all these pilings. I could do it. We could certainly do that, just like they do at the beach all the time. But the resale would... it just wouldn't... it would be non-existent because we don't feel like anyone would purchase a home that's built like it's on the beach when all the other houses on the street just look like normal houses. So, you know, one of our points is that, you know, even if you guys decide that we are in a flood zone -- which we disagree with, we don't think we are -- flood-proofing the foundation is going to prove ineffective because there's just not enough volume of water that's going to be up against the structure to make any difference at all.

Mr. Grimes: Yeah, I mean, that's from a structural perspective for the knockouts. I understand that, but the property could be built differently and still be built on that lot if that was a flood zone.

Mr. Gallagher: There are... there are... it would be difficult. It would be difficult. Yes. to answer your question in truth, yes, it could be built different. Would building it different to satisfy the code be something that would, number one, be approved by the HOA, because we also do have Aquia Harbour that has regulations as far as what types of homes are built. The resale value, as I stated earlier, I'm not going to reiterate that, but the resale value of a house that's on stilts and has all these different features in it would be... would be... would be difficult. It would be a hardship for them down the road to try to sell this house if they ever wanted to move or had to move for work or something like that; they would have a very difficult time of reselling a house that quite frankly would be, you know, if we were... let's just hypothetically say all this is done, you approved this, we built the house that we're gonna build; it's going to be the best looking house on that street. I'm sure that's arguable and that's obviously a perspective but...

Mr. Grimes: Very subjective.

Mr. Gallagher: ... but what they've chosen to build, it's going to be the newest house on the street by 25 years. And, you know, the type of house and the options that they picked in it will be great for resale down the road. If they decide they have to move, they'll be able to sell that house very easily. And again, there's a million factors; market and all kinds of different things. But, you know, building

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something that's abstract just to get around the building code would be a hardship for them down the road.

Mr. Grimes: The reason I ask is that there are plenty of houses in Aquia Harbour that I've seen driving through there that because of the topography in Aquia Harbour, and it is brutal with the hills...

Mr. Gallagher: Yes.

Mr. Grimes: ... quite often they're built slab on grade to the point where the front door entrance is basically at the second story. And it's done that way because they couldn't dig a basement in or there was issues with going down below grade to get that third level. So, the reason I'm asking that question and you did kind of answer it, there are other ways to do this on this lot.

Mr. Gallagher: I would say yes there is, but the best way to do it is the way that we propose -- on a 4-foot/5-foot crawl, the finish floor elevation at 10.2 which is three...

Mr. Pyle: Yeah, if I could just clarify it to come back to your original, I think your original question. The 10.1 finish floor elevation is more than 3 feet above the base flood elevation which is either 7, if you don't interpolate, or 6.7 if you do interpolate. And correct me if I'm wrong, Greg, at the meeting with the building reviewer, they... in the end they decided that the crawlspace did not have to be... obviously did not have to be 3 feet above the base flood elevation. It was just the finished floor they were looking at. They weren't concerned with the garage; they weren't concerned with the crawl. It was only to the finish for elevation being 3 feet above...

Mr. Grimes: And then that's typical, right, because you're talking about the habitable space.

Mr. Gallagher: Yes, that's correct.

Mr. Pyle: Yes.

Mr. Grimes: Right, so you could build whatever you want in the uninhabitable space, you know, however you want to build it. But what concerns me is that you're talking about putting the house's equipment in that space; you know, the HVAC, the water treatment, I assume the electrical equipment and service won't be in the crawl space.

Mr. Gallagher: No, and so there is other criteria when you build in a floodplain. You know, no utilities underground, you know, obviously the water line can go underground but we'd have to do overhead electrical service which is not a big deal. You know, that's done all the time in a lot of different subdivisions. Even in new construction where they try to have underground electrical service. We've certainly done overhead service before in certain cases; that would be required. Moving the HVAC unit from inside the crawl for the first floor is a 2-zone system so the second floor has its own system up in the attic. The first floor has a unit in the crawl space. We would have to move that somewhere else which means we'd probably have to put it in the garage and hang it from the ceiling and we would probably have to run ducting through the first floor which now turns their 9-foot ceilings into 8-foot ceilings because we have to do bulkheads. So, yeah, there would be a considerable redesign and cost associated with those different... those different aspects of it. Where... you know, what we're looking at, not even really considering that we are in a flood zone, but if that was the ruling, yes, there would have to be some major, some drastic changes to the house in order to build it there.

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Mr. Grimes: Oh, and just for sharing this out loud, I'm not concerned about HVAC water treatment down there. If the owner wants to risk that equipment, it's not a life safety issue, right. You don't have to build a house with air conditioning.

Mr. Gallagher: That's right.

Mr. Grimes: It's not required by code. You have to have heat. So, if that system provides heat then there's the potential there. But again, in a residential issue it's not really a life safety thing. They can leave and go check into a hotel.

Mr. Gallagher: True. Very true. And when we look at designing a house, we, you know, obviously life safety is at the top of the list. You know, make sure everything's safe, it's up to code, you know. Protecting the investment that the customer is making with us by installing quality work and following the codes and you know not putting systems at risk. We normally do condition crawls. So now we would have to do an unconditioned crawl and insulate the floor because if we did a condition crawl and we're in a flood zone and it floods then we lose all the insulation and now they have thousands and thousands of dollars of repair. So, when we look at designing the projects, we don't just look at oh, what's the prettiest and what's cheapest. We look at long term in these types of things and in that situation, yes, we would probably have to go to an unconditioned crawl and there's a cost and an expense to do that as well. Absolutely.

Mr. Grimes: That's all the questions I have for the applicant.

Ms. Brown: Mr. Chairman?

Mr. Gallagher: Thank you sir.

Dr. Larson: Go ahead.

Ms. Brown: So, just to recap then from what I think I'm hearing, there is an alternative. This... the one you've presented is just the most cost efficient and it's the design that you most want. Is that what I'm hearing?

Mr. Gallagher: I would... I would disagree with that statement.

Ms. Brown: Okay.

Mr. Gallagher: So, it's not because it would be the most cost efficient. We don't... I consider... I consider financial impacts a hardship, but I know that that's not applicable in this case. You know, the cost to do something, to follow the code, as a builder we understand that that's what we have to do. So, if we... if we had to follow this code, what we would have to build would, in my opinion, present a hardship on the customer. Number one, they won't have any resale value whatsoever. They won't... they'll have a home but, you know, it'll be so odd looking at what we have to do that people won't understand what they're looking at when they want to buy it. And homebuyers...

Ms. Brown: Do you do real estate as well?

Mr. Gallagher: I have done real estate in the past, yes. So, I know a little bit about it. Again, I'm a novice in everything and not an expert in anything. But building it to satisfy all the codes, yes, there is a

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financial implication and it is... and it is very... it is a big number. I mean, I don't want to get into it unless you guys want to specifically ask me what kind of financial implication we're talking about.

Ms. Brown: No, I just wanted to be sure what I heard. I thought I heard was Mr. Grimes kind of get out of this was that there is another way to build; it's just going to be... cost a lot more money -- that you could comply with the floodplain.

Mr. Gallagher: I would say yes to that.

Ms. Brown: Okay. Okay, that was it.

Mr. Gallagher: Okay.

Ms. Brown: Thank you.

Dr. Larson: Adela?

Ms. Bertoldi: Yeah. I just... what you are proposing with respect to the vents and the foundation, would that alleviate or make sure that there's... there is no substantial detriment to the adjacent properties, because that is an element of granting a variance. Would that... have you taken into consideration the properties next door on either side and how your current plan is going to affect them?

Mr. Gallagher: Absolutely, 100%. So, the adjacent properties -- and Jeff actually brought this up in the meeting, I think the last meeting that we had -- the adjacent properties are at an elevation of an 8, flood elevation 8. So, here's our lot and it's kind of down here a little bit and you go next door and then the ground is up here. So, essentially what's happening is if there is a flood, all that water is kind of coming to the lower area. When we build this house, and essentially what we're going to create is exactly what they have next door, is we're gonna have a lot that is not... that is really not... once we grade it out and we grade around the foundation, we're actually gonna have a lot and a structure that's not in the floodplain if you use the interpolated data. All I have to do is build it and grade it out. So, in essence, what it's gonna do is it's actually... you and I were talking about this earlier Bill... it'll actually improve the drainage for the neighbors because now we're creating swales going down the sides of the house that don't exist and the water, in a normal rain event, not a flood, but in just a normal rain event, the water will be directed towards the channel which is where it should go. So, not only will we not be adversely affecting the neighbors, we'll actually be improving their drainage and helping their drainage; not just in a flood but in a normal rain occurrence. Was that safe?

Mr. Pyle: Sorry.

Mr. Gallagher: Was that safe?

Mr. Pyle: Yes.

Mr. Gallagher: Ah, he wasn't listening, never mind.

Dr. Larson: So, I was gonna ask one question real quick. So, you paraphrased the response of the county that compelled the new floodplain determination. You said you had that; could you just read that word for word please?

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Mr. Gallagher: Absolutely. So, I have a little timeline here that I put together. The first plan was submitted on December 26 of 2018 and that was for the RPA waiver. By the time we got the RPA waiver approved on 3/26, we took that initial site plan which I... which Bill provided you. That was submitted to the County on March 8, and that plan was dated 2/25; I believe that's the one that you have -- that was reviewed and failed site review on 3/26. The comments from the plan reviewer say as such: Failed. Floodplains should be shown on the plan. List the flood zone in which the property is situated. Plans must list the FIRM panel number with the last revision date. Some of the county floodplains were remapped in 2015. Which is what we put on the original site plan. We did have the floodplain on the original map. These maps were adopted on February 18, 2015. In situations where any portion of the property is in a floodplain with an established BFE, then the BFE must be shown. The lowest opening in the dwelling and/or lowest floor of the dwelling shall be a minimum of 3-foot above the BFE. Code Section 11.3, Appendix 3. All construction within the Special Flood Hazard Area shall conform to Section 28-57. So, that's the section of the code that he's quoting. Then his comment, the review comment is: number one, the extent of the Zone AE floodplain is determined by the FIRM or by elevation, whichever is greater. See Section 28-57. Comment one A. Please plot the floodplain on the lot based on NAV D 88 and the BFE shown on the FIRM. Comment number 2, any fill placed on the lot must be approved through the FEMA letter of map change process. And that was the comment that instigated us to redraw the floodplain line.

Dr. Larson: Okay, thank you. Adela, go ahead.

Ms. Bertoldi: Yeah. I'm sorry, did you... did you want to comment on that before I ask my next question?

Mr. Harvey: Yes, if I can.

Mr. Jenkins: Mr. Chairman, I had one last question.

Mr. Jenkins: Gentlemen, I noticed none of the neighbors were here this evening. But maybe you've spoken with them. Do they have any complaints or... no questions as to what kind of house is gonna be built or... it just seems like that lot's been empty a long time.

Mr. Gallagher: I believe Jamie had some interaction with some of the neighbors.

Mr. Mercer: Sure. The history of the lot, the original owners bought it 25/30 years ago and they bought two lots together; actually two or two and a half... a couple lots together because they had a wide house so they built it on one and a half lots. And they always had this extra lot off to the side that they used as their garden. Unfortunately, the man passed away a couple of years ago and the woman remained and she ended up selling off the lot and ended up selling the house soon after that. We bought the lot from them. So, as far as I know it's never been... somebody was asking if it'd been permitted to build on before. But we have talked to the new owners of the house there and we've actually become friends with them and the people on the other side already and they don't have any complaints. They've seen the floor plans. They've seen the renderings of the house and they're all for it. I mean, obviously, you're hearing it from me so you don't have to believe me but I mean we've been in touch with them frequently actually.

Dr. Larson: Jeff, I'm sorry, you were going to respond to the question.

Mr. Harvey: Thank you Mr. Chairman. I was just going to elaborate a little bit more of what Mr. Gallagher read and the staff comments. In particular, saying that if we use the FIS elevation designation

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that the property be designated as being in the AE Zone, therefore any fill that they would have to provide would have to be done through a letter map provision. So, that letter map provision would basically say that the property is not in a floodplain which is what the map currently shows. So, it's sort of almost like a chicken and egg to-do loop situation.

Dr. Larson: Thank you.

Mr. Gallagher: If I may, Mr. Chairman?

Dr. Larson: Go ahead.

Mr. Gallagher: Chuck wanted to add something of my responses to Mr. Grimes. I don't know if this is appropriate to allow him to address it at this point or if you wanted to wait till the...

Dr. Larson: If he could just preface his remarks with what Mr. Grimes... what he's addressing what Mr. Grimes said, that would be fine. Name and address please.

Mr. Fitzgerald: My name is Chuck Fitzgerald. I am with Bowman Consulting. I am a Certified Floodplain Manager, as well as a Professional Engineer in the State of Virginia. And I've also was at that meeting a month ago... a month or so ago. But, I just wanted to bring some clarity to some of the conversation that was some of the back and forth. This variance that's being requested is to allow the FEMA map to take precedence in this case and not the elevation of the existing property. And I think early on you mentioned, Mr. Grimes, that you know was it maybe that when the lot was built and the road was built, maybe that lot was left low. You know, that's a typical construction process even in today's industry. You know, you come in, you build a road and it's left low, and then the footers are dug out; that fill has to go somewhere, that usually goes against the house and that lets the water shed away for the localized drainage. I think that's what's going on with this lot, you know. Thirty years ago when that road was put in, it was left low with the expectation there would be a house built and that house hasn't been built yet. And now there's some question as to where the elevation falls in relation to a floodplain. The other thing I wanted to mention is the floodplain at elevation 6.7 or 7.0, whatever you want to go with, it's in regard to Aquia Creek, which is some several hundred feet away. It's not the floodplain associated with Channel Cove right there behind or, what is it, Aquia Cove, right there behind the lot. So, this area is simply just inundated by flood water when Aquia Creek floods. It is not associated with the localized drainage of the lots next to... in the immediate vicinity of the lot. So, I just wanted to point that out and hopefully bring some clarity to this discussion that, you know, there's the question of it will it impact the neighbors. The flood water is coming from Aquia Creek into these lots from the rear of the lots. And so the elevation 7 is something that FEMA has studied and determined and then now the topo, the topography survey is determining that some of that area does lie on the lot. However, what the variance is requesting is that the map, the FEMA map, be what determines the limits of the floodplain. So then that process of a letter... of a conditional letter of map revision based on fill and a letter of map revision based on fill would not be necessary for this applicant. So, I don't know if there's any other questions on that, but there's this long and lengthy process that we briefly touched on but that's really the basis of the request is there's this dual FEMA process before construction and then after construction. And that would have to be done and it's a several months long process, you know, a significant time and expense, so.

Ms. Bertoldi: Has FEMA been advised of this issue with respect to the property and it not, you know, it not being...?

Mr. Fitzgerald: Yeah, as you can imagine, FEMA's a large organization...

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Ms. Bertoldi: Yeah, I was asking like have you reached out, you know, how are they... because I actually just checked it online just now as we were sitting here and it still says Zone X.

Mr. Fitzgerald: Yeah, yeah. The only way it's going to change is to submit a application to FEMA and so you'd have to have an engineer like myself prepare that. And, you know, that's some time and money and then also it gets submitted to the County. The County would then review and approve, then it goes to FEMA. There's an associated fee with that as well. And then a 90 day waiting period for them to do their (inaudible - being talked over).

Ms. Bertoldi: Which you don't really want to do anyway because you don't want it to be (inaudible). I mean, is that... is that basically what you're saying? Like you don't... and I don't know and maybe Jeff you can help because it sounds like with respect to what you're asking, so I'm a little confused. Like if I... if I were to vote yes to a variance, I'm not really sure at this point what you're asking us to grant. I mean, I don't know if I have the authority this to tell Stafford County no, your guy has to go with the FEMA... like I don't think we necessarily have jurisdiction to say no, no, no, you must go... I mean, I don't know. I mean, I need a little guidance from probably the County on that.

Mr. Fitzgerald: Yeah. Let me just mention, there was discussion about crawlspace and piers and all that. That's if the floodplain were to remain on the property, if the determination were not to be... if the variance were not to be granted. If the variance is granted then it's a house. It's gonna be built like just any other house. It's gonna be above the floodplain anyway; it's an elevation 10 and that sort of thing.

Ms. Brown: Adela, I share your concern. I think the FEMA map is wrong and the FIS map is correct, and that's what's really on the ground and they're wanting to go with the one that's wrong. (Inaudible - being talked over).

Ms. Bertoldi: Well, I just don't know if I have the authority. I just want... I just want to hear what the County has to say.

Mr. Harvey: Mr. Chairman, Ms. Bertoldi, the code stipulates that the Floodplain Administrator is in charge of interpreting the map. And there's another subsection M that says if there's a dispute or a conflict over what my interpretation is, then that would come to the BZA to resolve. So, ultimately, it rests in the hands of the BZA as to what... who determines what the flood zone is in this area if it can be done administratively.

Ms. Bertoldi: Because we're experts in that, right? So, is there a reason why the floods... the person who actually did this and he's not here tonight... because, I mean, it's like... alright, so we do have jurisdiction over that. But now it's like, okay, do I, you know, kind of flip a coin and say, you know, FEMA, well you know, FEMA's this a big organization, they're, you know, federal, they, you know... I don't even know what processes they go through but I'm supposed to determine, we're supposed to determine who has the better process? I mean, I don't... I don't know how to... how to feel about that. I'd love to hear some other people's comments on the BZA when we come back to the board but. Okay, to answer my question, that is actually up to us.

Mr. Harvey: Yes.

Dr. Larson: Go ahead, Bob.

Mr. Gibbons: I want to ask you only one question. The lot next door was used for what now?

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Mr. Mercer: The people that owned it before us, he just used it as a, like a vegetable garden. He had a vegetable garden. He had a shed on the lot.

Mr. Gibbons: So, they were the only... so it was (inaudible).

Mr. Mercer: I can't answer that.

Mr. Gibbons: Okay.

Ms. Brown: Mr. Chairman?

Mr. Gibbons: Mr. Chairman, what I'm trying to get at is it was a hardship (inaudible - being talked over top of) because the lot was platted in 70. The other two lots were in the 80's, so they had plenty of time. Somebody could have built. So, when you come in and purchase it and then you go through this application. I think the (inaudible) with the application is there is no hardship.

Dr. Larson: We'll discuss that when we bring it back to the Board. Dana, did you have another question?

Ms. Brown: Just one. I want to ask Mr. Harvey the same question I asked him earlier, just to make sure I heard it right. I asked you earlier, because current... the situation on the ground is 7, the FEMA map says 8, so he's okay at an X. So, if they actually... if the FEMA map was corrected to show what's really and truly on the ground, it would no longer be an X, it would be an AE. Is that correct? I kind of feel like I'm getting asked to look the other way. Yeah. We're gonna use the FEMA map this is 8 even though that's not what's really there. So, if... if FEMA knew that it was really 7 feet, they would no longer think it was an X, correct? They would designate it as an AE.

Mr. Harvey: Ms. Brown, that's correct. And then the applicant would proceed with their building permit and show a house being built there in the floodplain meeting all floodplain requirements. Then they would also have to file a conditional letter map provision to show the fill they put in, i.e., the foundation for the house, the positive drainage, and those features, to show that it's been elevated out of the floodplain and it would result in the same map that they currently have today. So, that's part of the dilemma for the applicant is that the map says they're not in a floodplain. In order to build on the lot, they're going to have to put in fill on the lot to elevate the building above the floodplain and then get the map changed again to reflect what the current condition is as showing it's not in the floodplain.

Ms. Brown: Meanwhile, the insurance company is thinking it's in an X zone and they're insuring as such, is that right?

Mr. Harvey: Yes.

Ms. Brown: When it really... really and truly should be an AE. Okay.

Mr. Harvey: Mr. Chairman, I do have a correction. I referenced subsection M, but it's actually subsection N as in November, dealing with the interpretation of district boundaries.

Dr. Larson: Thank you sir.

Ms. Bertoldi: And, I mean, an ordinance, before you sit down, is there any, because, you know, FEMA obviously is federal and everything about the map and everything is federal law and federal law trumps

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local ordinances, let's be honest. Is there any federal laws that you're aware of that say that, you know, that when there is a discrepancy that FEMA, you know, maps or, you know, are to take precedent? I mean, there usually is something in the law that talks about the supremacy of how you look; when there is a discrepancy, you go with the higher.

Mr. Harvey: Ms. Bertoldi, the typical zoning ordinance construction as the more restrictive standard would take precedence. This is in the Zoning Ordinance.

Ms. Bertoldi: Okay.

Mr. Harvey: And just for clarification...

Ms. Bertoldi: You see the struggle here, right?

Mr. Harvey: Yes.

Ms. Bertoldi: Okay.

Mr. Harvey: Localities are not required to participate in flood insurance rate program, but most do for the sake of their homeowners. If you don't have a mortgage on your property, you're not required to get flood insurance, but you can elect to. And if you're in a AE Zone, you're going to be required by your lender to get insurance. If you're outside of that in a Zone X, you're not required to have flood insurance.

Ms. Bertoldi: Okay. And so the variance that they're requesting is for us to affirm that the FEMA map is the correct map. Is that, I mean, is that your understanding of the what they're asking in the variance? Because it seems a very over... I really honestly thought we were kind of looking at a different type of variance. I mean, the request was a little bit different. But it means that... the request of the variance as you understand it.

Mr. Harvey: My understanding is the request of the variance is the interpretation of the FIRM and the data in subsection K-1-A where the base flood elevation, even in areas not delineated in special flood hazard area on a FIRM, the area shall be considered as Special Flood Hazard and subject to the requirements of these regulations. So, in other words, if the topography like we have in this situation shows that... that it's below the flood elevation, then that would be classified as being in the floodplain and that's what they're seeking a variance of.

Ms. Bertoldi: So, (inaudible) seeking not that we say that it isn't in a flood variance, but that they get relief from having to comply with the requirements of what would normally be required if they knew it was actually what should be an AE. Is that correct?

Mr. Harvey: Yes, by seeking a variance of this provision, it...

Ms. Bertoldi: Right. So it's not us saying no it really isn't a flood area. It's just saying we're going to alleviate you from having to deal, you know, to comply with the requirements as a flood area.

Mr. Harvey: In essence yes.

Ms. Bertoldi: Okay. Thank you.

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Mr. Gallagher: Mr. Chairman, if I could add one thing to that if you would indulge me. On the... in your packet under the background, under Section 28-57, kind of to your point and also to your question Ms. Brown, Section K says use an interpretation of FIRMs, which is what we're talking about here. We have a plan reviewer who's trying to decide where the floodplain is. Is it all the way at the back of the lot which means we can just go build our house, get a building permit, put it on up like we normally do, and rock on with our business. Or are we going to say that the floodplain is all the way up here and going through the middle of the house which now means flood vents and all different kinds of other things, letter of map revisions on the lot. But Section K, under use and interpretation of the FIRMs, it says the floodplain administrator shall make interpretation where needed as to the exact location of the special flood hazard areas. So that's basically giving the floodplain administrator, and in this case I think the Board of Zoning Appeals which is his higher authority, the means to say that our interpretation of this flood zone is the FEMA map, the FEMA map that the homeowner originally used to do the investigation to buy the property, the FEMA map that the insurance company used to determine whether or not they were going to require flood insurance. The same map that the lender who was going to give them over a half a million dollars to build the structure used to determine whether or not they wanted their investment insured being in a flood zone. All of these people, all of these people who have a vested interest in this said it's not in a flood zone. So, in my interpretation, and I may be wrong, it is in the County's authority and your authority to say that listen, we have a FEMA map, it says that the flood zone is back here at the back the lot and that's what we're gonna go with, and we can proceed with our building permit application.

Ms. Bertoldi: Alright, if I may. Heather, do you want... you've been wanting to say something for a long time. I can shut up for a minute. Go ahead.

Mrs. Stefl: I guess... I mean, you alluded to staying within the same characters of the... or characteristics for the neighborhood and stuff. And so I guess as I'm trying to look right here on Zillow real quick at the two homes on both sides, one's a single level with no basement, so it has a crawl space; the other one is a two level with again no basement, crawl space, and both of them look like they do have those flood vents, I mean, part of their design. And so I'm just trying to get a sense of like where you're going to be placing it on the lot. Are we looking at similar frontage and rear because like the one has a deck and a patio type thing, track deck that goes pretty much all the way to the seawall and the other one has fencing and stuff like that. So, I'm just trying to get a sense of where maybe these homes are in also the floodplain. So, like when they built in 83 and 85.

Mr. Gallagher: Right. So, to your... to answer your question, the vents that you see on those homes aren't breakaway flood vents. Those are just foundation ventilation vents. So...

Mrs. Stefl: Okay.

Mr. Gallagher: ... my guess would be without being in their home...

Mrs. Stefl: Right.

Mr. Gallagher: ... that they have an unconditioned crawl space which, in that case, by code you have to provide ventilation...

Mrs. Stefl: Okay.

Mr. Gallagher: ... so that it can... it can... it can breathe.

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Mrs. Stefl: So, you're looking at doing a similar type of build in that sense or are you looking to actually excavate and put a basement then in?

Mr. Gallagher: No, we're putting a crawl space in it so our excavation is minimal. It's only a couple feet into the ground and we'll do... we would like to do or have contracted to do a conditioned crawl. So, we would have no vents on the exterior of the house. That means the crawl space is insulated, it's heated and conditioned...

Mrs. Stefl: And vapor barriered and everything.

Mr. Gallagher: ... and vapor barriered and the walls insulated and so on and so forth. So...

Mrs. Stefl: So, it doesn't breathe in the sense like the other two homes that must have been designed in the '80s.

Mr. Gallagher: It breathes, but it breathes through the heating and air conditioning system.

Mrs. Stefl: Okay.

Mr. Gallagher: Yeah. And so, in regards to the situation of the house or the situating of the house, we have pulled the house all the way forward as far as we can because we also had to get an RPA waiver because, you know, you have an RPA, Resource Protection Area, you've got to be 50-foot or 100-foot.

Mrs. Stefl: Right.

Mr. Gallagher: We were into that 100-foot RPA so we had to apply for an RPA waiver based on when the lot was recorded. It qualified to be grandfathered in to allow us to build into that 100-foot buffer. But, in doing that, we pulled the house all the way to the forward setback. So the front setback for that zoning is 30 feet or 30.2 feet to the front of the garage. In fact, we also had to get a waiver from Aquia Harbour whose front setback requirement is 40 feet. So, they actually... Aquia Harbour gave us a variance so that we could pull it all the way forward to Stafford County's variance so that we're minimizing the impact on the RPA.

Mrs. Stefl: So an HOA has more restrictions on it than the County.

Mr. Gallagher: They are the stricter in this case on the front setback, yes.

Mrs. Stefl: Okay.

Mr. Gallagher: In Aquia Harbour. And so... and as far as in relation to the side setbacks being that the lot is only 80 feet wide and you have 10 on both sides... 80, 60, a 60-foot wide house is pretty normal but, you know, anything less than that obviously they were trying to maximize square-footage and so on and so forth. So, we've maximized our side to side and we're at our very minimum setbacks on the side which is 10.2 feet on both sides.

Mrs. Stefl: So, are you... so, are you right there with the... 'cause one is like 2840 square feet and the other one's 2714.

Mr. Gallagher: It's pretty close.

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Mrs. Stefl: You're right in there.

Mr. Gallagher: Yeah. So, if you're looking at the street, if once we build the house, they're all... they're staggered a little bit. I mean, they're not in a perfect line like you'd see a subdivision but they're... they're all close in proximity as far as the front setback.

Mrs. Stefl: Okay. Alright, thank you.

Mr. Gallagher: Mm-hmm.

Mr. Pyle: If I may, to your point... to your point about the possible encroachment, the two adjoining houses were built in 1983 and '85.

Mrs. Stefl: Right.

Mr. Pyle: And you were talking about how the decks and the other rear yard improvements extend all the way, the Ches Bay Act was I think approved in '89 and enacted in '91. It's entirely possible that those improvements in the back yards were built prior to that and there was no RPA at that time -- which is why they were probably allowed to extend closer to the water versus now.

Mrs. Stefl: Well, I can tell you one of them has tracks which wasn't in the '80s.

Mr. Pyle: But if it was built previously, it can be renovated with no... I think it would qualify to be grandfather and they wouldn't... they would be allowed to replace. They wouldn't be able to expand it but they would be able to replace the material.

Mrs. Stefl: Okay.

Mr. Gallagher: Same thing on the fence, too. I think they both have vinyl fencing which...

Mrs. Stefl: One of them has vinyl fencing and the other is kind of an open because it was... obviously they had the this lot, too, so.

Mr. Gallagher: And I also can't really speak to, not that I want to get anybody in trouble or anything like that, but I can't be for sure that all those things were built legally and permitted through the County.

Ms. Brown: That was my... my next comment.

Mrs. Stefl: Right.

Ms. Brown: Because we have a lot of things... the RPAs are there for a reason and the floodplains. And we've... and the comment I heard earlier was that well everybody, once you get your approval everybody just does what they want. That's not good... that's not what I want to hear.

Mr. Gallagher: I know.

Ms. Brown: And I know that from our pictures, it's in the pictures and from me being out on the ground, yeah, the neighbor to the right has a shed and it's not a water use shed. It doesn't look like it's holding stuff for a pool that'll pump out anything; it looks like it's in the RPA. And they've got that fence going down. It doesn't look like it's 25 years old. So, yeah, I am concerned about that. Today I went in I did

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pull... I was looking for a survey map of your lot and I was unable to find one, but I did find one for the house next door, lot 1122, the original owner's house. And it does show on there... because I noticed your plat map, it said that you know you don't account for any easements, you know, you're not guaranteeing any of that, you were just doing what you were doing, and there are 10-foot easements on each side of each property for a utility easement. And you said you're going... you're leaving 10.2 feet?

Mr. Gallagher: Uh, yeah, it's 10.2 on one side and 10.5 on the other side.

Ms. Brown: So, you're really close to that easement. Okay. Because I don't think...

Mr. Gallagher: We're maxing it out.

Ms. Brown: I don't know that a fence, because you want to keep your children in, could be put there. And as I saw when I went there on the ground it's a huge ditch there and I'm assuming that's a drainage ditch. I don't know. So, I don't know that you would be... that'd be a question for Mr. Harvey. But, since it is a utility easement, I don't know that you could put a fence on there but.

Mr. Gallagher: You can, in my... in my experience, you can build removable objects in easements. So, say for instance a utility company had to come in that easement and there was a fence in it, they can tear it down.

Dr. Larson: Since we're... since we're running short of time, let's confine that discussion to the variance. Adela?

Ms. Bertoldi: I just have two clarifications that I just want to flush out with you. One, now that we all kind of, at least I, maybe everyone else understood, with respect to what we were looking at for a variance, I want to know you putting in these vents in the foundation -- is that if you are not granted the variance? Or are you doing that if you're granted the variance? Because now I'm kind of hearing if you're granted the variance you're just building the house, like, how you're gonna build the house but you'll do the vents if you're not granted the variance. Is that correct?

Mr. Gallagher: Yes. So, if we're granted the variance we will not be doing flood vents. We will not be... and we will not be waterproofing the foundation. We will build our normal house with a conditioned crawl with the HVAC equipment in the crawl.

Ms. Bertoldi: Okay.

Mr. Gallagher: And that kind of stuff, yes.

Ms. Bertoldi: Alright. So, that answers that question. But that's not all you... this kind of goes into my second part of, you know, whether or not there's other options on the property which is honestly part of a variance. And frankly the one I'm getting a little hung up on, I mean, you have me on like everything else and so I just... it's real important to me that I... that I flush this out. So, the vents are not sufficient to deal with the issue of the floodplain. You're saying you have to... you have to do all kinds of gymnastics to get this house built otherwise.

Mr. Gallagher: Correct.

Ms. Bertoldi: Okay. I know others don't want to hear the number. You don't have to give me a number. But I do want to know like, okay, let's say this... their construction loan is \$400,000 or, you know,

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whatever the amount is. What is the cost? I mean, are we tripling the cost? Are we doubling the cost? What are we talking about with cost because I'm sure you have to go all the way back and you have to start all over again, because I do think like in conjunction -- this is my personal opinion -- in conjunction with, you know, whether or not if you're not at fault and you've done your due diligence, that monetary can, in very limited circumstances, you know, be part of that consideration. But not like it's going to cost you X amount... you know what I'm saying.

Mr. Gallagher: Oh, oh certainly. No, I understand (inaudible - being talked over).

Ms. Bertoldi: So, what are we talking about in numbers?

Mr. Gallagher: So, we're talking about probably a figure... I'll give you a percentage. So we don't want to talk about numbers, I'll just give you a percentage of the overall contract price since you don't know what the contract price is. Let me just do a little quick math here.

Mr. Grimes: Clarifying while you're doing your number crunching, that the actual only added cost is the flood-proofing and the design requirements that you'd have to do for doing the flood vents because the HVAC system is still the HVAC system whether you're building bulkheads or running it under the floor. The bulkheads are going to add some cost, I agree, but... so I just want to make sure that we're not, you know, you're not lumping in the design change cost versus the cost that it would cost to do this in a floodplain.

Mr. Gallagher: Oh, no, no, no, yeah no. They're... obviously the house has to have an HVAC system. Where it located is... it's significant but it's not significant, yeah. So if we take the HVAC from the crawl and we put it in the garage, there's ... we still have to put in an HVAC system but there are some additional costs. I'm not... I'm not considering the whole HVAC system as... oh, we have to... no, no, absolutely not. We're talking about a figure of about 12% of the overall contract price of what it's going to cost us to either do the letter of map revision or flood-proof the structure. So... so, yeah, 12% of the overall contract price.

Ms. Bertoldi: Thank you.

Mr. Gallagher: Mm-hmm.

Dr. Larson: Any other questions for the applicant? Thank you, sir.

Mr. Gallagher: Thank you.

Dr. Larson: Is there any member of the public who wishes to speak in support of the application? If so, please come forward. Seeing none... unless... unless the owner would like to add something.

Mr. Mercer: Other than what Greg has already said, there's not much more I can add. We've been through all the meetings and we've heard what Jeff here has to say. And we're just waiting to hear your verdict. Thank you for your time.

Dr. Larson: And I assume there are no questions based on that. Um, and does anybody wish to speak in opposition? Seeing none, I'll close the public hearing. I'll bring it back to the Board for motions and discussion.

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Ms. Brown: I'll start. What I... what I'm feeling right now is that if we don't approve this variance the house is still going to get built. That's... so the property is still going to be utilized. That's my takeaway from what we talked about.

Dr. Larson: I wanted to relay to the BZA what I saw when I visited the lot. You can chime in, Dana, since you visited the same place. It's pretty flat. I thought the... as you're looking at the lot from the road, the adjacent lot on the left was a little bit higher, maybe a foot, maybe a foot and a half. It's hard to tell with a calibrated eyeball, but there's no way I'm going to see three tenths of a foot with my eyeball. I thought the lot on the right looked to be about the same elevation. Again, hard to tell with the eyeball, but that's what I thought I saw. There is...

Ms. Brown: I agree with that. The house on the left was built up maybe more than a foot and a half.

Dr. Larson: A little bit, yeah, a little bit more...

Ms. Brown: It was up on a berm.

Dr. Larson: And then the one on the right was basically the same level.

Ms. Brown: It looked very similar in the front.

Dr. Larson: Um, on the left there's a sort of a swail already that... and you see it on the topo chart, where it's a 6-foot loop on the left-hand side, and then it's higher. And the only other thing that's almost not of interest but you can actually see where they had the shed on the lot; it's not very big, sort of in the middle toward the... toward the road. Those were my observations. So, it's... if it's in a floodplain, it's really, really... I believe three-tenths of an inch... or three-tenths of a foot. It's very, very little.

Mr. Grimes: Well I... I'd offer to this floodplain issue here. You know, we understand that FEMA re-does these maps on a regular schedule, or at least they try to. Those lines move. And they could move in the future to be even further into this lot. I don't want to get into the discussion of whether or not climate change is real or not but, the fact is, water levels have been noted to be rising in certain areas and this could change down the road. I have no idea what that does to them in the future. But my biggest concern, and the applicant's agent actually said, we can build this another way. And, you know, when you read through the requirements of a variance...

Dr. Larson: Go ahead Adela.

Ms. Bertoldi: Well, let me actually read the requirements of the variance because this is... this is what it says. It says the Virginia Code provides that a variance shall be granted if the evidence shows that a restriction... a restrict application of the terms of the ordinance would unreasonably restrict the utilization of a property which everyone is, you know, saying that the applicant conceded that it's not. But then it says, or, not and, or that granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to the property. And then the and shows up. So, it's one of those three; it's not that they can build the house in a floodplain and grant, you know, it would alleviate a hardship. It's... it's an or. So, I agree that it could be built another way, but I think, in my opinion, and I'll be frank I'm leaning towards a variance. I am the last person that ever grants a variance. I think everybody knows that about me, because it's very... it's a...

Mr. Gibbons: Can I quote you on that?

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Ms. Bertoldi: I think my record probably speaks for myself on that. But I think that it's... it's not here to never give a variance. I think that, you know, they are to be very restrictive obviously but the or language here is what gets me. So, fine, I agree. So, or is the granting of a variance would alleviate a hardship due to a physical condition relating to the property. Okay. So, it does relieve... alleviate a hardship. It does. This is a hardship. Hardship is different from unreasonably restricting the utilization of the property. So, you get to the and. And one, the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance. I think the testimony tonight, I think that they did their due diligence based upon I think everything I would have done, too. I would probably not want to spend after I've had the federal government maps tell me this, the insurance companies, multiple insurance companies tell me no, you're not in a floodplain, Stafford County telling me they're not in a floodplain, that at some point I would feel pretty reasonably comfortable that I'm not in a floodplain. So... so, I'm confident after hearing the testimony that they meet those two requirements. Then the third, with granting the variance is not a substantial detriment to the adjacent property or the nearby properties. I think that that also, with the drainage that they're going to do, they're going to improve the properties. The condition or situation of the property concerned is not such of a general or reoccurring nature that, you know, it would be... be adoption of an amendment to the ordinance so that we would get a flood of people going hey, I don't want to have to comply with flood ordinance either. I think that's the big one here because I think that that is important and, you know, something we should not take lightly. I would say that it is very unique here, okay. I don't think you probably see very often maps that, you know, all say, everything says, insurance companies say, FEMA maps say, Stafford County says, everyone says that it's not in a floodplain and then it actually ends up being in a floodplain. I think that it is very unique situation here and I am comfortable with denying another application with a totally different set of facts that I don't think you're going to see this set of facts come before us again. Granting a variance does not result in the use that is otherwise permitted on such property. I mean, they're not looking for a zoning class... they want to build a house. I mean, obviously they can do that. And the relief of the property sought is not available through a special exception, which it's not. So, to me they actually do meet the requirement. I agree that they could build the house another way. But, again, it's an or not an and with respect to that.

Mr. Gibbons: Do you make that a motion?

Dr. Larson: I... well, you can make that motion if you wish.

Ms. Bertoldi: Well, no, I mean I think we should talk about it.

Dr. Larson: Well, I concluded exactly the same thing that you did, except I'm not convinced that we have a hardship. That's... that's the thing that I'm struggling with. I agree that the bottom five... and I also agree with your discussion that this is pretty unique. And so I don't... I don't think people would have a lot of... well, they'd have to go through... Well, I just don't think that this would happen again. Possibly. But it's so close and the official documentation all agrees that it's okay, it's not in a floodplain; it's in the 500-year floodplain, including the insurance companies which, by the way, have a vested interest in that kind of thing. So my problem remains that it... do we have what I would call a hardship.

Mr. Grimes: The applicant and the County has stated that there is a vehicle to remedy the situation. The applicant has stated they'd prefer not to spend the time and the money to do that, to get the FEMA map updated and changed and change the grade of the lot. So, while I understand that 100%, and I can understand why they want to... don't want to do it because it's added cost, it's a delay to their project which they've been waiting for 2 years to build which I can understand is a frustration in its own, and then the time it takes to even get started, you can see how long it's taken them to get to this point. So, I understand their frustration, but again the idea of a variance should be administered very tightly. And

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the fact that there is at least two remedies, two other ways to approach this other than a variance that would be in compliance. How is that a hardship? How can we... how can we go down that road of granting a variance when there are other remedies that are available to the applicant? That's unfortunately where I am. I feel for the applicant. I'd love to be able to just go yeah, sign it off. But we're talking about a flood zone that somebody in the County at some point raised the flag that does this on a daily basis or on a regular basis looks at these plans. We don't know that the insurance companies had the right data. You know, you're making a leap to say well, what they had must be right. Again, not that it's... not that it's this Board's problem, right, because they build it and it floods, they don't have flood insurance, it's not, you know, they can't come back to the board -- I don't think. But, that's my concern with just, you know, again, the application of a variance is supposed to be very, very strict and only if there's no other way to remedy that situation. And I know of at least two or at least I feel like there's two. So, that's my position on this.

Ms. Brown: And I agree with you Robert. I think this is more about convenience. I do. I also think the insurance companies don't have the correct information because I asked Mr. Harvey twice if the actual real elevation that's really on the ground right now was reported to FEMA it would not be an X. So, I don't think the insurance companies have the accurate information. So I do think it needs to be changed. I'm gonna be voting no.

Dr. Larson: I think... okay. So, another part of it that I'm struggling with is it's we're talking about a very, very small amount of varying. You know, we we've been asked in the past, in the recent past, to wave an entire ordinance, County ordinance, as a variance which was, you know, several hundred feet of setback; the cemetery issue. This is... so I guess what I'm saying is that weighs in my thinking about the hardship, you know, if it were, you know, that they were asking for 5-foot variance then probably not. But this is only a few inches of variance.

Mr. Grimes: And again, from the perspective of a variance, it doesn't matter whether it's an inch or a mile. If there's a remedy that can be had that's other than... because a cemetery is a different animal...

Dr. Larson: I hear you, but I was folding it into hardship. If it was a big variance, it'd have to be a pretty big hardship. If it's a little tiny variance, do you still need a really big hardship or can a little tiny hardship, or maybe a medium hardship?

Ms. Bertoldi: Well, and then that's kind of what, you know, unfortunately the concept of what is considered a hardship is not clearly defined.

Dr. Larson: Exactly.

Ms. Bertoldi: And I really have flipped back and forth several times looking over this material and even tonight. And, you know, to me a hardship doesn't have to be that, you know, because, you know, the only thing that's gonna be... could look like a spaceship can be there, well then you have an option and so now you have a spaceship. I mean, you know, like at some point, you know, I think you do have to look at the neighborhood, okay. Being a former president of an HOA, you know, I don't know, you know, if I heard testimony I believe tonight and I know I'm not talking about us considering HOAs and their decisions, but you know, it creates a hardship if we say you have an option, not our problem, and then the HOA says well we... you can't build like this, you can't do this, you can't do that. You are... you are... that is a hardship. And I think that it is relevant with... in the decision of a hardship I think to me also good faith ties in a lot to hardship. I once... I watched a BZA in another county which someone wanted a variance on a... on a... on a setback of their... of their front porch because the front porch that they could build was not conducive to the type of parties that they wanted to have. They wanted to have

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a larger porch because, you know, otherwise, you know, what's the point. And everyone else around them has bigger porches so we want a bigger porch. To me that's not, you know, a hardship. To me, here you have people who literally did I think everything possible to make the best decision that they could. I mean, I literally don't think that they could have done anything else except for a, okay, well we're going to, you know, ignore all of these officials from federal to local government, insurance companies, and go do it ourself because they all could be wrong I think is actually unreasonable to expect someone to do. And when you tie into the well, wait a second, now all of a sudden, I mean, look, I mean, let's say, you know, I mean, 15% of you know it could be a lot of money and I think that and something that is truly I don't think their fault I think can be interpreted as a hardship. I do not take this lightly. I really don't. But I think that just because you can build something does not necessarily mean in every single instance that that alleviates a hardship. If they're gonna have to build a house that doesn't fit into the...

Mr. Grimes: They can build the exact house they want if they change the FEMA plan. They literally could build the exact house they want by filing amended site plan by raising the lot...

Ms. Bertoldi: They said they had to put it on stilts?

Mr. Grimes: No. That's if you don't want to change the grade of the land. They can go and file a FEMA map change, change the elevation of the land by adding fill, spend I don't know what it costs so I'm not even gonna guess, but it's probably less than the 12% of added cost to the house and get the same house. So, that's why I said there's two... two avenues that they can build their house. They can change the design of the house which is what you're talking about, or two, they can file the change with FEMA and they can build the exact same house.

Ms. Bertoldi: See, I didn't hear that. I would actually don't know if it's appropriate to ask for clarification because I did not hear that from... because I asked that question three times in three different ways and I didn't, I mean, maybe I missed... maybe I missed it but I would actually like clarification on that because I did not hear that from the applicant.

Dr. Larson: I heard that.

Mr. Grimes: Because I think Mr. Harvey... that that was the primary issue here or one of the issues if you can answer the question was that there was going to be a several month delay and some added cost to go the route of getting the FEMA map updated.

Mr. Harvey: Mr. Chairman, Mr. Grimes, in order for them to build a house in the floodplain they're gonna have to put in a foundation and fill around that foundation to get positive drainage. Therefore to do that they're going to need to get the conditional letter of map revision prior to construction and the final letter map revision after construction.

Dr. Larson: What's involved with that Mr. Harvey?

Mr. Harvey: Mr. Chairman, I have to defer to the applicant's engineer who prepares those types of applications. He can give you more of a detailed description.

Dr. Larson: Would the applicant's engineer like to come and speak?

Mr. Fitzgerald: So, a conditional letter of map revision takes a map of the property with the topography, the proposed topography of the property and plots the area of the floodplain that would be removed by

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that fill. And there's documents that go, there's FEMA forms and narrative, those sort of things. We prepare those. They were submitted to Stafford County. There's a review fee, review period. There can be comments. After that's all done and approved the County floodplain administrator signs that document and it is submitted to FEMA and there's a 90 day review period. And then after that there can be comments. And then once that's approved then the grading plan could be approved by Stafford County. After that the house would be built and then that whole process starts over with as-built topography once the fill was placed, and then that area's then officially moved... removed from the floodplain. The area that we're talking about being removed from the floodplain is the area that is currently not shown in the floodplain on the FEMA map.

Dr. Larson: So, the first part, we're... the 90 day part that you just described and there was a lot of back and forth questions and answers, how long would that part take do you figure? Ninety days plus...

Mr. Fitzgerald: So, FEMA has 90 days to review the material.

Dr. Larson: And the County does some interaction. How much time are we talking about?

Mr. Fitzgerald: So, yeah, if we had the plan ready with the proposed fill today, then it would be submitted to the County. The County has about... usually about 30 days to review and get back to us. Then we would submit; let's say that was another 30 days. So, if the plan was ready today, we could expect County approval somewhere in 60 to 90 days. Once we have County approval, then we would submit to FEMA which then takes 90 days for them to review, provide comments, and then when that data is resubmitted, they have another 90 days to review and approve. And that happens twice; once with the conditional letter and map revision, once with the letter and map revision.

Mr. Grimes: And once the conditional letter's approved construction could start because the second part is the as-built.

Mr. Fitzgerald: Once the conditional letter map revision is approved then the site plan can be approved which then after that construction would be after bonds and all that.

Mr. Grimes: Right.

Ms. Bertoldi: The exact house, the same house can be built then. The same house.

Mr. Fitzgerald: Yeah. The application allows the fill to be placed in the floodplain, which I'll reiterate that that...

Ms. Bertoldi: Okay. So, it just... it just elevates it and then just build the house that you were going to build anyway.

Mr. Fitzgerald: Yeah. The letter of map revision process is what would be gone through to make the FEMA map look like what it already looks like.

Ms. Bertoldi: So the only costs associated with that are going to be the fees, whatever they are. Like, typically what are fees for those applications?

(Inaudible - microphone not on.)

Dr. Larson: Stand by, we'll get to it.

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Mr. Fitzgerald: Stafford County application review fee for a floodplain study is \$2,055. The FEMA single lot CLOMAR F conditional letter map, it's like \$600/\$700 and so that would be twice...

Ms. Bertoldi: And your fees, right?

Mr. Fitzgerald: And then our fees which there's, you know, survey and planning fees and all that.

Ms. Bertoldi: You're talking in the ballpark of what?

Mr. Fitzgerald: Thirty thousand dollars.

Dr. Larson: Okay. So you... when you described the process, I came up with four to six months plus 90 days more from FEMA. And you said the whole process repeats.

Mr. Fitzgerald: Mm-hmm.

Dr. Larson: So you're talking 7 to 9 months twice.

Mr. Grimes: The repeat is for the as-built.

Mr. Fitzgerald: Yes.

Mr. Grimes: They can start construction... they can start construction after that first 6 to 7 month period. The second one happens as the as-built documentation, which means construction is done or at least grading is done. So, after they finish grading and putting the foundation in, then they document that and put that back into FEMA. That doesn't stop construction.

Dr. Larson: They can still build.

Mr. Grimes: Correct. I say correct; is that correct?

Mr. Fitzgerald: Yeah, yeah. The area that we're talking about being removed from the floodplain is the area that's currently not showing as floodplain on the FEMA map.

Dr. Larson: So, a 7 to 9 month delay. Sir, did you want to add something to the cost estimate?

Mr. Gallagher: I did just because there was some additional information that was provided. What I would want to say is that in your... when you had made the comment that there was two different ways to build a house, the first way is to build a spaceship, for lack of a better term; the second way is to do the letter map revision. The prices that that Chuck quoted you are not even close to what it's going to cost the homeowner to do this revision. You're talking about a construction loan, interest payments, a construction loan that's going to expire. So they will have to re-apply for that construction loan. You're talking about mortgage rates that have been locked in that will no longer be locked in. Maybe they'll be lower. Maybe they'll be higher. So, the cost significance is not just the fees to prepare the map revision. The County fees... the FEMA fees which those are pretty significant in and of themselves. You have some other pretty significant ramifications of the delays in construction as it... as it pertains to their construction loan, rent on their house that they're currently living in that they didn't plan on being in, they planned on being in a new house by now. There's tons of different implications that would inflate that number that was \$30,000 to double that. So, my contention is there is very much a hardship here and I will pretty much emphatically say this because I've talking to Jamie and Crystal and had some

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emotional conversations with them, not to bring emotion into it, but if this ordinance is imposed and we don't get the variance, they're not building the house. They can't afford to build the house. They would have to literally strip this house down to its bare bones. Could they build a house? Sure, they could still build a house but it's not gonna be the house that they deserve, it's not going to be the house that they've worked their entire lives to be able to buy and build for their children to live in and grow up in. This amount of money is going to strip all those things away that they wanted to do in the house to provide a home for their ... for their child. So, my comment is that it does provide a significant hardship. Absolutely 100%.

Ms. Brown: Wasn't that construction loan gotten last August?

Mr. Gallagher: Yes.

Ms. Brown: And you didn't start submitting until March?

Mr. Gallagher: No, we submitted in December.

Ms. Brown: Okay.

Mr. Gallagher: Yeah, December. That's when we started the process...

Ms. Brown: So you already sat on it 4 months.

Mr. Gallagher: Well, we had the RPA, we had to get the RPA approval and there's a long process for that. That's a County thing. We did that and then we submitted...

Ms. Brown: That was in March, I think, wasn't it? The letter?

Mr. Gallagher: That's when we got it finally approved, yeah. But was submitted before that.

Ms. Brown: But the time from the initial loan is not due to this problem.

Mr. Gallagher: Well, I mean, you know, we submitted the initial site plan in March and now we're in August and we don't have an approved site plan and we don't even have a resolution as far as the floodplain.

Ms. Brown: Right. But the loan started in... in August before the initial site plan for several months.

Unknown: No, the loan started in November?

Ms. Brown: So, I don't want to be on the hook for that.

Dr. Larson: Yeah, let's... let's uh... let's wind up the discussion. Are there any more questions for the applicant? Thank you, sir.

Mr. Gallagher: Thank you, Mr. Chairman.

Dr. Larson: Okay. The public hearing is still closed. Any other comments from people?

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Mr. Jenkins: What I had heard under that last little discussion there was this property is not on the... on the screen for FEMA. It's not a floodplain. So, if they were to apply to remove it from the floodplain, wouldn't it be just negated that they would say no, we're not even gonna to look at it because it's not in our floodplain. Why would we even look at this...

Mr. Gallagher: That's the end result.

Mr. Jenkins: That's what I'm thinking FEMA would say. They would probably toss the application because it's not in their purview. If they don't see it as a flood (*inaudible - someone else talking*) then why would we question?

Mr. Grimes: Well, the fact is, if they were to basically come back and say no, it's not, the answer is answered, right? Somebody has made a decision. FEMA has said...

Mr. Jenkins: They already have.

Mr. Grimes: ... FEMA's interpreted their map and said it's not there.

Mr. Jenkins: But we already have that.

Dr. Larson: But they already have said that with their map.

Mr. Grimes: Well, then the County could have just said FEMA's information is correct. Right, they put it to us.

Ms. Bertoldi: Why do we always get these things?

Ms. Brown: Here's my concern, okay? The insurance companies. The insurance companies think this is a flood zone X. There's a difference in price between the flood zone X and a flood zone AE, and it's considerable. Okay. So right now, the insurance company thinks, hey, they're in an X, there's no problem. That property could flood. We know it's not in an X because we know Mr. Harvey told us. If they really knew the real elevation, it would really be an AE. So, I feel like I'm defrauding the insurance company, and I feel like if it was really done like it was on the ground, they would not be in an X. But what they're going to do would bring it up to an X.

Ms. Bertoldi: Well, honestly, I don't... I mean, I see what you're saying, but we're not defrauding anybody because we're not telling the insurance company something different other than, you know... I mean, we're not involved with the insurance company, we're not involved with that.

Ms. Brown: We know it's not an X. I know now it's not really an X.

Ms. Bertoldi: Well, sure, but that doesn't mean... if they flood and that's between FEMA and the insurance company and people that are a lot higher than us, we don't have any culpability with respect to that. And...

Ms. Brown: I don't know that and here's why. Because we're going to... if we grant variance, we have knowledge that that property really isn't an X; it really should be an AE.

Ms. Bertoldi: Well, there's a process for that. I mean, I see what you're saying but I don't... there's this... I don't...

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Ms. Brown: I have knowledge now. It's not like I don't know. I have knowledge now.

Ms. Bertoldi: Well, I don't... I don't necessarily agree with that. But I think that... I do want to say I hear what the applicant said at the end, but I want to make clear that emotion isn't supposed to come into this. And, you know, the house that they want is not the house that they get is not going to be a part of my decision whatsoever regardless of how I vote. But I still do believe that because we are not, you know, it is not defined, a hardship is not defined or how you interpret hardship or how you correlate hardship with other parts of the criteria for an ordinance that given the level of good faith and the amount of money, you know, time and all of that, I think that that is can be interpreted as a hardship. This is a really tough call. I mean, if there was one tiny little itty bitty fact that was different, I would flip. But I think as a totality, I think that the statute supposed to look at that as a totality, that I think that they meet the criteria for a variance.

Dr. Larson: Go ahead.

Ms. Bertoldi: For those reasons, I will make a motion to approve the variance requested.

Mr. Jenkins: I'll second it.

Dr. Larson: Motion and second. I just heard from you about why you made the motion. Would you like to tell us why you second it, Brian?

Mr. Jenkins: I really appreciate what she had discussed over the last few minutes there. It just makes sense. I've listened to the testimony. You've described the property; it's within inches. I'm not an engineer but it sounds like there's homes literally, what, 20 feet away on... well, 10 feet away on each side. So, I believe it's... it's within our reach to or... yeah, it's within our reach to go ahead and give them the variance.

Dr. Larson: Dana?

Ms. Brown: Um, I'm not going to support it but it occurred to me when you guys just said that and maybe our attorney on the Board could help us out with this. Would title insurance help cover this cost? Because isn't that what it's for?

Ms. Bertoldi: Well, title insurance is actually have to do with liens on a property and whether or not there is any blemishes on a property. So, if a title comes back as clean and you buy a house and they say oh, well wait, the mortgage company then comes back and says actually, you know, there's this, you know...

Ms. Brown: Problem.

Ms. Bertoldi: Yeah, you have a PMSI on a property or a security interest on a property. Now you can't get the deed until you pay them off, the title insurance company will then pay it off.

Ms. Brown: Right.

Ms. Bertoldi: But that has nothing to do with any lawsuits if someone were to come back and, you know, sue somebody. I mean, anybody can sue anybody. I mean, that's obviously... anyone can walk into a courthouse and say I want to sue anybody. But whether or not they have standing, whether or not

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it's the appropriate venue, it has literally, you know, is a totally different matter. And I am not an expert in this field but I'm telling you I am not concerned about an insurance company coming back to us.

Dr. Larson: I don't think that was her question though. I think it...

Ms. Bertoldi: Oh, it wasn't? I'm sorry, then I misunderstood your question.

Dr. Larson: I think what you're asking is they...

Ms. Brown: Could that help cover the cost?

Dr. Larson: ... they bought the property with certain information in hand.

Ms. Bertoldi: No, because I don't think of, I mean, I'm not a land use lawyer but I can... but -- and this is... for the record this is not legal advice because I'm not allowed to give legal advice. Okay, so, with that said, in my personal opinion that title insurance does not cover something like that because being in a floodplain is not considered a blemish on a deed that makes it a non-marketable title. Title insurance covers unmarketable titles and something that makes a title unmarketable.

Ms. Brown: It doesn't cover things (*inaudible - being talked over*).

Ms. Bertoldi: That's not... no, this is a totally different, totally different animal.

Ms. Brown: Okay.

Dr. Larson: Anybody else want to make any comments on the motion on the floor? Well, I would like to say I'm going to support the motion. And the reason is what I said before, that I believe there is sufficient hardship, especially in view of the very small amount of variance that's being requested, that I'm going to support the motion. Anybody else? Okay, those in favor say aye.

Ms. Bertoldi: Aye.

Mrs. Stefl: Aye.

Mr. Jenkins: Aye.

Mr. Gibbons: Aye.

Dr. Larson: Aye. Those opposed?

Mr. Grimes: No.

Ms. Brown: No.

Dr. Larson: Okay, motion passes 5 to 2. You have the variance sir. Thank you. Okay.

Mr. Gallagher: Thank you for your time.

Dr. Larson: You're welcome. Okay, is there any Unfinished Business? Evelyn? Any Unfinished Business? We have minutes coming up.

UNFINISHED BUSINESS

Ms. Keith: Yes, there's other business.

Dr. Larson: We have Other Business, I was... I was going down the agenda.

Ms. Keith: Okay.

ZONING ADMINISTRATOR'S REPORT

Dr. Larson: So, we've done the public hearing, we have Unfinished Business, nothing there. Zoning Administrator's Report. Does the Zoning Administrator... okay, go ahead Melody.

Ms. Musante: I just wanted to let you all know that both of the June cases were appealed. Is it June? June.

Ms. Brown: (*Inaudible, microphone not on*) the wedding?

Ms. Musante: It was the... no, this was the cemetery and the wrestling club.

Mrs. Stefl: So, was that Jumping Branch or was that the...?

Ms. Musante: Jumping Branch, mm-hmm.

Mrs. Stefl: (*Inaudible, microphone not on*).

Ms. Musante: No, it was Jumping Branch.

Dr. Larson: Jumping Branch... oh, that was the one where they pushed over the stones?

Ms. Musante: The stones.

Dr. Larson: Okay.

Ms. Musante: And the writ has been delivered to the court.

Mrs. Stefl: (*Inaudible, microphone not on*) court dates?

Ms. Musante: Not yet. The Board, on September 3rd, will be voting on a new Zoning Administrator. His name is Douglas Morgan and he comes here with 30 plus years of local government experience. He's currently employed in Spotsylvania County as a transportation planner. He actually started here and trained me, so he's knowledgeable of Stafford County and he also lives here.

Mr. Gibbons: And then you're going to say that you're going to extend your work for a few months.

Ms. Musante: I think I'm gonna... as of right now, I'm gonna extend my work for a few months, so.

Ms. Brown: Just a few months?

Mr. Grimes: So every meeting we've got to bring chocolate or wine...

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Ms. Bertoldi: Just for a few months?

Mrs. Stefl: No wine, because she has a longer drive now.

Mr. Grimes: We just leave them... no, we leave them in a bag...

Mrs. Stefl: Oh, okay.

Mr. Grimes: ... by the door, they just get...

Ms. Bertoldi: Is your house done now?

Ms. Musante: Yes.

Dr. Larson: Okay, let's press on. We do love you, Melody.

Ms. Musante: Thank you.

Ms. Brown: Dean, Dean back to that... the cases, the ones that you said the writ delivered on the cemetery case and the wrestling case. What happened without one?

Ms. Musante: They have both just been appealed. They're over in the courts.

Ms. Brown: Do we know if the Supervisors are going to support us on that or?

Ms. Musante: I'm going to refer to Jeff on that. I'm not sure.

Mr. Harvey: Mr. Chairman, Ms. Brown, my latest discussion with the County Attorney's office was that the County would be pursuing the cemetery case, but not the other case. There was some concern about the Notice of Violation, how the violation was written, and the fact that the BZA pointed out concerns about the definition of community use. They felt that that would be a case maybe that we would not pursue. That's the latest I've heard.

Mrs. Stefl: So, by not pursuing, they'll in essence win the appeal? Because we're not gonna be there?

Dr. Larson: Not necessarily, they have our minutes. But the County won't be actively...

Mr. Grimes: Defending our position.

Dr. Larson: Exactly.

Ms. Bertoldi: Well, meaning that there won't be an appearance from the other side. They'll be basically appearing and... is that what that means? That not pursuing means they won't be appearing in the case and fighting it?

Mrs. Stefl: Right.

Dr. Larson: That's correct.

Mr. Harvey: That's correct.

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Ms. Bertoldi: That's called a... well, yeah, that's called a default judgment.

Mrs. Stefl: Default judgment. That's where I was going.

Mr. Harvey: Well, the judge will still make their ruling based on...

Dr. Larson: We have no control over this, ladies and gentlemen.

Ms. Bertoldi: The judge, I mean, who knows. I mean maybe with respect to BZA, you know, they look at the record and, you know, whatever but. Okay, that's cool.

Dr. Larson: Okay, thank you.

Ms. Brown: Those are probably the only cases we have pending in court?

Ms. Bertoldi: Well, what about the wedding, the two wedding cases? I know the one guy appealed; whatever happened with that?

Ms. Musante: He did not do proper service. He did not list the Board of Supervisors. He did the Board of Zoning Appeals and Susan Blackburn. So, that's not a proper...

Dr. Larson: So, the County...

Ms. Bertoldi: Was it thrown out of court?

Dr. Larson: The County pointed that out and they threw it out?

Ms. Musante: Yes.

Dr. Larson: That's what always happens.

Ms. Musante: It's done, mm-hmm.

Ms. Bertoldi: Right, because he doesn't have any more time to appeal.

Ms. Musante: No.

Ms. Bertoldi: And what about the other, I know the other... didn't the other lady appeal as well or no?

Ms. Musante: Not to my knowledge. I never received anything.

ADOPTION OF MINUTES

April 23, 2019

Mr. Gibbons: Mr. Chairman, I make a motion for the minutes (*inaudible - microphone not on*).

Dr. Larson: There's a motion to approve the April 23rd minutes.

Ms. Brown: I'll second that.

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Dr. Larson: Any discussion on April 23rd? Okay, those in favor say aye.

Ms. Bertoldi: Aye.

Ms. Brown: Aye.

Mr. Gibbons: Aye.

Mr. Grimes: Aye.

Mr. Jenkins: Aye.

Mrs. Stefl: Aye.

Dr. Larson: Aye. Opposed? Okay.

June 25, 2019

Mr. Gibbons: I move for June 25th.

Dr. Larson: I have one thing on June 25th.

Ms. Brown: And I've got several so.

Dr. Larson: Okay. On line 1306, please change to the word with to what. Just for clarity. Okay? Dana.

Ms. Brown: Okay, on page 3 of 73...

Ms. Keith: Can you... I'm sorry, Mr. Larson, can you repeat that for the secretary, the recording?

Dr. Larson: I'm sorry, say that again?

Ms. Keith: Can you repeat what the change is for line 1306?

Dr. Larson: Yes. On line 1306 change the word with to what. Okay, Dana?

Ms. Keith: Thank you.

Ms. Brown: Okay, page 3 line 112, toward the end of the sentence that says I didn't know that the public hearing... I want to change didn't to did. And also on the next line, sorry on 114, after my daughter Virginia Tech I, could you please insert did an impromptu stop. I don't think I said I impromptu stop. So that was that. And I have more, I just have to get to my stickies here. Page 26, line 1280, at the end instead of if the, it probably should be of the. And in line 1281, right... following that, instead of county does not, I think it's county definitions. I think that its definitions. Page 28, line 1387 after, or try to interpret what. There's too many what's and two B's, that just should be interpret what the Board of Supervisors. So we need to take out to be and what... to be two and one of the what's, we only need one. Page 29 line 1396 instead of and by-right, it should be in by-right. Okay, well I just dropped a sticky off of one, so we're going to get a pass on that one. Page 61, line 3001, Mr. Peterson was talking about the grass and the first word, plat I think he meant plant, plant grass. And then the last one

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I have is Page 71. Line 3532, toward the end where it says animals on the backyard, or animals on the back, it should be animals in the back. And that was all I had.

Dr. Larson: Okay, anybody else have...

Mr. Jenkins: Yes sir, page 28.

Dr. Larson: Melody, do you have a question?

Ms. Musante: No, I've got some corrections from Steven, so I'll go last.

Dr. Larson: Okay. Go ahead Brian.

Mr. Jenkins: Page 28 line 1353, if you, if you... just strike one set of those if you's. That's it.

Ms. Bertoldi: I have a question. If for some reason like let's say one of us didn't catch a mistake in the minutes or the such, the recordings of these meetings do trump any written transcripts correct, Melody?

Ms. Musante: I'm sorry, I'm trying to do three things at once here.

Ms. Bertoldi: Oh, come on, you're good.

Dr. Larson: I don't think...

Ms. Bertoldi: I just want to make sure for the record that, you know, let's say, you know, we missed a mistake or something in the minutes and correcting the minutes, if it ever became an issue down the road...

Ms. Musante: Yes.

Ms. Bertoldi: ... like in court or whatever. The actual recordings do trump the written transcripts, correct?

Ms. Musante: Stacie, do you know the answer to that?

Ms. Brown: We wouldn't know Adela, because the actual minutes go over like this.

Ms. Bertoldi: Do they also get the recordings?

Ms. Musante: The court?

Ms. Bertoldi: Yes.

Ms. Musante: Yes.

Ms. Bertoldi: They do, okay.

Dr. Larson: I've done an adjudication where both were done, recording and recorder. And at the beginning the panel made a decision that the recorder would be the official record. And the reason I like

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that is because a lot of times the recording, although it's an accurate recording it's hard to hear what people say and they sort of guess at some of the words, and sometimes they're not really right.

Ms. Bertoldi: Well, it just concerns because I know we always have corrections I think we need to make. I'm not saying we shouldn't make them.

Dr. Larson: But we could...

Ms. Bertoldi: But... but... but you know, they're big. And you know we can miss them. So, I just wanted to kind of throw it out there, you know, in the record that, you know, the recordings...

Dr. Larson: Recordings make mistakes.

Ms. Bertoldi: Well no, the writings make mistakes, recordings are not supposed to.

Dr. Larson: The recordings are hard to hear...

Ms. Bertoldi: Right.

Dr. Larson: And people don't talk with good diction and therefore sometimes...

Ms. Bertoldi: We have to correct them ourselves.

Dr. Larson: ... what is printed into the record isn't accurate.

Ms. Bertoldi: Yeah.

Dr. Larson: We have to try to correct that ourselves.

Ms. Bertoldi: No, I'm not saying we shouldn't be doing this...

Dr. Larson: Well...

Ms. Bertoldi: I just wanted to, to know the answer...

Dr. Larson: And personally, I don't know how everybody else does it, but I read everything that I supposedly said...

Ms. Bertoldi: That's what I do.

Dr. Larson: ... and make sure it's right. So if you all do that, too, we will catch everybody.

Ms. Brown: I do that, too, but I caught Mr. Peterson's just because it was right above.

Dr. Larson: Okay, okay. All right, so let's press on to the...

Mrs. Stefl: Did we do June minutes?

Dr. Larson: Oh, I'm sorry. Did we do the June...

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Ms. Musante: He did.

Mrs. Stefl: Oh.

Mr. Jenkins: I... Motion to approve the June meeting...

Ms. Musante: Hold on we're not done.

Mr. Grimes: I think Melody's going to (*inaudible*).

Mrs. Stefl: This is just more of a clerical, but I didn't miss this (*inaudible*) June, it was in April but this one I am seeing my name is Ms.

Ms. Musante: We had somebody different do the June minutes.

Mrs. Stefl: I figured. So no problem, it's just...

Ms. Musante: We had to get those done quickly because of the court cases.

Mrs. Stefl: I've dealt with his mother, I have earned the honor.

Dr. Larson: Does anybody else have any changes to the June 25th?

Mrs. Stefl: I thought Steven did.

Ms. Musante: Yes. Are we...

Dr. Larson: Robert, are you finished? Okay...

Ms. Musante: Okay.

Dr. Larson: ... Steven, get Stevens.

Ms. Musante: Okay. Page 5 of 73, line 218, this is or is not a property, instead of personal. Page 6 of 73, line 279, should say actually live in Spotsy not spots. Page 16, line 786, instead of combated it should be combative.

Dr. Larson: (*Inaudible*).

Mrs. Stefl: Yeah, (*inaudible*).

Ms. Musante: One more, 1640, which is page 33, instead of Section 28-39 part zero it should be part O. And that's it.

Mr. Grimes: I move to approve the June 25, 2019, meeting minutes, amended as noted.

Dr. Larson: Second?

Mr. Jenkins: I will second.

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Dr. Larson: Those in favor say aye.

Ms. Bertoldi: Aye.

Ms. Brown: Aye.

Mr. Gibbons: Aye.

Mr. Grimes: Aye.

Mr. Jenkins: Aye.

Mrs. Stefl: Aye.

Dr. Larson: Aye. Any opposed? Motion passes unanimously. Let's go to ah, not the... the potential changes to the zoning ordinance. Remember, this is the last time we're gonna get together before this is due, so we need to do this.

OTHER BUSINESS

- By-Laws

Discussed after Potential Changes to Zoning Ordinance

- Potential Changes to Zoning Ordinance

Mrs. Stefl: Okay.

Dr. Larson: Which is why we made the change to the agenda. So, let me brief you guys on the first one because I just reminded myself of what was. The BZA feels that Stafford County Section 28-59, Highway Corridor Overlay District and Article 15 Non-conformities are in conflict in wishes the Board of Supervisors to address this issue. I read both of those over with and as far as I can tell if any of you read it over you can certainly jump in. First of all non-conformities, as we all know, primarily deals with structures, there are some uses in there too, but the Highway Corridor Overlay District would apply mostly to what you would think of as structures or things like that, not uses I think. So, the Highway Corridor Overlay Act actually exempts people from three of the provisions in in this ordinance because of the non-conformity type issues. I think they missed one and that was Item 10 which says... okay so, what the... it says is all residential uses shall be subject to the limitations and development standards set forth in the underlying land use districts and in addition shall be subject to the following Highway Corridor Overlay District limitations. And Item 10 says area and bulk regulations in the HC, Highway Corridor shall be the same as those for the underlying land use districts except that the height of buildings or structures within 75 feet of the corridor highway shall not exceed two stories or 30 feet, which I think you would agree is not in agreement with the non-conforming part of the ordinance. Whichever is less or where parking areas are provided in a manner such that the structure or building is located between the parking area and the highway corridor, the applicable setback required, may at the option of the applicant, be reduced to 50% of the otherwise required underlying district. Well again, if the structures between... if the structure is located where it is, if it's already non-conforming, this shouldn't even be an issue right? That's... that was what the BZA was complaining about before. Although I don't, I don't think, I think the other parts of the Highway Corridor Overlay District portion is, is okay except for the, the three that they've listed plus Item 10. So what I would like to recommend

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to the um, the Board of... not the, yeah, Board of Supervisors, I guess, is that that Item 10 be included in the exclusions in the act itself, on item 12 where it list the exclusions. They have already listed Item 5, 6 and 9, we will just add 10 to that. And if there are no objections I will do that.

Ms. Brown: Dean, I just... I am listening and I'm looking for this. One of those things, didn't you assign me to look into, Bob and myself...

Dr. Larson: Yes, yes.

Ms. Brown: And I looked into it and I'm looking for response.

Dr. Larson: Yes. Do I have anything on that?

Ms. Brown: I wrote it to you and I'm looking for it. When was this that we met? So that would help me narrow it down a little bit. But I remember I looked into it and determined it didn't apply. We didn't need to do this and that was my opinion. I was waiting to hear from Bob, but I sent that to you.

Dr. Larson: I didn't...

Mrs. Stefl: We met in March.

Dr. Larson: ... get that.

Ms. Brown: It was March? No, no, no, we met in June.

Dr. Larson: It was May I think.

Ms. Brown: It had to be like June or something, right?

Ms. Bertoldi: I have my schedule right here.

Dr. Larson: Anyway, it doesn't matter it does. We met.

Ms. Brown: But I researched that, I mean I went and did that.

Dr. Larson: Yeah, I guess I...

Ms. Brown: Somebody sent me stuff and I had to go look and read through all of it.

Dr. Larson: I would, I would, I would say that Item 10 needs to be an exception in the in the Highway Corridor thing, based on what I just read.

Ms. Brown: Okay, I look... I think I'm finding it. It looks like it might have been in May.

Dr. Larson: I didn't get any e-mail from you on this by the way.

Ms. Brown: Yeah, you responded to me. You said you agreed with wait till we heard from Bob.

Ms. Bertoldi: You did, because I saw that email.

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Ms. Brown: Yeah, okay.

Dr. Larson: Oh, whoops, okay.

Unknown Speaker: Well you can't miss a thing.

Ms. Brown: I'm getting close to finding that...

Dr. Larson: I get a lot of e-mail.

Ms. Brown: Because you guys, somebody, Melody or somebody sent me the stuff I had to review and I went right, and I went over it...

Ms. Bertoldi: We met on the 20th of May...

Ms. Brown: Okay.

Ms. Bertoldi: ... for the Legislative BZA meeting.

Ms. Brown: Okay, I had to do it like right away.

Ms. Bertoldi: So it was, so it was somewhere around that time, May 20th.

Dr. Larson: Oh, you're looking for the email.

Ms. Brown: Yep, because I responded and concluded that we didn't need to send this on because it wasn't something that was happening.

Dr. Larson: Well, I never looked at the... I just got your e-mail and said okay. I mean I haven't looked at it since then.

Ms. Brown: Okay, I thought you said we wait to hear from Bob.

Dr. Larson: Well actually, yes I do remember saying we'll wait to...

Ms. Brown: Yeah, yeah.

Dr. Larson: ... hear you because Bob had the other assignment.

Ms. Brown: I'm still looking I have a lot of e-mails to you apparently.

Dr. Larson: It's okay, we're.... anyway

Ms. Brown: I didn't want to, I didn't want to send that on, that was my recommendation.

Dr. Larson: Let's move along. I believe that Item 10, if you, if you guys would care to read it, it's 28-59 (10).

Mr. Grimes: As a member of this Board, I will defer to any recommended actions from the legislative committee.

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Mrs. Stefl: Oh stop.

Ms. Bertoldi: Is this it?

Ms. Brown: I found it.

Mr. Grimes: No, I am serious, you guys did research, I trust you.

Dr. Larson: We didn't, we didn't recommend... all we did was recommend...

Ms. Brown: Okay.

Dr. Larson: ... you look at this and this, this actually had...

Ms. Brown: Can you give... you show it to him...

Dr. Larson: ... both of these first two had red lines. I was going to wait...

Ms. Bertoldi: I pulled it up on my iPad, this is what she...

Dr. Larson: Yeah I, I, I, oh, okay, I see that.

Ms. Brown: Yeah. I, I, I took a long time going through it and it didn't really apply anymore. We hadn't had a case in years and years.

Dr. Larson: Well, what about item 10?

Ms. Brown: Okay, which one is 10? You had given us a list with no numbers on it, so.

Dr. Larson: Pardon me? I just read through it.

Ms. Brown: No, I know but during... at the...

Dr. Larson: Oh yes. I gave you... I gave you the code numbers without the sub-paragraphs.

Ms. Brown: Yeah.

Dr. Larson: That's what, that's what was in the, um...

Ms. Brown: Okay, I'll say this. There was five of us on this legislative committee and I thought we had deter... whatever we determined that day I'm fine with. My beef is, is that we sat here, five of us. We were all invited to join and one member was allowed to derail all of our work.

Dr. Larson: Well...

Ms. Brown: And I had a problem with that.

Dr. Larson: I believe we have ten minutes to do what we're going to do now and forever old our peace. So, can we get some agreement here?

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Ms. Brown: I went to the trouble to get Melody to give me a copy of that because...

Dr. Larson: Let me read this to you again. This is Item 10 of the Highway Corridor Overlay Act, area and bulk regulations in the HC shall be the same as the underlying land use districts except that the height of buildings or structures within 75 feet of the corridor shall not exceed two stories or 30 feet. What if you have a non-conforming structure that is 35 feet, are you gonna make him take the top five feet off? Because of this?

Ms. Brown: Like we did with the hotel and the 7-Eleven?

Dr. Larson: That was not a non-conforming situation. Non-conforming means that they were legal when they constructed it and then they changed the code afterwards. That's non-conforming. So these, these... if you're non-conforming you can't... we can't force them to do stuff if they're non-conforming because they're non-conforming. We can't, they can't increase the non-conforming aspect of the building. What they can be non-conforming because they constructed the building under the code that was in force at the time they constructed the building. The code was changed afterwards. That's non-conforming. So I'm saying that Item 10 is in conflict as the Board, as the Board said back in their annual report in 2011 that the, the Board of Supervisors needs to look at it and I believe that Item 10 is what they were talking about. So I just thought we would just do the Board of Supervisors a favor and just point to item 10.

Ms. Brown: Yeah, but that's the one I researched and we haven't had a case like that since...

Dr. Larson: Oh I don't doubt that. But we could have future cases

Ms. Brown: So it wasn't like an issue that we needed to like, have it pressed on.

Dr. Larson: Until it is.

Ms. Brown: Yeah, but it's been eight years, I mean we had more pressing issues. I thought we could only submit a few top priorities. I didn't think that was a top priority because we haven't been experiencing that.

Dr. Larson: Well, we were... we could only... we agreed to only submit our top few, maybe two or three top priorities...

Ms. Bertoldi: Right, which was what...

Dr. Larson: ...to the state. This is, these are all county requests. I think we could have an infinite number of these.

Mr. Grimes: Absolutely.

Ms. Brown: Yeah, I am thinking of the state, because that's what our charge was. But that's not what we are talking about.

Dr. Larson: That's exactly right.

Ms. Bertoldi: So, I guess if there's no limit... there's no limit to the Board of Supervisors.

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Dr. Larson: That's correct.

Ms. Bertoldi: So, is there... okay.

Dr. Larson: But we...

Ms. Brown: Have we done our state ones? Because I'm confused now.

Ms. Bertoldi: I am, too.

Dr. Larson: We... these are both because why not. We when we went met as a, as a committee we, we didn't have any state level after we walked out of there.

Ms. Brown: We did, we did.

Dr. Larson: Well except for the one...

Ms. Brown: I have a CD to prove it.

Dr. Larson: Except for... well, I identified one after all the other changes were made to the code. The one about the, ah, the training.

Ms. Brown: That was one of my things.

Dr. Larson: Okay.

Ms. Brown: That's a state thing.

Dr. Larson: Well do you have... let's hear your other state level.

Ms. Brown: My other what?

Dr. Larson: Your other state level recommendations.

Ms. Brown: Well, the training was my state one. I didn't agree with the Highway Corridor Overlay one. The other one was on our retail something.

Ms. Bertoldi: It was on the definition of defining...

Ms. Brown: The internet sales tax...

Ms. Bertoldi: The internet sales tax and actually flushing that out and...

Dr. Larson: There were two issues...

Ms. Bertoldi: ... then clarifying it.

Dr. Larson: There were two issues.

Ms. Bertoldi: There was two issues on that.

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Dr. Larson: One was taken care of. The other was the last section that was poorly worded. And I know the first one was taken care of.

Ms. Bertoldi: Well, what we had decided is as a Board and I think what Dana was trying to get out with respect to the one member that was not part of the legislative committee, was that you know, we need to be careful. We weren't trying to suggest changes to the wording, we were setting forth to the state to consider that there is an actual discrepancy and let brains larger than ours...

Ms. Brown: Figure it out.

Ms. Bertoldi: ... to make those decisions and figure it out. And I still think that that needs to go. And I mean we decided, actually I thought we decided, as a legislative committee... Heather maybe you can remember too, I believe we decided to put that on the list...

Ms. Brown: We did.

Ms. Bertoldi: ... And then all of a sudden it was decided to be taken off the list and I think that's the issue. So, I still think it needs to be put on the list for the state to decide. If the state wants to say there is no issue then they can decide that.

Ms. Brown: And that's exactly what I remember too. And the training was the other one.

Dr. Larson: I guess I disagree in that we already know... the county has already issued guidance on that. They, they allow for internet commerce in a home business I and home business II. They call it e-commerce. It's allowed by-right. So why do we ask the state this question?

Ms. Bertoldi: Because we voted on that in a legislative meeting, to...to...

Dr. Larson: Well but we didn't know it at the time. So the vote... we didn't know that the change had been made at the county level.

Ms. Brown: No we did, we looked at it.

Ms. Bertoldi: Yeah.

Ms. Brown: We all thought it was confusing.

Ms. Bertoldi: And there was still that last...

Ms. Brown: Yeah.

Ms. Bertoldi: ... right, yeah, it's still... that it needs to be, that needs to be looked at. Not that we know better, but it is still confusing.

Dr. Larson: Well, the county has already done it.

Ms. Brown: Okay, well here's, here's...

Dr. Larson: It's not it's not ambiguous anymore.

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Ms. Brown: Okay.

Dr. Larson: It's in the code.

Ms. Brown: Here's the deal. I have that I have the recording 47 minutes in, we start talking about getting guidance from the state on retail internet sales tax private sales. Heather says it should be separated and then at 52 minutes and 43 seconds, Dean says he'll write something up.

Dr. Larson: Which I did, until I...

Ms. Brown: Not about that.

Dr. Larson: ... found out that the county has already addressed it. There is no ambiguity.

Ms. Brown: Well, I disagree.

Dr. Larson: Well, I disagree with you guys.

Mr. Grimes: As a as a member that's not part of the legislative committee, can I suggest that you guys reconvene and hash this out?

Ms. Brown: No, we have a deadline. We had a deadline back in June.

Ms. Bertoldi: We wanted to do this...

Mr. Grimes: Well, there's another deadline next year, so.

Ms. Brown: Yes, but...

Dr. Larson: Well no, the state... we need, we need to do the state things now.

Dr. Grimes: We do it every year is my point. If it doesn't get done before the deadline...

Ms. Bertoldi: Can we vote on it tonight?

Mr. Grimes: ... it could be done next year.

Ms. Bertoldi: Can we vote on it tonight as a Board?

Dr. Larson: Yeah.

Ms. Bertoldi: Let's vote on it tonight.

Dr. Larson: Okay.

Ms. Brown: Are we missing somebody?

Dr. Larson: Hold on.

Ms. Brown: Because Bob, Bob was...

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Ms. Bertoldi: Bob left.

Ms. Brown: He left to go home? Because he was part of the legislative committee.

Ms. Bertoldi: I know, he left.

Dr. Larson: Well, let's vote on it as a Board...

Ms. Bertoldi: Right.

Dr. Larson: ... while we are here.

Mrs. Stefl: It's still voting.

Ms. Bertoldi: Yep.

Dr. Larson: Alright...

Ms. Brown: Originally it came out as a 5-0.

Ms. Bertoldi: I know it did.

Dr. Larson: ... so we have, we have the definition of internet... retail sales on the internet. That's basically the question.

Ms. Brown: Well, the collection...

Ms. Bertoldi: To clarify,

Ms. Brown: ... of sales tax.

Ms. Bertoldi: To clarify the sales tax, because it is not clear and there is a discrepancy within the language and...

Dr. Larson: Sales tax?

Ms. Brown: Internet sales tax.

Ms. Bertoldi: Yes, the internet sales tax and to have... not to suggest language but to charge the state with looking at it to seeing if there is actually a discrepancy. They can leave it the same, they cannot, but just to bring into the intentions...

Dr. Larson: Why don't you write a suggested wording of what we'll say and...

Ms. Bertoldi: That, that was...

Mrs. Stefl: But they are looking at that. I thought the state is looking at sales tax.

Dr. Larson: All the states are looking at internet sales, in fact most of them have passed it already.

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Ms. Bertoldi: No, we already have it...

Ms. Brown: I remember the way the language was written about what was to be collected.

Dr. Larson: Anyway, let's... let me continue. So the next one this BZA Code Section 28-57 (H), permitted uses in the floodway district. Item numbers 1 and 3 are in conflict, okay, so let me just look at that real quick. After looking at this I concluded that we could resolve this by saying in the number 3, after adherence to number 1, do this. That's what I concluded. So, number 1 is in the floodway district, no encroachments including fill, new construction, substantial improvements or other development shall be permitted unless it has been demonstrated through hydraulic and hydrologic and hydraulic analysis performed by performance accordance with standard engineering practice that the proposed encroachment would not result in any increase in the 100-year flood elevation. Number 3 says the following uses and activities may be permitted by Special Exception, and then it lists some uses and activities that may be permitted by Special Exceptions. So, I don't think that 1 and 3 are in conflict. I think that 1 restricts things so that you have to have these analysis performed. And then number 3 lists the things that you can do by Special Exception.

Ms. Brown: Dean, I am going to be honest with you, I don't know where you're reading from. The only thing I have in my packet is this. Is this what we're looking at?

Dr. Larson: Twenty, well it's 28-57 (H) unless the new code has a different...

Ms. Brown: So it's something we don't have in our packet that we're reading from?

Dr. Larson: No, no, no. Well I have...you have a one page...

Ms. Brown: This thing, right?

Dr. Larson: Yes.

Ms. Brown: That's all I have, okay.

Dr. Larson: And the code, you have the code. Anybody have a problem with that one? Going once, going twice.

Ms. Brown: I have no opinion because I'm confused on this has been so long. The only thing I want to vote on tonight is what we are sending to the state. The rest I don't care. Like Robert said, it can wait another year; it's the Supervisors, there's no deadline. We could do it any month we wanted to. The state stuff is what's important.

Dr. Larson: Okay, well... okay, well, Adela, you were going to come up with suggest wording for the retail sales. I don't know... I didn't realize you were focused on internet tax. I thought, I thought we were talking about...

Ms. Bertoldi: Emails that went back and forth on this.

Ms. Brown: Yeah, it was the internet tax. We're doing it but it was not clear in the state on who had to pay it, as I recall. It just wasn't clear on what was being collected and what wasn't and it needed to be clarified.

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Ms. Bertoldi: Right.

Ms. Brown: And that's what we were suggesting, that the state go back and look at it.

Ms. Bertoldi: And it also wasn't,

Ms. Brown: And make it more clear.

Dr. Larson: Okay,

Ms. Bertoldi: If I remember it also wasn't clear that it actually had been an ordinance approved it was discussed but I don't think...

Ms. Brown: I thought it was in play. I don't...

Ms. Bertoldi: That I ever saw the...

Ms. Brown: I can't remember now.

Ms. Bertoldi: ... that it was a minute in minutes and it wasn't clear that it actually was actually approved because even the ordinances that Melody pulled up as the most recent, did not include that.

Dr. Larson: At the state level.

Ms. Bertoldi: Yeah, everything she pulled up was not, was, was current as of that day. So, you know, what was, you know, given to us as a see it was changed...

Dr. Larson: No that was...

Ms. Bertoldi: ... was actually not the, you know, actually was not approved it was not the ordinance. So, you know, I mean...

Dr. Larson: I thought that was... I thought that was the ordinance.

Ms. Bertoldi: I don't remember that being the ordinance itself.

Dr. Larson: That was the ordinance the county posted on the internet.

Ms. Bertoldi: But that's what actually...

Ms. Brown: Yeah, I think...

Ms. Bertoldi: ... Melody...

Ms. Brown: I think she's right. I think what our other member was referring to hadn't actually been passed.

Ms. Bertoldi: It actually had not been passed yet. It's unfortunate he's not here because it did not look of what he sent was not...

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Dr. Larson: It's on the internet now. I mean, Jeff doesn't the county post the correct ordinance on the internet?

Ms. Bertoldi: Well, I mean and...

Dr. Larson: Was it a draft?

Ms. Bertoldi: ... what Melody pulled up was the most current and did not include that.

Ms. Brown: It conflicted with something and we need to clarify on it.

Dr. Larson: Is she... yeah, there were... there was a lot of confusion on what the current one was but that's why I referred to the one that was on the county's website on the internet.

Mr. Harvey: Mr. Chairman, the Municode posts the most recent version of the County's ordinance on the website. As far as State Code, we default to the State website to grab the most recent State legislation.

Dr. Larson: Okay, okay, thank you, thank you. Alright, anyway. Why, why are we interested in collecting sales tax on the internet at the BZA? That is not what I was interested in.

Ms. Brown: Well, you said you were.

Dr. Larson: No, I said I would and I have been for years defining retail sales, retail sales on the internet.

Ms. Brown: It was about internet tax collection on retail sales.

Dr. Larson: I don't know why we would be concerned with that.

Ms. Brown: Because there's a, there's a law that, you know, if the company does business... has a, has a place of business in the State of Virginia.

Mrs. Stefl: Brick and mortar.

Ms. Brown: Yes, brick and mortar, we have to pay retail sales tax.

Dr. Larson: I know retail sales are.

Ms. Brown: But if they don't have a place of business, brick and mortar in Virginia, we don't have to pay the internet sales tax.

Dr. Larson: Ah, but that's what... yeah, okay...

Ms. Brown: But then...

Dr. Larson: But they're...

Ms. Brown: And then...

Dr. Larson: This is a whole...

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Ms. Brown: ... there was...

Dr. Larson: ... new thing.

Ms. Bertoldi: It was direct sales. It was it was a direct sales definition.

Ms. Brown: My guess is our other member thought it was something else perhaps like you're doing now and got all concerned that it was something we weren't talking about and that was why there was such a hysteria about it.

Dr. Larson: No, he interpreted it exactly what I what I was saying he exactly what I had in mind. The code now says that for the home business I and home business II by-right e-commerce is allowed period.

Mr. Jenkins: *(Inaudible, microphone not on)*.

Dr. Larson: So we had...

Ms. Brown: Right, right...

Dr. Larson: So, we had no question...

Ms. Brown: Not all e-commerce has to pay sales tax. It depends on the brick and mortar.

Dr. Larson: Oh.

Ms. Brown: That's the...

Dr. Larson: No, no, that's, that's a different, that's a different issue.

Ms. Brown: I know. We're talking about two different things.

Dr. Larson: But that's a different issue. But the, the issue...

Ms. Brown: Adela, help me.

Ms. Bertoldi: Honestly, I can't make heads or... this is too long ago, it was too... it was too... too much of a nuan... I mean, I'm just literally trying to go through. I mean, I honestly cannot articulate...

Ms. Brown: It wasn't...

Ms. Bertoldi: ... to sufficient degree of what exactly is going on here right now.

Ms. Brown: When the wrap up came from Dean that wasn't what we were talking about and that's probably why there was hysteria on the other part because that, that's not what we were talking about.

Ms. Bertoldi: It all seems very vague. I'm trying to look at e-mails unfortunately it's 10:00 at night.

Dr. Larson: Well, okay. What, what I have always been talking about.

Ms. Bertoldi: When's the deadline? When is the deadline?

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Dr. Larson: Next month, which is next week.

Mrs. Stefl: *(Inaudible, microphone not on)*.

Ms. Bertoldi: Next week like August 1st? August 2nd? August what?

Dr. Larson: I was told... well Jeff, you tell us. I have... got it from Jeff.

Ms. Bertoldi: Because I actually think that this is something that I am not comfortable like, I mean I think it does need to be flushed out, I think I would like to be able to have that opportunity but, I mean.

Mr. Harvey: Mr. Chairman and Board members, the Board of Supervisors has a legislative committee in June they started taking solicitations from staff of various departments and all the Boards and Commissions. In the month of September that's when they're going roll up all the recommendations and finalize what they're going send forward for their highest priorities to talk to the legislative delegation. So, that's the importance of the timing of any recommendation comes from this Board. If we wait for the next meeting we've probably passed the deadline for the Supervisors to make their decisions on what they're going to ask legislators to do. Traditionally they prioritize the first three or five important bills and then others that they think are important, but not as critical as the top three.

Dr. Larson: So this is at the state level that they do this?

Mr. Harvey: Yes, asking for changes to state law.

Ms. Bertoldi: What state? When is the meeting in September?

Mr. Harvey: Ms. Bertoldi, I'm not really sure what date it is yet.

Ms. Bertoldi: I mean, is it at the beginning? I mean, is there a time that maybe we can notice a meeting for the legislative committee to meet one, one last time? And then the Board give the authority to us to be able to make that decision and write it down and get it right over. I mean is that possible?

Mr. Harvey: Staff will convey the BZAs recommendations as soon as they're available.

Ms. Bertoldi: I mean, as long as it's before the Board of Supervisors, the Supervisors meeting.

Dr. Larson: Right.

Ms. Bertoldi: So, like if they meet mean the 15th then we feasibly would have the first two weeks of September. I mean, they aren't going to, you know, I mean I don't know.

Ms. Brown: Well, the Board's only going to take top two or three from the whole county right? So the BZA is not... they're not going to take two or three...

Ms. Bertoldi: Then they are probably not going to look at this anyway.

Mr. Harvey: But they'll also have other items that they'll let the legislators know that they're of importance so if some other jurisdictions have same issue, we will ask our legislators to co-sponsor that bill or add emphasis to it.

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Ms. Brown: Alright.

Dr. Larson: Dana, you had the... you, you had a good idea with the training which was narrowed to one time a year.

Ms. Brown: Here is what I'm going to propose. I'm very angry about this, I wasted my time. Okay. I will settle right now for expedience because I want to get something to the Board because we look stupid but we've had three months to get this together. We had a meeting, we had an agreement and something happened. So, I'm hard over. I want the training thing going on there. We've got one training session a year. It needs to be in the first part of the year when all the members are being appointed.

Dr. Larson: Do you have any words?

Ms. Brown: Well, I thought you were taking care of that, but BZA training needs to be in the first three months of the year, calendar year.

Dr. Larson: Anybody have a problem with that?

Ms. Brown: Because elections are in November, new members are appointed in January. I don't want to wait, like Brian's having to wait until September.

Ms. Bertoldi: Right, and he just heard a variance.

Ms. Brown: That's a liability for the County, you know we have people not, nothing personal, but they don't know some of the legalities of this. So that's why I think it's important. The other thing I think is important too, and I'm, I'm, like I said we wasted, I don't know an hour and a half talking about it. We've got it on tape and I, and I, I, I am upset that one member, who wasn't here, who didn't volunteer, was able to derail the training thing going.

Dr. Larson: We're back on track. We're doing it now.

Ms. Brown: No we are not, we don't have time to do that sales tax.

Dr. Larson: I've written down BZA training needs to be with in the first three months...

Ms. Bertoldi: And the wedding venue, right? That was at the...

Ms. Brown: The County is taking care of that.

Ms. Bertoldi: The County is taking care of that.

Dr. Larson: The County is taking care of some of that. I'm not sure how much.

Mr. Grimes: I think it's a moot point on the Internet sales because as of March 27th Governor Northam approved SB1083, which requires sales tax to be collected for all e-commerce sales. There is a safe harbor for small sales and it's defined by the Virginia Code so, it's already in there.

Dr. Larson: Yeah, sales tax is a moot issue.

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Mrs. Stefl: *(Inaudible, microphone not on)*.

Mr. Grimes: Yeah, it's moot. It's already taken care of.

Dr. Larson: It does not apply to the BZA anyway.

Ms. Brown: That wasn't the... the issue was there was conflict in the... they needed clarity in the actual what they worded it. That was *(inaudible, two people talking at once)*.

Dr. Larson: Yeah, I agree.

Ms. Brown: It was not that we didn't want it or didn't want to have it.

Dr. Larson: I don't disagree, there was an issue and we were talking in the meeting. I discovered that the county had taken care of it after the meeting, that's what happened.

Ms. Brown: It's a state thing the county can't take care of it for the state. That was...

Dr. Larson: I don't understand why...

Ms. Brown: I give up, okay. Dean, I give up.

Dr. Larson: Okay.

Ms. Brown: It's the wording is not clear. We were just asking the state to clarify it, not change it, not get rid of it.

Dr. Larson: Melody, can you, can you bring up...remember I asked this before. Can you bring up the County's version, the current version of the Zoning Ordinance under definitions and look at one of them that would have it home business I? And then hook it around if we can transmit it to our...

Ms. Brown: Dean, I'm letting this go for time's sake, okay. I'm letting this go.

Dr. Larson: But I thought you wanted...

Ms. Brown: No, we don't have time. If I would do that... I have the tape, I have the CD, I would play it for you, everything that we said, and what the exact issue were. We don't have time. We need to get the stuff to the Board of Supervisors.

Dr. Larson: Okay, okay. I'm, I'm not going explain this anymore.

Ms. Brown: So, I'm hard over on the training. I want the training to go in.

Dr. Larson: Okay.

Ms. Brown: And that's all I going to...

Dr. Larson: Okay, wedding venue. Never mind, Melody. This says BZA recommends wedding venue be added, is requiring a Special Exception and A-1, was that... do you know if that was added, Jeff. I know I'm picking on you but,

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Mr. Harvey: Mr. Chairman, wedding venues and event venues are being considered as part of an overall change to Agricultural zoning category and under the current draft they would only be allowed on properties greater than 20 acres...

Dr. Larson: Okay.

Mr. Harvey: ... and by Special Exception.

Dr. Larson: Okay, okay.

Mr. Grimes: And a Special Exception.

Dr. Larson: That was actually one of the other recommendations, I believe. Yeah, minimum lot sizes.

Mr. Grimes: And.

Dr. Larson: Yep, yep, that was actually uh right off the words. Okay, do you know if they're going to speak to commercially provided water and waste disposal at wedding venues as well, Jeff? Because that's another part that we've run into before, and the sewage issue.

Mr. Harvey: Mr. Chairman, from staff's perspective that's an issue that has to be addressed by an applicant with the Health Department.

Dr. Larson: Okay.

Mr. Harvey: If they're going to use a private wells or water source and a serve more than 35 people for a certain number of days, they're required to essentially build a public well to serve that venue.

Dr. Larson: Okay. Do we... does anybody have any more issues at the state level? State level?

Ms. Brown: No, I was clear, it was just two small things.

Dr. Larson: Okay. Well, then in view of the view of the hour, I think I'm going to compose a memo because, I'm tired of floating this back and forth too. I am going to compose a memo for chop by the Board. So, I'll send it to Melody. Melody can forward it to the Board. This is administrative stuff anyway. And look for comments on proposed changes at the county level. And please feel free to add what you have noticed that might...to clarify the County Code. Okay? Okay. Is there a motion to adjourn? Because we are not doing the rest of the agenda.

- *By-Laws*

Mr. Grimes: Are we not adopting the by-laws? Are we deferring that?

Dr. Larson: Deferring that to the next time.

Mr. Grimes: Okay.

Ms. Brown: And I think we have no meeting next month. So, we won't meet until October, is that right?

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Dr. Larson: Oh, there's no meeting next month?

Ms. Musante: No meeting next month.

ADJOURNMENT

Dr. Larson: Okay. Okay, motion to adjourn?

Mr. Grimes: Motion to adjourn.

Dr. Larson: Second?

Mr. Grimes: Looking for second.

Ms. Brown: Second.

Dr. Larson: Those in favor say aye.

Ms. Bertoldi: Aye.

Ms. Brown: Aye.

Mr. Grimes: Aye.

Mr. Jenkins: Aye.

Mrs. Stefl: Aye.

Dr. Larson: Aye. Any opposed?

With no further business to discuss, the meeting adjourned at 10:14 p.m.