

STAFFORD COUNTY BOARD OF ZONING APPEALS
January 23, 2024

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) Tuesday, January 23, 2024, was called to order with the determination of a quorum at 7:00 PM by Chairman Kecia Evans in the Board of Supervisors Chambers of the George L. Gordon, Jr., Government Center.

MEMBERS PRESENT: Kecia Evans, Dana Brown, Steven Apicella, Everet Blaisdell, Jon Ireland, Abraham Panjshiri, Steven Gorski (alternate), Nathan Mowery (alternate)

MEMBERS ABSENT: Jeffrey Spinnanger

STAFF PRESENT: James Staranowicz, Stacie Stinnette

DECLARATIONS OF DISQUALIFICATION

Ms. Evans: Do we have a quorum?

Mr. Staranowicz: Yes, ma'am we do.

Ms. Evans: Alright. Let the record reflect that we have a quorum tonight with six voting members present. Before we hear the first case, does any board member wish to make any declaration or statement concerning any cases to be heard before this board tonight? Alright, take note, alright. The BZA is a quasi-judicial body whose members are volunteers appointed to the Circuit Court of Stafford County. The purpose of the BZA is to hear and decide appeals for any order, requirement, decision, or determination made by the Zoning Administrator. Hearing of appeals will be conducted in two parts. The first will be a review of jurisdiction and standing. The second will be the hearing of the merits of the case, if required after review of jurisdiction and standing; hear and decide upon request for Variance from the Zoning Ordinance, when a literal enforcement of the ordinance would result in unnecessary hardship to the owners of a property; and hear and decide on requests for Special Exceptions where the Zoning Ordinance allows for special exceptions. The hearings will be conducted in the following order. I will ask the BZA Secretary to read the case. I will then ask the applicant or their representatives to come forward and state their name and address and present the case to the board. You will be allowed 10 minutes to present your case. I will then ask for any member of the public who wishes to speak in support of the application to come forward and speak. You will only have three minutes. After hearing from those in favor of the application, I will ask for any member of the public who wishes to speak in opposition to the application to come forward and speak. You will only have three minutes. After the public comments have been received, the applicant shall have three minutes to respond and provide closing remarks. Members of the board may ask questions of the applicant to clarify or better understand the case. We ask that each speaker present their views directly to the board and not to the applicant or those members of the public. We require the applicants, speakers, presenters, and audience to act with the level of decorum and respect appropriate as a courtroom setting. This board requires that any person who wishes to speak before this board shall be administered an oath. Therefore, I ask that anyone who wishes to speak tonight to stand and raise your right hand. Do you hereby swear or affirm that all testimony before this board shall be nothing but the truth?

Audience Members: I do.

Ms. Evans: Thank you, and be seated. After the applicant's final response, I will close the public hearing. After the public hearing has been closed there should be no further public comments. As a reminder, I ask that when you come down to the podium to speak, please give your name and address clearly into the microphone so our recording secretary can have an accurate record of the speakers. Also,

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please sign the form on the table at the rear of the room, if you have not already. Thank you. Are there any changes or additions to the advertised agenda?

Mr. Staranowicz: No Madam Chair.

APPLICATIONS AND APPEALS

1. SE24-01/23155390 - Nicholas Wingert - A request for a Special Exception per Stafford County Code Sec. 28-35, Table 3.1, "District uses and standards," A-1, Agricultural, to allow for the expansion of a previously approved Bed and Breakfast Inn, application SE21-02/21153856, on Tax Map Parcel No. 39J-3-28. The property is zoned A-1, Agricultural located at 148 Falling Creek Drive, within the Aquia Election District.

Ms. Evans: Alright, I now ask staff if the application has been deemed complete.

Mr. Staranowicz: Yes, the application is complete.

Ms. Evans: Alright, does BZA member Steven Apicella have any additional questions for the staff?

Mr. Apicella: Nope.

Ms. Evans: Does BZA member Jeff... he's not here, sorry. Does BZA member Everet Blaisdell have any additional questions for the staff?

Mr. Blaisdell: No.

Ms. Evans: Does BZA member Abraham Panjshiri have any additional questions for the staff?

Mr. Panjshiri: No Madam Chair.

Ms. Evans: Does BZA Secretary John Ireland have any additional questions for the staff?

Mr. Ireland: No.

Ms. Evans: Does BZA Vice Chair Dana Brown have any additional questions for the staff?

Ms. Brown: I do.

Ms. Evans: Okay.

Ms. Brown: Thank you very much. I just have a couple. Have there been any complaints from the neighbors since this was approved back in May of 2021 called into the county?

Mr. Staranowicz: The Zoning Department has not received any complaints.

Ms. Brown: Okay, great. And do you know when the last time that a staff person was out on the property, not just placing the sign at the street, but like on the property or in the house or anything?

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Mr. Staranowicz: The last time probably would have been when they were issued their occupancy permit by the Building Department being out there.

Ms. Brown: Okay. I, for those who don't know, we've had this request come to us back in May of 2021. So we have another meeting packet on this. And I went through the minutes just to kind of refresh myself. And as I was looking in there, I was reminded that there were, at the time, a lot of open issues with permits that had not been issued for things that had been built. Did all those items get resolved and did they get their permits?

Mr. Staranowicz: There have been no additional permits since they received their special exception.

Ms. Brown: Okay. Did they get their ADA review?

Mr. Staranowicz: The Building Department would have verified that when they went out to do their final inspection for the occupancy permit.

Ms. Brown: Is there any notes in the system about that?

Mr. Staranowicz: I'm sorry?

Ms. Brown: Is there any notes in the system that that met the requirements?

Mr. Staranowicz: I haven't... there was no notes in the system. Because the building review passed, the inspection passed, so there was nothing that they would have put in there.

Ms. Brown: Okay, that's all I had right now. Thank you.

Ms. Evans: Okay, I just have one question now that you brought that up about the permits. So I know it was dealing with the tree house because we had mentioned that. That... was that handled? Or no?

Mr. Staranowicz: Again, there were no additional permits pulled once they received their special exception back in '21.

Ms. Evans: Alright, that's kind of concerning. You may ask one more, yes.

Ms. Brown: In the minutes that I read from our last meeting, Mr. Morgan, I know he's not here now and neither is Ms. Musante, but they had said that these permits were required and they would get handled when they had their final inspection for the bed and breakfast. So, that just didn't happen. Is that pretty much it? We don't have record of that?

Mr. Staranowicz: We don't have any records of any permits being filed since then.

Ms. Brown: That was it. Thank you.

Ms. Evans: I now open the public hearing. Will the applicant or his or her representative... I am so sorry. Yes.

Mr. Ireland: Yes, please read the case. I now ask the Secretary to read the first case.

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Mr. Ireland: The Board of Zoning Appeals is to consider a request for a special exception to allow for the expansion of an existing Bed and Breakfast in accordance with Section 28-35, Table 3.1. The property is zoned A-1, Agricultural. It is located at 148 Falling Creek Drive in the Meadowbrook Estates subdivision within the Aquia Election District. The applicant is requesting a special exception to increase the occupancy of an existing Bed and Breakfast the existing bed and breakfast that was approved by the Board of Zoning Appeals on May 25, 2021, and currently permits eight occupants within four bedrooms. The increase would permit 10 occupants within five bedrooms.

Ms. Evans: Thank you. I now open the public hearing. Will the applicant or his or her representative please come forward to present their case.

Mr. Wingert: Hello, I'm Nick Wingert and this is my wife, Sharon. Thank you for coming. Okay, so I do want to address that first issue. After the last special exception was issued, we... I have an email, I'm not sure who it was in the Zoning Department, but they said because it was...

Mrs. Wingert: The Building Department.

Mr. Wingert: ... or the Building. We did follow-up with that. And they said because it was under 256 square feet we did not need one. So I have an email on, somewhere in our email that I can show.

Mrs. Wingert: We don't have it prepared but I'm happy to provide that or look through... *inaudible*.

Mr. Wingert: But we did follow-up and that apparently was not an issue. I think it had to do with being, I recall R-3, I don't... I mean, it's been two and a half years so. We can probably follow-up here. Yeah, so we, initially we had, we were allowed to do four bedrooms. And...

Mrs. Wingert: The reason why was because unbeknownst to us, the builder of the home did not build the septic for a five bedroom home. They sold us a five bedroom home and not only was it unbeknownst to us, but apparently a couple neighbors until recently, actually, it wasn't known until the inspection of the Health Department that said, actually your builder put in a septic system and it was approved for a four bedroom. But it has to be a five, which is why we're not even able to operate with all of our bedrooms. So what we did, was we...

Mr. Wingert: So, yeah, so since then we've done everything with the Health Department. And we've had the septic work done to where we have two more pipes in the drainfield, a new tank. So the all the work's been done. And so now we're, we want to operate all five bedrooms, one bedroom difference.

Mrs. Wingert: With regards to the ADA review, I'm glad you brought that up. I have an email here with information from, I can't recall which department it was, that gave me information with regarding to the ADA requirements for a bed and breakfast, hotel, or motel was required only after six bedrooms. So anything under six, required Ada, anything underneath five...

Mr. Wingert: Five and under does not require ADA. Which for a lot of bed and breakfast they're in older homes that can't really be brought up to that, that spec.

Mr. Wingert: And I think that's it. I mean, we're happy to take questions if there is anything else afterwards.

Ms. Evans: We can't ask questions now, so.

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Mr. Wingert: Okay, I think that concludes it.

Mrs. Wingert: Thank you so much.

Mr. Wingert: Thank you.

Ms. Evans: Alright, thank you. Any member of the public who wishes to speak in support of the application, please come forward.

Mr. Inge: Good afternoon, everyone. My name is Clarence Inge. And one of my neighbors...

Ms. Evans: Can you tell us where you reside at, sir?

Mr. Inge: I'm sorry?

Ms. Evans: State your name and your address.

Mr. Inge: Clarence Inge. I'm a neighbor of Nicholas. He's in a subdivision; I'm about 300 yards from him. And I want to clarify that ADA, I believe we're talking about the American Disability Act. Okay. Alright. Okay. I've known him for approximately 10 to 12 years. And, you know, he's an outstanding person. And not just an outstanding person, an outstanding American person. And I don't see any reason why, I don't have an exception for him to expand. I think in question when we came here initially, there was some... he made the requirement upgrades, you know, with a septic tank and a landfill. I had some septic tech issues corrected to have a four bedroom. So he made a great financial to upgrade. And I don't see any reason why he hasn't... he's been doing this. I've looked at some of the reviews. There's outstanding. There's no issues. There was one issue that got resolved I think in 2020. And I loved the way that he handled it. He was upfront. We haven't had any issues since to my knowledge. I wouldn't be here today if I did not support him. So I would, I would request that it be approved. Thank you.

Ms. Evans: Thank you, sir.

Mr. Inge: And my wife also shares that same... she's not going to speak but.

Ms. Evans: Thank you. Any member of the public who wishes to speak in opposition to the application please come forward.

Mr. Cupp: Members of the board, can you hear me?

Ms. Evans: Yes.

Mr. Cupp: Because I can't hear you. My name is John CUPP. I live immediately abutting the back of this gentleman's property, and have been for the last 34 years. I'd like to preface my comments by saying I have no objections to his expansion. I do however, have objections to the additional, any additional noise that may create. Over the time that he has been a bed and breakfast, nuisance noise from parties late into the evening have been a problem previously. At one time, it was so bad at two o'clock in the morning when I had to get up and go to work at four o'clock, I drove to his cul-de-sac and was going to confront him over the party noise that was going on but discretion was the better part of valor last night and I turned around and went back home. The next time it happened, I reported to the Sheriff's Office. The Sheriff responded, sat in my driveway with his, you know, the decibel meter and said, the gentlemen

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was within the law with his decibel readings just under the allowed 55 decibels at his property line, and that the Sheriff could do nothing about it. But the noise continued well into the morning. Now, if that activity continues, then I would strongly disapprove. However, if there was more control over the noise generated from that property, I laud him on his entrepreneurial spirit. But the noise I'd definitely object to. Thank you.

Ms. Evans: Thank you, sir. Anyone else? Does the applicant wish to respond and/or add additional information?

Mr. Wingert: Yes, absolutely. I have no idea what he's talking about. If that did happen, that was three years ago. We absolutely do not have any parties. I can't even imagine what it is. The last special exception we have, there was not to be any amplified music and it does not happen. It absolutely does not happen. I'm like, I'm, I'm completely blown away by this.

Mrs. Wingert: If I may, John...

Ms. Evans: No, you only speak to the board.

Mrs. Wingert: Oh, okay. I mean, I would just like to say that we haven't had any more than again six, seven people since we've had our first initial special exception. We've abided by that. At the same time, you know, if he's having any issues with noise, he's always welcome and anyone's always welcome to come by, and say hello, or knock on our door and see what's going on. Because it is a bed and breakfast and they're always welcome to do that. So if anyone has any issues, you know, we want to hear them, and we want to address them. Because I know, at least from our side, because we live on a finger, we hear parties everywhere. And I'm not sure if he was behind us, or here or here. In fact, our neighbor behind us across the creek, she's a retired police officer. And, you know, she contacts me all the time, like what's going on? Have you heard, you know, what's going on over here or here? Because sometimes, it sounds like it's coming from us. So, you know, we do keep in contact with a few neighbors across the creek. And like I said, I'm not sure if he's there. But, um, you know, we can hear a lot of stuff that's going on. And sometimes we hear parties, but it's, it's not. So you can always come by and look around and even see how many cars are parked. Anyone's always welcome to do that.

Mr. Wingert: He, it must be mistaken. He... if anything, he should have come by and confronted us, or had somebody come to our residence because he's got the wrong residence. I'm telling you that as a fact. We have, we, I might also add we have a two and a half year old. We don't have parties. We, this is, this right here is kind of...

Mrs. Wingert: Not only do we have a two and a half year old, but we have a teenager who's about to graduate high school.

Mr. Wingert: And he does not have parties; maybe have two friends over at any given time. So, I don't know where this is coming from. I'm kind of in shock.

Ms. Evans: Alright. Alright, thank you. At this time, we will open up for questions from the board members. This is a time for the board members to ask any and all questions of the applicant before I close the public hearing. As a reminder, once the public hearing is closed, we cannot take any further questions from the floor. Each board member will have no more than four minutes to ask her questions. Does BZA member Steven Apicella have any additional questions?

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Mr. Apicella: No, Madam Chair.

Ms. Evans: Does BZA member Everet Blaisdell have any additional questions?

Mr. Blaisdell: No.

Ms. Evans: Does BZA member Abraham Panjshiri have any additional questions?

Mr. Panjshiri: No Madam Chair.

Ms. Evans: Does BZA Secretary Jon Ireland have any additional questions?

Mr. Ireland: No, Madam Chair.

Ms. Evans: Does BZA Vice Chair Dana Brown have any additional questions?

Ms. Brown: Yes, I do. Thank you. Can I go ahead now?

Ms. Evans: Yes, go ahead.

Ms. Brown: Okay. For the applicant, how many bedrooms are in the house including the basement?

Mr. Wingert: So we have a total of six bedrooms. There's one in the basement that we use, that we stay in so we're separate from the rest of the guests.

Ms. Brown: Okay. And how many rooms are available for rent?

Mr. Wingert: Just the five upstairs, if this is approved.

Mrs. Wingert: Available for rent, four right now. We want five.

Mr. Wingert: So what we do, we juggle them so that if there's a room that has been used, we shut it down until we, until it's cleaned or whatever. But we really haven't had more than I think on average, we at most we ever have two, occasionally, three guests in the house. We've never had, zero-zero parties, I just have to reiterate that.

Ms. Brown: I'm asking you because on your old special exception, you were approved for four bedrooms to rent out, eight occupants, that included yourselves.

Mr. Wingert: Yeah.

Ms. Brown: And when you were saying you have six to seven people at a time...

Mrs. Wingert: That included us.

Mr. Wingert: Oh, including, yeah...

Ms. Brown: That included you?

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Mr. Wingert: Yeah, yeah.

Ms. Brown: Okay. And did you get the permits for your basement yet?

Mr. Wingert: It's not completely finished. And it's just one room that we're staying in. So it's, and it's that part we're not open up to other guests. Guests do not come into the basement.

Mrs. Wingert: We did not apply for any permits from, um, I was a little bit confused about that. Because, because we did not do any construction or anything else other than paint in the basement. So...

Mr. Wingert: Yeah, there's... I mean...

Mrs. Wingert: I, I, I didn't know.

Ms. Brown: Well, I was looking back in the minutes and it looked like you had said last time that you were finishing up, like doing the electrical on the drywall and that kind of stuff.

Mr. Wingert: Yeah. And we're, I mean, it's still a work in progress. But it's not a, it's not a...

Ms. Brown: Because, yeah...

Mr. Wingert: It's not a basement that's ever going to be used by people.

Ms. Brown: I know that when I got my basement fixed, you know, finished, I had to get an electrical inspection before I could drywall to make sure everything looked good. So I think you're supposed to have permits. And as far as the deck treehouse, I don't know what the size was, I don't remember. But I do know that anything under 256 would require a zoning permit. Do you have that?

Mr. Wingert: The email that we were, we were given said we did not need a permit.

Ms. Brown: Okay, I have concerns that you are operating things. I know you were building also a new water heater system when I was out there, a propane tankless one for the house to be more efficient.

Mr. Wingert: Yeah.

Ms. Brown: Did that get finished or?

Mr. Wingert: Yeah, there's a propane tankless water heater in there. Had to replace the tank water heater.

Ms. Brown: No permits for that one either?

Mr. Wingert: Uh, no.

Ms. Brown: Okay. That's all I had, Madam Chair.

Ms. Evans: Thank you. I do not have any additional questions.

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Mr. Apicella: Madam Chairman, I have a follow-up question based on some comments from the applicant. So, going back to the number of bedrooms, so there's you and your wife. You said you had a two and a half year old and you have a teenager. Where does your teenager sleep?

Mr. Wingert: Yeah. So he's actually moving out next month. So he's, he's kind of upstairs, but he's moving out.

Mr. Apicella: Okay, because I just was asking because the number of bedrooms approved for the permit was six. So at the end of the day, there's going to be just you and your two and a half year old...

Mr. Wingert: Exactly.

Mr. Apicella: ... presumably in the same bedroom or I don't know what the arrangement is there. And then five other bedrooms for guests.

Mr. Wingert: Yes.

Mr. Apicella: Okay. Thanks.

Ms. Evans: Anyone else? Alright, I will now close the public hearing for this application and bring the matter to the board for discussion. Alright, if... if you have question, go ahead.

Ms. Brown: No, I was just waiting for somebody else to go.

Ms. Evans: Okay.

Mr. Apicella: Madam Chairman, I'll make a motion to approve special exception 24-01/23155390.

Mr. Ireland: I second.

Ms. Evans: Okay, so there's motion on the floor. There's a second to approve the application for SE24-01/23155390 for a Special Exception for a Bed and Breakfast. Is there a discussion?

Mr. Apicella: Since I made the motion, am I allowed to make comments first?

Ms. Evans: Yes.

Mr. Apicella: So the bottom line that I see from this application is it's merely changing what's already been approved for four bedrooms to five bedrooms. They've updated their sewer system to accommodate six bedrooms, there's no change to the existing conditions, no complaints to the Planning and Zoning. And notwithstanding what I heard from the gentleman who complained about noise – and I appreciate that concern – it's not quite necessarily sure that it actually came from the bed and breakfast. So with all those factors under consideration, again, a modest change to what's already been approved, that's why I'm recommending approval of this minor change to the current Bed and Breakfast operation.

Ms. Evans: Thank you. Anyone else? No discussion? Okay. Alright. Let's vote. I didn't know if you wanted to, but go ahead.

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Ms. Brown: Yes. I have concerns about the lack of permits. When we voted on this last time, we were assured by our staff that that would be addressed before you opened your bed and breakfast. And somehow, I don't know how, that fell through the cracks. I don't feel comfortable approving this for you.

Ms. Evans: I was about to say, this is not about approval, it's just a discussion to say...

Ms. Brown: It was about the... he made his motion, yes.

Ms. Evans: So we can't take the vote yet.

Ms. Brown: Right. But what am I... I'm allowed discussion, right?

Ms. Evans: Mm-hmm. But I just want to say not to vote...

Ms. Brown: Yes.

Ms. Evans: ... so don't say, if we're going to approve or not.

Ms. Brown: I don't feel comfortable that you don't have your permits. And everybody that does their basement in Stafford is supposed to get permits. So then it goes to the Commissioner of Revenue, and then they get taxed on the improvements. And we know that the stuff is out there. And we, I thought you were going to comply last time. And it's, I think before I, you know, I would like to see that, you get your, your permits first. I did go out just briefly today and just drive by your house and saw the sign; it looks great. Very professional looking, very nice at the end of the street. So that's it for me. Thank you.

Ms. Evans: Alright, anyone else?

Mr. Ireland: Yeah. So I've got a sort of a question/comment. So when we, when we as a BZA group get together to decide these, we put conditions as everyone, as most people know we put conditions on it; approved with these conditions. My question, I guess, is or a discussion point is okay, who, once we put conditions on it, who police's who? Is it up to the applicant to go ahead and do everything they're supposed to do? Or do we have staff remind them that hey, you haven't done these things, or if you come before us, again, which may be unusual, because maybe it'd be just one special exception for someone, and who police's whether they met the conditions or not? And the only way we would find out is if someone complained about it, I guess, because we're not going to, I don't think anyone's going to go out to your house with a checklist and say, you know, you met these conditions. So if we're penalizing, and that's a loaded word, I think if we're going to penalize the applicant for not meeting conditions, who is it? And I think it's incumbent upon them to do what we ask them to do as far as the conditions go, but who police's it? Who enforces it? I mean, you're here now. So it's becoming an issue. So in some way, we have to, do we have to have proof that you've met these conditions, and I don't have the whole package so I don't remember what the conditions were other than what's been proposed. And this one here is probably very similar. So that's, that's my discussion point. One way or the other, we approved it last time, you're adding one bedroom, you've updated the septic. The noise issue, if I recall, and I think because I, I remember three years ago hearing about decibel, and the sheriff was sitting out there with a decibel thing. And, you know, it was very scientific, but I don't think there was anything proven. So if the gentleman can confirm whether it was recent or if it was three years ago, I think I remember, I remember three years ago when it came up before that there was a, you know, we talked

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about noise, but, you know, so. I don't know if there's a track record that you guys are noisy and causing problems out there. So that's not an issue for me, I think but this one, thank you.

Ms. Evans: Alright. We can now take a vote. Those...

Audience member: Before you take a vote, are you allowing the floor to speak?

Ms. Evans: No. The public I mean the public hearing is closed. So now that we take a vote, those are in favor say aye.

BZA members: Aye.

Ms. Evans: Those who are not in favor, say nay.

Ms. Brown: Nay.

Ms. Evans: I want to take a poll vote. So to make sure this is two-thirds. And so busy a member Abraham Panjshiri, what's your vote?

Mr. Panjshiri: Aye.

Ms. Evans: BZA member Steven Apicella, what's your vote?

Mr. Apicella: Aye.

Ms. Evans: BZA Secretary Jon Ireland, what's your vote?

Mr. Ireland: Aye.

Ms. Evans: BZA Vice Chair Dana Brown, what's your vote?

Ms. Brown: Nay.

Ms. Evans: And BZA member Everet Blaisdell, what's your vote?

Mr. Blaisdell: Aye.

Ms. Evans: Alright. So we basically have...

Mr. Staranowicz: Excuse me, Madam Chair, what's your vote?

Ms. Evans: Yes. My vote is, I'm going to say yay. And so the board has approved the application. And so with the application, for their stipulations, we're going to keep the same stipulations? And that's it, right?

Mr. Staranowicz: The only thing that was changed in the conditions was the number of occupants that went from eight to 10. Everything else was same as it was before.

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Ms. Evans: Alright. Alright, so the application is approved. Thank you. I just have a question. And this doesn't pertain to the applicant. But this pertains to applications in general for staff. When the board puts in stipulations dealing with permits and stuff like that, and as Jon said, when we put in these stipulations, how are they, or why are they not being checked to make sure that they are in compliance?

Mr. Staranowicz: That's a good question. And I think that's something that we would need to look at changing in our office, as far as ensuring that these conditions are met before their occupancy permit is met as part of the special exception occupancy permit.

Ms. Evans: Okay.

Mr. Staranowicz: Typically, the Zoning Department doesn't do proactive enforcement. It's typically a complaint based that we work on. So we would have to do something different in order to ensure that these will get picked up and make sure that they do what they need to.

Ms. Evans: So let me ask you, with being that it's complaint based, the gentleman, and I'm just... if a resident complains to the Sheriff's Department about the noise, and let's just say like in this application, it was stipulated about the noise decibel. Is there communication between agencies? Or No?

Mr. Staranowicz: Typically not. If we get the call, say, for example, if we were to receive the call saying that there's a noise complaint, we would refer them to the Sheriff's Department. And that would be our, our end at that point.

Ms. Evans: Okay.

Mr. Apicella: So can I piggyback off of that?

Mr. Staranowicz: Yes, sir.

Mr. Apicella: Because we learned this when we were doing data centers. The only time that the Planning and Zoning Department enforces noise related issues is if it's part of a condition, or in the case of Planning and Zoning activities, part of a CUP or part of the standards that were created to develop that specific parcel. So the Sheriff's Office is separate from the Planning and Zoning Department; they're not required to communicate with the Planning and Zoning Department. Two separate departments, two different forms of enforcement, two different ordinances that take effect. And so that's why there's maybe a disconnect.

Ms. Evans: Right, okay. Yeah, I understood a little bit why the disconnect. I was just wondering, like, you know, with it, and I hate using this applicant because we approved it, but when we look at number 11, no outdoor amplified music, and being that there was a complaint, you know, I was just wondering if the two agencies could talk or do talk. So, but I understand that there's, there, they are separate, and it's different.

Mr. Panjshiri: So, I just want to add on to that, but right, it's specific to this application, not even regarding it. But if the Sheriff's Office deemed that they weren't even able to do anything...

Ms. Evans: Right.

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Mr. Panjshiri: ... right. So there's, they technically weren't violating anything, right. They weren't violating their special, in this case, right. But even if we had another case where somebody made a complaint, because anybody can complain that noise is loud. But at the same time, if there's no like formal complaint or record of like, okay, you exceeded your absolute, you know, your minimum, your maximum from your property line, like this person can hear 100 decibels like, yeah, that's crazy. But if we don't have a complaint, then I don't see like what, you know, we could say retroactive again and go back... *inaudible*.

Ms. Evans: Absolutely.

Mr. Apicella: So what I would recommend is that, when an application comes forward, that we ask staff to check and see if there's any complaints with the Sheriff's Department, or with any other departments associated with a specific property. So if there were a potential permit issue, that they would look into it proactively even before the case comes to us. I... will they require a new occupancy permit since they're changing the number of... ?

Mr. Staranowicz: I would think, yes, they would.

Mr. Apicella: So, so potentially, as part of that process, you'll look and see whether any required permits, or all, that all required permits have been... *inaudible*.

Mr. Staranowicz: Yes, we will ensure we do it.

Mr. Apicella: Right. And so one of the stipulations, of course, is they must comply with all state, federal and local code. So permitting is a local code requirement. If they're not in compliance, then they're put their special exception in jeopardy unless and until they fix that problem.

Mr. Staranowicz: And, of course, and of course, I will be reaching out to, reaching out to them to get those emails that they referenced saying that didn't need...

Ms. Evans: And that piggybacks off what Dana was saying.

Ms. Brown: Well, that was my concern. My concern was that this was, I think, we do have a complaint based system. Somebody has to let you know that there's a potential violation. The violations were discussed in a public hearing at the last meeting, and we were assured by staff that they would be addressed. And they weren't. And I don't, you were not in charge. I'm not laying any blame at you there. Sorry, I didn't mean to come off like that. But it was something that was in open hearing. And it was talked about and the gentleman actually, in the minutes, said he had more bedrooms than he said he had tonight. He said he had seven. And that's what I saw down on the basement. He had two down there and five upstairs. So, and that, that was in our minutes. So that was the concern that we brought it up before, it was in open session, they said it would be addressed and it wasn't. So that was the reason I voted against it. I didn't have any other problems with it. But I did not want it to go another two years with these permits not being done, why we issued a special exception saying they could operate like this when we knew full well that they didn't have permits. So that was my, that's why I voted no.

Ms. Evans: But again, I want to put on the record. This was general; I wanted it to be general. I hate using this case as an example, but just wanted to be general. Alright. Do we have any Unfinished Business? The FOIA? Oh, no. For the new, for the new members, we did, I did ask for FOIA training, and a refresher for the old members. And James did respond back and said – can you remind me James?

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UNFINISHED BUSINESS

Mr. Staranowicz: 2023 was an unusual year for the BZA and legal fees.

Ms. Evans: Yes.

Mr. Staranowicz: Typically we're budgeted \$5,000. We went way over this year due to cases being heard at the Circuit Court that were appealed to the Circuit Court. So we had to borrow money in order to pay those fees. So at this point, we do not have any money for legal fees, legal training until the end of the fiscal year, until the new fiscal year.

Mr. Apicella: Madam Chairman, why does that come out of the BZA's budget? If the County chooses to take the matter to the Circuit Court, I know the BZA may or may not be a party, but why is it part of the BZA's budget?

Mr. Staranowicz: I'm not sure because I know the, one of the cases the BZA was a party...

Mr. Apicella: Because we're not the ones deciding whether or not to take it to the Circuit Court. The County, the Board has to make a proactive decision that they're going to spend money and use either the County Attorney's Office and/or legal counsel to take that matter.

Mr. Staranowicz: I have no idea how this all came about. All I know is that we were billed in excess of \$30,000.

Mr. Apicella: Madam Chairman, I think that's something you might want to follow-up on, because that's not...

Ms. Evans: Right. I was like and we actually didn't even say, hey, like, we want to be involved. Like \$30,000, I didn't even know that amount. That, that, that's ridiculous for what wasn't done. There was nothing literally done. I mean, I know how lawyers work, but I'm just saying, you know.

Mr. Staranowicz: I know, I mean we have, we did receive from, we did receive from Mr. McAndrews a detailed list of what the fees were for.

Mr. Ireland: So we, the BZA, was a party of someone suing the County, is that correct? Is that why we incurred it?

Mr. Staranowicz: No. The, one of the appeals was the party suing the BZA for their decision.

Mr. Ireland: Right. We plus the County plus other, like, wasn't there like two or three groups that were being sued by the applicant?

Ms. Evans: Still is.

Mr. Staranowicz: There are two cases that... yeah, there were two cases.

Mr. Ireland: So we were just the right target, because there's money there... *inaudible*.

Mr. Staranowicz: And the third one, actually I think there were three.

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Ms. Brown: Three. Yeah, I think there was three.

Mr. Staranowicz: The first two had to deal with two appeals that were held here that to overturn, or one of them was for the truck yard on Wyche Road. And the other one I can't remember what it was.

Mr. Ireland: Was it the wolf-hybrid dog?

Ms. Evans: Yes, it was, yes. Yeah, that was the two.

Ms. Brown: Are we still incurring costs? Are we in litigation still?

Mr. Staranowicz: None of them have been resolved yet.

Ms. Brown: Okay, so just to be clear, you're saying we have no money for FOIA training or any other legal expenses until the next fiscal year?

Mr. Staranowicz: Correct.

Ms. Brown: Is there someone we can talk to about that?

Ms. Evans: It would have to be the Chair. I would have to Meg.

Mr. Staranowicz: You'd have to discuss that with the Board.

Ms. Evans: Right, with Meg. Alright.

Mr. Ireland: So to go further – I just want to take this one little step further – money spent, whatever, is there feedback from the attorneys to us as a group to say, okay, if we had done it a certain way perhaps we wouldn't have been sued or, you know, these are things you need to stay away from in the future because it's not part of your purview. Can we... is there a way to get feedback from the attorneys to say, you know, stay away from this stuff? Stay away from that stuff, you know?

Mr. Staranowicz: I'm sure there, I'm sure there is, but it's, again, it's gonna cost us.

Mr. Apicella: Well, on the Wyche Road, it's the county that sued, so.

Ms. Evans: Right. Exactly.

Mr. Apicella: Again, I just, it just strikes me as odd that we have a limited budget. That budget is for counsel provided to the BZA so we can conduct our meetings and get help on any legal matters that, you know, we're not experts on. Going to the Circuit Court is well beyond us. Most of the time where, I mean, even though we're being sued as an entity, it's not really that they're necessarily suing us. It's just a legal process. Money is spent for attorneys to represent the County, the BZA, but it's, it shouldn't be part of the budget that we use for our own purposes. So again, I would, I would ask, Madam Chairman, that you have a conversation with the Chairman of the Board of Supervisors, because, again, we could have some pretty significant cases coming up. We don't know. Even if it's kind of held in a pot, you know, that we can tap into at some point in time, but in reserve, I think that's better than just saying, well, you don't have any money because it's all been spent. I think that's a little unfair.

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Ms. Brown: Well, you're right. You're exactly right. And I don't know why we were charged for this. On an appeal for the the truck case, we were not being sued. The County was appealing the decision, but the BZA was not being sued so we didn't need to have counsel up there. And I don't even think we did. And I'm like you, Mr. Apicella. I believe that the funds were set aside for legal things like legal advice, you know. Mr. Larsen used to refer to it as our research attorney, not to defend us in court because we can't be sued. Now, I think we are a party named for the first time in, since I've been on the board in one case, but we haven't even heard the case. So I would, I would agree with him. I don't think that we should be being debited out of our funds, because that's not what the funds were intended for. And if we were debited for all three, you know, cases that should not be either. Both cases that were being appealed, I think it was the wolf dog case and the truck case, you know, that's an appeal. That's not something that we're... we're not being sued so our legal counsel shouldn't be, they're not defending us.

Ms. Evans: Right. That goes up to Circuit Court. But...

Ms Brown: Yeah.

Ms. Evans: ... even, the question I have is, we only have \$5,000. So I was like I'm a little bit confused.

Mr. Staranowicz: I know.

Ms. Evans: Exactly. Like, I'm a little bit confused on this. So I will, you know, as the Chair, will ask the Board of Supervisors Chair to meet and maybe discuss this issue, as well. And then I'll let the board know... *inaudible*.

Mr. Staranowicz: Now, Andrew did mention some alternatives as far as getting the FOIA training. It's possible that we can do something virtual, or he even mentioned something about pro bono training with one of his associates from his office.

Ms. Evans: Right. He did.

Mr. Staranowicz: So we can discuss that and see if that's the route we want to go at this point so that we can get everybody, I think, because I'm not sure... Abraham, you haven't received any FOIA training from last year?

Mr. Panjshiri: Not from here, but I have from the...

Mr. Staranowicz: From the class.

Mr. Panjshiri: Yeah, from the class... *inaudible*.

Ms. Evans: Let me ask you. So that's another thing because they have to, the new members have to go to class. But when does the Board go to their FOIA training, being that you have newly elects?

Mr. Staranowicz: I'm not sure exactly when they have theirs. But it could be a possibility that that could be worked in...

Ms. Evans: Okay.

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Mr. Staranowicz: ... or have somebody from the County...

Mr. Apicella: Yeah, I think that's a good point. We got two new Planning Commissioners, and I mean, all the boards have been potentially affected by the election. So everybody who serves on a board in the County needs FOIA training. So to maybe check and see with the County Attorney's Office, what they're going to do to make sure that...

Ms. Brown: I have a comment about that. We've done that in the past, because I have asked for it and and I've attended all of them. And every time we have questions, we are told by the County Attorney, I'm told that that is, that they cannot advise us, they cannot answer those FOIA questions, and we need to check with our own counsel. So it's been a waste of time. I still go, but it's been a waste of time.

Mr. Apicella: There's still some general principles I think you can learn by going to the, to the class that's provided by the County. And I mean, I would recommend a two tiered approach; we get what we can from the County, whatever course that they provide, and if Andrew and/or his firm is willing to do something at no cost, then we can do, take, you know, do that as well, so.

Ms. Evans: I agree. I like that better.

Mr. Staranowicz: I'll reach out to Andrew again and see if we could set something up as far as...

Ms. Evans: Something pro bono. Tell him not to charge us \$5,000.

Ms. Brown: Are BZA classes still in September, or have they changed that?

Mr. Staranowicz: They've been changed.

Ms. Brown: Okay, good.

Mr. Staranowicz: Abraham just went through it, it was August through November, October.

Ms. Brown: So same timeframe then, in the fall.

Mr. Staranowicz: So, but there, I was looking since we have three new members, I was looking at the classes for that. I believe those are coming up in the spring. I would have to talk with Vicki Sowers from our office to see if we may be able to get Mr. Blaisdell in since he is an actual sitting member. The cost has increased to \$600 now, so.

Ms. Evans: We have no budget.

Mr. Staranowicz: That comes out of a different budget.

Ms. Evans: Oh, okay. Is that operating expense?

Mr. Staranowicz: We, we budget money for that within our training budget.

Ms. Evans: Okay.

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Ms. Brown: So it used to be two a year, then they went, because of budget cuts at the state, they went to one a year. So they're back to two a year?

Mr. Staranowicz: I think it's still only one a year right now, still.

Ms. Brown: So August, September, November.

Mr. Staranowicz: Well, I think the next one's coming up is, they pushed it up to the spring or late spring/early summer timeframe.

Ms. Brown: But it'd only be one for the year.

Mr. Staranowicz: I'd have to check the dates again.

Ms. Brown: So our alternates couldn't go later this year, then in August, September, October, November?

Mr. Staranowicz: I'm sorry?

Ms. Brown: So if it's only once a year now and they've moved it up to the spring, that means our alternates wouldn't be able to go later should we have other money or anything?

Mr. Staranowicz: We're looking at our operating budget for this year right now. So right now we would be able to get one, I believe she said we could get at least one, possibly two in and then the other one will be next year.

Ms. Brown: Mr. Apicella, you were an alternate. Did you get training pretty quick before...?

Mr. Apicella: Oh, yeah. I got it very quick. I think it's helpful because you never know when you're gonna have to pinch hit, so.

Ms. Brown: Right.

Mr. Apicella: I think it's just as important for the alternates to get trained up as it is for a regular member.

Ms. Brown: Maybe Madam Chair could talk to the board about that as well.

Ms. Evans: Alright.

Mr. Staranowicz: Okay, Abraham just looked it up. He says there are two classes this year. So it's possible that we may get, because the second one is after the new fiscal year, so one's an in-person and the other one's a virtual. That's the only difference.

Ms. Evans: Alright. You had mentioned training budget and I was like, why isn't FOIA in the training budget then? BZA training is in the training budget, but not FOIA training?

Ms. Brown: That's a good point.

Mr. Staranowicz: We can look at that.

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Ms. Evans: Yeah, can you convert that over?

Mr. Apicella: Well, maybe, but I think if Andrew is willing to do something pro bono, let's try to see if we can take him up on that first.

Ms. Evans: Most definitely. Tell him pro bono. I really would like pro bono. But I also want like, in the future, and we can talk about fiscal year 25. But yeah, put that in the training budget.

Mr. Staranowicz: We can look at that.

Ms. Evans: Okay. Alright, if that's it then let's do the Zoning Administrator's Report.

ZONING ADMINISTRATOR'S REPORT

Mr. Staranowicz: Okay. With all this going on, I'm not sure what I was gonna say. First of all, first of all, I would like to welcome our three new members: Mr. Blaisdell, who is sitting was sworn in this morning; Mr. Mowery is at that end, he's one of the alternates; and Mr. Gorsky over here, he is our other alternate. They will be sworn in within the next 30 days. They will be reaching out to the clerk's office at the Circuit Court in order to get that done.

Ms. Brown: Welcome.

Ms. Evans: I was about to say welcome, welcome, welcome again.

Mr. Staranowicz: And I am back in position as Interim Zoning Administrator. We have not had much success looking for or being able to interview for a Zoning Administrator. It's kind of in the same boat as our Planning Director position. So I'm not sure when anything will happen with that. Trying to think, oh, Conflict of Interest Forms need to be filled out and turned in by February 1st for everyone.

Ms. Brown: Do you have a checklist of who you have and don't have? Because I turned mine in and I asked, I said it the wrong way. I asked if you couldn't read it, let me know. And I probably should have said, please confirm receipt. Do you have me on a list is not getting...

Mr. Staranowicz: I don't have a list. I can check with County Admin to see who's turned them in.

Ms. Brown: Okay.

Mr. Staranowicz: We do have some blank packets available here if you need one.

Ms. Brown: If you could let me know if they didn't get it, then I'll... thank you. My fault. I just said yeah, let me know if you can't read it. Probably not the best way to do it.

Mr. Staranowicz: They probably could read it so they weren't worried about it.

Ms. Brown: You know, I'm thinking I probably should know for sure.

Mr. Staranowicz: So, and I think that's it on our part. There are some legislative issues that are coming up that we're working with Anthony Toigo on sending recommendations to the state as far as what we think they should be changing and how it should change. One of them's concerning ADU's, accessory

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dwelling units. Another one is, and there's, there's several of them, but that's probably going to be the biggest one we see. I don't think the board here will see much of it. But we, but we will have a case for a variance next month. And that will, that does involve an ADU, so. But other than that, I think that's, that's pretty much all I have.

Mr. Apicella: Madam Chairman, does the proposed schedule come under Zoning Administrator's Report or how are we going to address the schedule?

Ms. Evans: So, the schedule was going to be under Other Business but, if you want, we can move this up under Zoning Administrator's Report. I mean, it's just a draft meeting schedule.

Ms. Brown: Stacie did a new agenda. I don't know if you got that.

Mr. Apicella: I'm sorry?

Ms. Brown: Stacie had done a new agenda for us.

Mr. Apicella: Yeah, I've got the proposed schedule. I just wanted to bring up that November 26th is two days before Thanksgiving. I want to potentially request that we consider a different Tuesday that month.

Ms. Evans: Which Tuesday are you recommending?

Mr. Apicella: Do we know what the board schedule is for November?

Mr. Staranowicz: I don't know at this point.

Mr. Apicella: Do they usually... do they usually have two meetings in November or just one meeting?

Ms. Brown: Usually one in December and one in November. At one time, I think we moved it up if we had one to like the first week of December. I personally, I don't want to say that we're not available November and December. I'd rather like pick some alternate days as Mr. Apicella is suggesting. If you were I'm sorry, I thought that's what you were doing.

Mr. Apicella: Yeah, I was just gonna suggest that we hold on a Tuesday earlier in the month that is not on a day that the board has a regular scheduled meeting. I don't know what that day is, but I'm just maybe throwing that out as an option.

Mr. Staranowicz: If the board was to hold two meetings at once, it would be in November, it would be the 5th and the 19th. So that would leave the 12th open.

Ms. Brown: Now the County is open that Tuesday, correct?

Mr. Staranowicz: Yes, we are. We will be closed Wednesday all day.

Mr. Apicella: So, so, November 12th...

Ms. Brown: Maybe we leave it?

Mr. Apicella: ... does that work?

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Ms. Evans: It works.... it works for me. But we could poll everyone to say, hey, does that work. And so then we can chanbe... *inaudible*.

Ms. Brown: Yeah, and I'm okay with the 26th, if the County is open on the 26th.

Mr. Apicella: I probably won't be here. And I suspect other people might not be here. And then when you start talking about applicants and attorneys, it becomes problematic. That's why I think the, the week of Thanksgiving is not a good week to hold a meeting.

Ms. Brown: Okay, well, my preference is we don't say we're not available in November and December. So I'd like to find alternate dates.

Mr. Apicella: Right. So I'm suggesting that we hold our November meeting on November 12th.

Ms. Evans: Right. So, as of right now, Abraham, do you have any objections to November 12th?

Ms. Panjshiri: No ma'am.

Ms. Evans: Do you, Jon?

Mr. Ireland: *Inaudible*.

Ms. Evans: I don't. Do you, Dana?

Ms. Brown: No.

Ms. Evans: Do you... okay, so then can we change the November... you're good? I'm sorry, I, we've gotta get used to alternates. November 26th, can you change that to November 12th?

Mr. Staranowicz: November 12th?

Ms. Brown: And you'll let us know if that's a conflict with the Board or anybody else? Okay.

ADOPTION OF MINUTES

2. August 22, 2023

Ms. Evans: So let's do the approval of minutes. Is there a motion on the floor?

Ms. Brown: Motion to approve.

Ms. Evans: Is there a second?

Mr. Ireland: Second.

Ms. Evans: Discussion? Alright, those in favor say aye.

Mr. Panjshiri: Aye.

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Mr. Apicella: Aye.

Mr. Ireland: Aye.

Ms. Brown: Aye.

Mr. Blaisdell: Abstain.

Ms. Evans: Aye. That motion is passed to approve the minutes of August 22, 2023. Is there a motion to adjourn?

OTHER BUSINESS

3. 2024 Draft Meeting Schedule

Discussion moved to Zoning Administrator's Report.

ADJOURNMENT

Mr. Apicella: So moved.

Mr. Ireland: Second.

Ms. Evans: Second? Oh, you seconded? Then let's go home.

At 7:58 PM, Chairman Evans adjourned the January 23, 2024, Stafford County Board of Zoning Appeals meeting.