

STAFFORD COUNTY BOARD OF ZONING APPEALS
February 27, 2024

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) Tuesday, February 27, 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, Nathan Mowery (alternate - sitting), Steve Gorski (alternate)

MEMBERS ABSENT: Jeffrey Spinnanger

STAFF PRESENT: James Staranowicz, Crissy Kendall

DECLARATIONS OF DISQUALIFICATION

Ms. Evans: Do we have a quorum?

Mr. Staranowicz: Yes, Madam Chair, you have a quorum.

Ms. Evans: Let the record reflect that we have a quorum tonight with seven voting members present. Before we hear the first case, does any Board member wish to make any declaration or statement concerning any case to be heard before this board tonight? No? Alright. The BZA is a quasi-judicial body whose members are volunteers appointed by the Circuit Court of Stafford County. The purpose of the BZA is to hear and decide appeals from any order, requirement, decision or determination made by the Zoning Administrator. The second will be the hearing of the merits of this case if required at the review of jurisdiction and standing. Number two, we are here to hear and decide upon requests for variance from the zoning ordinance, when a literal enforcement of the ordinance would result in unnecessary hardship to the owner of a property. And three we 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 representative 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 all 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 other 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 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: Yes.

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

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

Mr. Staranowicz: No, Madam Chair.

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

Mr. Staranowicz: Yes, it has been deemed complete.

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

Mr. Apicella: I don't, Madam Chairman. I do have a question though. We used to read the case before we asked questions. It seems to me that that's the right order of business, to read the case before we start asking questions.

Ms. Evans: So, this is questions just to the staff, not about the case.

Mr. Apicella: Well, it's questions to staff about the case.

Ms. Evans: So, the way that it's here, if you want to do that order I don't have a problem with it. But usually, I'll just say do you have any questions. If you don't have a question now...

Mr. Apicella: I do have questions, Madam Chairman, but I think again, for the record, with a case could go to court, it makes sense to read the case first.

Ms. Brown: I also would prefer to read the case first.

Mr. Apicella: And that's how we did it for 15 years.

Ms. Evans: Okay, that's fine. I now ask the secretary to read the first case.

APPLICATIONS AND APPEALS

1. V24-01/23155403 – H. Clark Leming for Justin and Amanda Clark – Requests a Variance of Stafford County Code Sec. 28-25, “Definitions of Specific Terms,” specifically the definition for “Dwelling, Accessory,” to allow for an increase in the allowable square footage, on Tax Map Parcel No. 31C-31. The property is zoned A-2, Rural Residential, and located at 117 Jib Drive, within the Aquia Election District.

Mr. Ireland: The Board of Zoning Appeals is to consider a request for variance of Stafford County Code, Section 28-25, definitions of specific terms, specifically the definition for accessory dwelling to allow for an increase in the allowable square-footage on Tax Map Parcel Number 31C-31. The applicant is requesting a variance of Stafford County Code, Section 28-25, definitions of specific terms, specifically the definition for accessory dwelling to allow for an increasing level square-footage on an accessory dwelling unit located at 117 Jib Drive, Tax Map Parcel Number 31C-31. An accessory dwelling is defined as unit limited such uses as a family member apartment, guest house for occasional visits by family or friends or maid’s quarters and shall conform to the following: An accessory dwelling shall not exceed 25% of the total gross floor area of the principal dwelling unit. Number two, there shall be no more than one accessory dwelling per lot. Number three, when an accessory building is located

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in the principal dwelling the entry to the unit and its design shall be such that the appearance of the building shall remain a one-family residence. Number four, an accessory dwelling shall have the same address as a principal dwelling and finally number five, this term shall not include a carriage house. One more. In this instance the floor, gross floor area of the principal dwelling unit is 2,642 square feet. Therefore, the applicant would be allowed 660.5 square feet. The applicant is requesting a variance to allow a 900 square-foot accessory dwelling unit or an increase of approximately 239.5 square feet.

Ms. Evans: Thank you. Does BZA member Steven Apicella have any additional questions for the stuff?

Mr. Apicella: I do, Madam Chairman. Are we aware of Virginia Code Section 15.2-2309 part two have any special provisions or exceptions for persons with disabilities?

Mr. Staranowicz: I was not aware at the time of the application.

Mr. Apicella: Okay, you've had a chance to read the state code?

Mr. Staranowicz: Yes, I have.

Mr. Apicella: And I'm paraphrasing because there's a lot to 15.2-2309 but it generally says with regard to disability, a variance shall be granted to alleviate a hardship by granting a reasonable modification to a property or improvements there on requested by or on behalf of a person with a disability. Does that kind of summarize that provision?

Mr. Staranowicz: Yes sir.

Mr. Apicella: Does Stafford County's Code 28-350 and/or our variance application address the disability provision in the state code?

Mr. Staranowicz: I believe it does not.

Mr. Apicella: Okay. I'm kinda of going down a different path here. Is the definition of an accessory dwelling clearly restrictive that it can only be used as a residence for family members or as a maid's quarters and infrequently for family or friends as a guesthouse? And the point being that an ADU cannot be rented out by non-family members or purchased separately from the primary residence by non-family members.

Mr. Staranowicz: That's correct.

Mr. Apicella: So hypothetically if someone, whether as part of a variance or not, if they have an ADU, they can't rent it out?

Mr. Staranowicz: Correct.

Mr. Apicella: Okay. Just want to make that clear. Alright. Thank you.

Mr. Ireland: Can I follow-up on that just real quick because that was a question I had not anticipated?

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Ms. Evans: Yeah, I was gonna go in order but we can go that way. So okay. Does BZA member Abraham Panjshiri have any questions?

Mr. Panjshiri: Not at this time, Madam Chair.

Ms. Evans: Does BZA Secretary Jon Harris have any questions? Ireland, I'm sorry.

Mr. Ireland: Yeah. What was asked sparked a question for me. Is the deed changed to cover what Mr. Apicella said?

Mr. Staranowicz: The deed for the property?

Mr. Ireland: Yes, to give it... because the variance runs with the life of the property from what I understand. So, is that entered into the deed so that if someone sells a property in the future that is annotated there and they cannot rent either one of those structures out to someone else?

Mr. Staranowicz: That I am not sure.

Mr. Ireland: Okay. Thank you.

Ms. Evans: Alright. Thank you. Does BZA Vice-Chair Dana Brown have any questions?

Ms. Brown: No, Madam Chair, not at this time.

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

Mr. Blaisdell: No ma'am, not this time.

Ms. Evans: And does alternate Nathan Mowery have any questions?

Mr. Mowery: I do, one question. Within the code it cites that if the variance is granted for a person with disability, it may expire when the person benefited is no longer in need of the modification. How would this variance expire if an accessory dwelling is already built?

Mr. Staranowicz: That I can't answer because I have no idea. I've never...

Mr. Mowery: It would just permanently exist.

Mr. Staranowicz: It would, yes, sir.

Mr. Apicella: So, Madam Chairman, can I try to answer that?

Ms. Evans: Yes.

Mr. Apicella: Or at least one option. The code allows us to set conditions for a variance. So, you could set a condition. I kind of thought about that same question. How would we restrict it in the future? If the parents who are they're seeking a variance for the additional 240 feet, if they're no longer using the property. How does that work in the future? I mean you can't take away that 240 feet if it's granted, but perhaps a condition could be considered. I don't know what that would look like, but that is an option.

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

Mr. Leming: Good evening Madam Chairman, members of the Board of Zoning Appeals. I'm Clark Leming and I'm here on behalf of Amanda and Justin Clark, who are seated here, and Dave and Sherry Somerville. Dave and Sherry are Amanda's parents. Thank you for the questions. This afternoon as I was going through the staff report I saw that the ordinance was cited. And the ordinance apparently in Stafford County has never been updated to reflect the 2015 statutory variance amendments. So, I got in touch with Mr. Staranowicz and was advised that you'll have been provided with the correct statute now and that, you know, at some point, Stafford will update its ordinance. Of course, it's been nine years. The question that Mr. Apicella asked, I think, is the germane one for tonight, assuming we're all working from the same page, as far as the correct statute is concerned. The disability provision is the one that would apply here. The way the new statute is set up, relatively new, let's say in 2015. And if it's helpful to you, I actually have a marked-up version of that statutory amendment that shows what was... you got that too? Okay. So, there were a lot of changes back in in 2015. The Disability Provision comes in in 2018. And so, I believe that the statute now has three threshold criteria. That's the first determination, I think, that the BZA makes. The first is whether or not there's an unreasonable restriction on the property. The second one is the physical hardship. And the third one is the disability. Now, I also have for you a case, a Virginia Court of Appeals case that actually was handed down today. Now, I give this to you not because it was my case, and I didn't know it was coming down today, but this is a case out of Louisa County and it's a variance case. It was an appeal by the Board of Supervisors of a decision by a circuit board granting the variance that the BZA denied. And the Court of Appeals upheld the Circuit Court. But what's important about this case is that this is the first case that interprets the 2015 statutory amendments to the variance criteria. So, I thought it might be of use to you. I don't know how often you even hear variances these days but it does emphasize the change, and specifically states that the text of the statute, combined with Supreme Court precedents made clear the legislature intended to expand the availability of variances, rather than merely authorizing variances in narrow circumstances, the statute now orders BZAs to issue a variance in certain circumstances. Now, it goes on at some length to explain the difference in what you are doing now versus what you did before 2015. Now, turning my attention to this evening, Sherry's Somerville has dementia. There is a short letter from her doctor in your file establishing this. It's described as moderate to severe. And it explains the things that she's no longer capable of doing on her own. The Somervilles have lived in Stafford since the 1980s and I've known the Somervilles for over 30 years. They're members of my church and when the dementia entered the picture here and the diagnosis was confirmed, which has now been three or four years ago, the family made a decision that they were going to take care of Sherry. Mr. Somerville has done that to this point, from their home, their longtime home in Stafford County where I think Amanda was raised. And they've always lived in that one house, but it's too much, it's too much now. So, the arrangement that the family has made, and this is a family decision, is to bring Sherry into the Clark's home or onto the Clark's property. Mr. Somerville will continue to care for her. That's his, that's his commitment. And I pressed him a bit about that. And I said, there are other ways to do this. And his response was, you know, she'd been with me for over 50 years, that's how long they've been married and she's taking care of me and that's what I'm going to do now. So that's what they're committed to and that's what has brought this about. Now, we looked at a number of options here. I want you to know that we didn't just jump into, okay, this is the size house that's needed here for the accessory dwelling. What we did was to look at the possibility of enclosing a portion of the of the Clark's home. A screen porch, upper deck or something like that so that that would add to their square footage. Well, each of those turned out to be engineering nightmares, because in order for the Commissioner of Revenue to count that square footage, there would have to be heating. It would have to be sheltered from the elements, have a roof and walls around it. So, we also looked at the possibility of jutting out somewhere on the property from the house but because of

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the topography, there was not a good location for that. This location is in back of the main house. It would be accessed by the same driveway. And the reason for the additional square footage is simply so that Mr. Somerville will have his own space. He will live there with Mrs. Somerville and she will have her bedroom. And there may be times when she needs special treatment or care that can be administered at that location but he will have his own space. There's a, as you see from the diagram there, there's a combination kitchen living dining area as well. But that's it. So that's as the basis for the request, so that he has his own accommodation there with Mrs. Summerville. So that is for the variance that is being requested, it is simply that difference, I think it's 239.5 square feet. Now, let's talk about some of the questions that you ask. And you're actually a little further ahead than I thought I would find you tonight, given what I found this afternoon. So that's great. But yes, there is a provision in the statute also added in 2018 that says with some accommodations, you can establish conditions and, you know, after the condition or the need for the modification goes away, you know, then perhaps the accommodation goes away. Now, to be sure, is a little difficult in this case, you can't just lop off one bedroom. However, it seems to me that what's already in your ordinance as far as what an accessory building can be used for pretty well addresses that. I mean, this is a family member. What was it, a family member, maid? You know, that's about as far as you can go with the accessories, occasional guests, I believe it says. So, what that does is to prevent this from being used, as I read this, for tenants. Just on the face of the statute, or the ordinance that you have right now. Now, you can, you know, emphasize that with the condition, I suppose, but that seems to be pretty well taken care of if that's the main concern. So, what you're left with is simply the accessory dwelling that has this 239.5 additional square foot, which wouldn't appear to be a major issue, but that option is there available for you under the statute. Now, as I read the statute, it's a little unclear, but I believe that you still must apply, there are five statutory criteria that are listed after you make the threshold decision on reasonable restriction, physical hardship or disability. The five criteria first, the property was acquired in good faith. The Clarks purchased the property in 2002. Certainly, I think it's self-evident, there's no self-created hardship here. Mrs. Somerville has moderate to severe dementia. And, you know, nobody created that. That's just that's just the way life happens. And it was diagnosed a long, long time ago. So, they didn't create this situation. That's, I think, fairly clear here. Substantial detriment to adjacent property. This is, number one, this is a by-right use of the property. But we do have a letter from one of the neighbors, a very nice letter, saying she has no objection to it. They've talked with their other neighbors, everybody knows what's going on and of the public hearing. So, they're observing all of their setbacks, as they will have to when they go to construction here. I'll be done in just one second, Madam Chairman, if you'll let me continue through these criteria. Third, the condition is not so general or reoccurring, such that an ordinance revision could be applied or sought here. I think we can agree that these are pretty unusual circumstances and not something that the Board of Supervisors could draft an ordinance that would cover specifically, maybe they could do something broader. But frankly, that's the point of the variance procedure. Four, does not result in a use not otherwise permitted on the property. Well, accessory dwelling is a by-right use in the A-2 zoning district, which is the one applicable here. And then there's no relief available through a special exception process. There's nothing in your ordinance, there's not. So, I believe that there's compliance with all of the statutory criteria. This provision, you may be interested to know that this provision actually was put into the state code because of some federal law. And so, this was an update to... *inaudible*... Virginia. Saw this again, just recently with some methadone clinic issues, change in state law because of federal law. So, but that's what the statute says right now. I think that's the threshold criteria. You have a person with a disability who's asking for a reasonable modification to assist with her care and the treatment of this disability. And I believe all the five criteria are met. I'm happy to answer any questions but I'm happy that you all were all familiar with most of this when I got here.

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Ms. Evans: Thank you. Is there any member of the public who wishes to speak in support of the application? Please come forward. Any member of the public who wishes to speak in opposition to the application? Please come forward. Alright. At this time, I will open up for questions from the Board members. This is the 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 their questions. Does BZA member Steven Apicella have any additional questions?

Mr. Apicella: I do, Madam Chairman. Mr. Leming. So, with the change in 2309, it's basically three separate criteria now. Well, three separate standards with...

Mr. Leming: Threshold questions.

Mr. Apicella: ... threshold questions with some additional criteria that applies to all three. And one of those standards – what did you just call it because I think that was a good word – the threshold.

Mr. Leming: You have threshold questions... inaudible.

Mr. Apicella: Right. So it doesn't have to be all three, it's just one of those three. And then one of those three threshold questions is if there's a disability.

Mr. Leming: Yes, uh-huh.

Mr. Apicella: I wish I could read the case, because it probably answers some of my questions or thoughts about this. How do we evaluate the context of a definition or the definition of a variance in 15.2-2201 and the, these different thresholds? Because, unfortunately, when they fixed or change 2309, they didn't change the definition of a variance to include the disability. They should have.

Mr. Leming: No, they didn't, to include a disability. I think that's correct. Well, I think there's another way to handle that first. I've long since learned that you can't count on the General Assembly to take care of every little detail when they make these changes in statutes, but we have to deal with them. But in looking at the threshold question, we were talking about the three, I think there probably are a couple of ways to deal with that. If you look at the, if you look at the statute itself, and it'd be very helpful if they put numbers in, but if you look at the preamble there, a variance shall be granted, as evidence shows, a... *inaudible*... application would, I put a number one there, unreasonably restrict the utilization of the property or, and I put a number two there, or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements they're on at the time of the effective date of the ordinance, or, and I put a three there preliminarily, alleviate a hardship by granting this reasonable... *inaudible*... modification to a property or improvements requested by or on behalf of a person with a disability. Now, here's the question. If I'm reading this correctly, and it's a bit faint, I think that the or between one and two, I don't think it has a comma. But if you look down at number three, before we get into that one, it does have, it has a comma. So, I think the grammatical question, and I don't know the answer to this, but I think it's reasonable to say, well, that could modify either, there are two threshold questions, and that disability could modify either of them, rather than standing as a third criterion. Now, to be sure, you know, we've just gotten our first case, interpreting the 2015 amendments. So, you know, we don't we don't know the exact answer to that. But I think that because of the language here, notwithstanding the definition of the variance earlier in the statutes, I think that the language here is saying that this variance shall be granted if I think that that's probably is going to trump any concern that you might have with the definition, such as it is a variance, many code sections earlier. And I think

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that gives you the leeway, the flexibility to say, Okay, this is, you know, this is a, not granting this unreasonably restricts the property under the circumstances because of the disability or there's a hardship here, a physical hardship, and we're addressing it from that or they'll simply say, this is a third threshold question and we're going with that one. We are in new waters here.

Mr. Apicella: You can't see it but I basically did the same thing you did. One, two and three. So, bottom line is, from your perspective, the shall, you shall grant a variance to alleviate a hardship by granting a reasonable modification to the property on behalf of a person with a disability. That's again, that's kind of the sum total. Thank you.

Ms. Evans: I just want to ask a question with that. Steven, were you looking for like the definition of the variance like what...?

Mr. Apicella: So, if you were to 2201 go to the last page, it defines a variance and it did fix the unreasonable, trying to find it, it changed it to unreasonably restrict the utilization of the property, which I think that was changed in 2015, that part, but they didn't go back in 2018 and fix the definition to deal with the disability. So, it's missing. But I, again, I'm not an attorney, but it's not unreasonable to take Mr. Lemming's view, that notwithstanding the fact that it's not in the definition, 2309 it's pretty clear in my mind that it says just what Mr. Lemming says, that you shall not, I don't think you would grant like another 1,000 feet, but if it's a reasonable amount. So, in this case, they're asking for some modest additional foot, square footage to put in a separate bedroom. That's kind of the way I read this.

Ms. Evans: The only reason why I was asking because when I was reading the case, it talked about it on page 11, the footnote. You know, it talks about the definition, exactly. And so that's why I wanted to say hey, it's just what we're asking. But it again, it doesn't talk about the disability like the what you're talking about.

Mr. Leming: Not in that definition. You picked up on the important part of this, really started page 11 of this opinion...

Ms. Evans: Right.

Mr. Leming: ... it's discussing the amendments to the statutory variance. This opinion doesn't deal with the 2018... *inaudible*... that was not before the court for this case.

Ms. Evans: Alright, that was it, Steven? Is that all you have? Does BZA member Abraham Panjshiri have any questions?

Mr. Panjshiri: No, Madam Chair, not at this time.

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

Mr. Ireland: No.

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

Ms. Brown: No, I do not.

Ms. Evans: Does BZA member alternate Nathan, I'm so sorry, Nathan Mowery have any questions?

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Mr. Mowery: I do not. Thank you.

Ms. Evans: Alright, this BZA member, Everet Blaisdell have any questions? Alright, and I do not have any questions.

Mr. Leming: Thank you.

Ms. Evans: I will now close the public hearing for the application and bring the matter to the Board. Can I get a motion?

Mr. Apicella: Madam Chairman, I'd like to motion that we approve the requested variance.

Ms. Brown: I'll second that.

Ms. Evans: Okay. I have a motion and a second. Is there a discussion or comments?

Mr. Apicella: Yes, Madam Chairman. So again, the Virginia State Code establishes a number of thresholds and criteria, which in my opinion, at least in the past set a very high bar to grant a variance. Usually there has to either be a taking, or something specific and unique about the parcel that creates a hardship based on its physical attributes. The state code was amended as Mr. Lemming indicated in 2018, to provide for a carve out or I'll call it a special exception for persons with disabilities. To me, that clearly seems to be the situation we're looking at with this application. I don't think it would be unreasonable to grant an additional 240 feet so that they can have an additional bedroom for the Somervilles. And I can see where this specific situation evokes that special exception 2309 for a disability. Alright.

Ms. Evans: Alright. Is there any other discussion?

Mr. Ireland: Yes, Madam Chair. I'm going to play the bad guy, I think, on this one, but it's because I want to make sure we're doing what we need to do because if this was a common situation, which I believe it is. Everyone, I think, has dealt one way or another with a disabled family member, and especially one that cannot live on their own. They, they've made it work, I suppose. In some cases, I go back to the definition, I put this in quotes, "reasonable modification or reasonable deviation." My opinion is this is not a reasonable modification. You're building a second house on a property. The other thing is, I'm only looking at the documents that I was provided by staff. I haven't looked at any outside information because I think we're kind of limited to what we've been provided. But I read that where we have to find three findings, and it's an and not an or so they all have to be true. And one is the strict application of the ordinance would produce an undue hardship. There's a hardship but this is not producing the hardship. If we apply this ordinance as it's written, we're not producing a hardship. It's already there. Second, the hardship is not shared generally by other properties in the same zoning district, in the same vicinity. It is not personal in nature and is not self-imposed. I agree, it's not self-imposed. We can't help when our family members get ill to the point they need to be cared for but I think this is a hardship that is shared by other properties. Many other properties, me included. I have a disabled child at home that needs to be cared for. And finally, the third one, and again, it's an and not an or. The authorization of this variance will not be of substantial detriment to adjacent properties, and that the character of the district will not be changed by the granting of the variance. If we approve this, it's going to open up I believe, Pandora's Box for people who want to take advantage of this system and start building second houses on their properties just to get rental income. I'm not suggesting this is the case here. I definitely believe it's not. But I will say that we will get a bunch of these variances coming

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through. Whereas we should change the ordinance to take care of it if it affects enough people, right? That's what an ordinance is for. A variance is for the unique one off, I suppose. But this is a problem, and I believe it is a widespread problem, not just in Stafford County, but around the Country, that we need to either do reasonable modifications, whatever that is, and its objective, I know that, or change the ordinance to allow this. I mean, it just makes sense that we should have an ordinance that covers this. If we do, but we don't have it in the package, I'm only going by the package. So that's all I have. Thank you.

Ms. Evans: Any other comments, by any other?

Ms. Brown: I am going to be supporting this and I'm supporting this because an accessory dwelling unit is a by-right use in the zoning classification. I do think that 239 and a half or 240 square feet is reasonable. I personally don't know that this is shared commonly because I haven't heard from anybody else. No one else has come forward. We sent out quite a number of letters. I think this is certainly within our purview. And yes, Jon, to your point, I gave you my paper, my cheat sheet. I think it's, yeah, 15.2-2309 was not referenced in our package but I did look it up. I mean, it was referenced by the applicant and so I checked it. And so that's how I read that because I had not seen that before either. So yes, I'm definitely supporting it. Thank you.

Ms. Evans: Any other member have any other comments?

Mr. Mowery: Yes, Madam Chair. If this variance is approved, can we not set conditions that would prohibit the use of the property for either commercial or rental purposes, which I think would alleviate some of the concerns?

Mr. Panjshiri: Isn't it already set by the definition of the accessory dwelling?

Mr. Apicella: So that's why I asked that question earlier to James about what the restrictions are. And I think he, in my opinion, he covered it. He said you cannot rent it out. And it can only be used infrequently, even by family members.

Mr. Mowery: So, if that is true, then then the negative drawbacks of the approval that were mentioned that it could create this watershed moment of everybody coming forward and asking for larger accessory dwellings, seems like it would be limited because they would have limited use to what they're intended to be essentially as accessory dwellings for family members. And as you mentioned already the additional 240 square feet as a reasonable accommodation for this disability. It seems appropriately sized for the additional bedroom that they're asking for. That's all the comments I have.

Mr. Apicella: So, one more thing, the only real issue here is as Ms. Brown pointed out, I think Nathan as well, right now, by-right you can do an accessory dwelling unit for a family member. In this case it's 25%, it can be up to 25% of the primary house, it's 660 square feet. So, the only issue is whether or not the variance is, which is what the variance is requesting, is an additional 240 feet to accommodate a digital bedroom. And in my opinion, based on the circumstances, again, it's not unreasonable for the Somerville's to have separate rooms, given the spouse's current situation. That's again, that's my opinion.

Mr. Panjshiri: I think that would, sorry, I think that would help, you know, alleviate some of those concerns is that regardless, if somebody's seeking a variance to go above 25%, they still have to meet that criteria of, you know, if the Board sees that it's reasonable, granted their circumstances.

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Ms. Evans: Is there any other comments?

Mr. Blaisdell: I've just got a small comment. I know I'm the new kid on the block here so I'm not gonna say a lot. But um, I kind of agree with Mr. Ireland that I think the ordinance should have some review and some changes should be made to it. As far as 25% goes, in my opinion, this is kind of a thing of like old Stafford meets new Stafford and the whole part of being able to build the square footage on your current house, I think kind of rewards kind of overindulgence and not livin practical. You know, the bigger house you have and the more taxes you pay the bigger ADU you're allowed to build and I just don't think that's fair across the board for everybody. I've studied it and I guess different surrounding counties and they have some extra things in there that have to do with lot sizes, acreage. They've got like minimums and maximums of square footage. Because, I mean, I might have missed something but if you have a big enough house, you can build an ADU that's bigger than most people's primary. And I don't think that that should be. And that's all I got to say that.

Ms. Evans: Alright, thank you.

Mr. Ireland: I gotta go back. So maybe this is a staff question or Steve question because you know, this stuff in and out but one of the exceptions on this was a carriage house. Now I had to look up carriage house, I had a feeling I knew what it was. But carriage house, I think, if I'm not mistaken, is a house on the second floor in a garage area on the bottom floor. How is this different? Other than the fact it's one story, the garage is next door attached to the house? How is this not a carriage house?

Mr. Apicella: So, the definition of an accessory precludes a carriage house. So, I don't know why. I didn't create the definition but.

Mr. Ireland: I guess, yeah, that's the crux so maybe the staff can answer. I don't know... *inaudible*.

Mr. Apicella: The way I understand an accessory dwelling unit can be attached to or it can be separate from the primary residence. Now I don't know whether that means it can be above the garage. I presume it could because it's still part of the house. But again, limited to the 25% of the primary.

Ms. Brown: I don't know that an accessory dwelling could be above the house because it would be part of the house. I think an accessory dwelling in the definitions was standalone wasn't it?

Mr. Apicella: Well it says an accessory dwelling located in the principal dwelling. So to me that doesn't necessarily preclude it from being above the garage. Again, I didn't create the definition. It is what it is.

Ms. Brown: I'm supporting it, so...

Mr. Ireland: So, I think, and maybe I'm just picking at straws here but the Carriage House thing had me perplexed because when I look at this house, basically with a detached garage as big as the gentleman at the end there said it's about as big as my first house back in 1980, whatever it was, but and it didn't have an attached garage. But a carriage house was specifically mentioned for a reason. I don't know why that was. But I looked at it and said, Well, maybe that's sort of trying to say that you can't build another structure. But I'll leave that alone. Because square footage. I know we're focused on the square footage, which is where we should be but again, this might be to me an unreasonable modification. But that's okay. Thank you.

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Ms. Evans: Yeah, I was about to say I was going to end on that note, because I was going to piggyback off with what Dana said about the 15.2-2309 statute, and it does talk about that alleviating a hardship by granting a reasonable modification to a property or improvements. And so I just think that granting a variance of that square feet would be reasonable, you know. So, what I'm going to do now, being that we've all had our discussions and comments, I'm going to say all those in favor of the motion signify by saying aye. And I'm actually going to take a poll with this if this if that's okay. BZA member Abraham Panjshiri.

Mr. Panjshiri: Aye.

Ms. Evans: Mr. Apicella.

Mr. Apicella: Aye.

Ms. Evans: Mr. Ireland.

Mr. Ireland: Nay.

Ms. Evans: Ms. Evans, aye.

Brown, Mowery and Blaisdell: Aye.

Ms. Evans: I'm gonna let the record reflect that we have six for approval and one for denial. The motion has been approved.

Mr. Apicella: Madam Chairman, before you go on to the next business item, I think the BZA through staff should recommend to the Board that they consider updating the code section 28-350 and the zoning application at least to accommodate the changes that occurred to make sure from 2015 and 2018. I think it does accommodate 2015 but just to be sure. I personally don't have an issue with a cap. I don't know about the 25%. I think that's pretty standard and looking at it ADUs from other jurisdictions. But if somebody had a, you know, 18,000 square-foot house, that's a pretty big accessory dwelling unit. So maybe the Board could consider some reasonable cap, 25% but no greater than...

Ms. Evans: I was gonna say, why didn't staff update?

Mr. Staranowicz: Why wasn't, why wasn't it updated? I was unaware of it. Of course, I wasn't in a position at the time it was.

Mr. Apicella: We did make modifications to the application. We didn't make modifications to the code. That's a Board responsibility. But I think at the time we did, it might have preceded the changes that the legislature made in 2018. So again, it's worth a revisit in my opinion

Mr. Staranowicz: I spoke with Kathy Baker today and explained her what the situation was with it. And we've discussed, we're going to start discussing looking at changing the application and the variance application and the code section. Also, while we're talking about ADUs, there is legislation being looked at right now so this whole thing may change anyway. Because they're talking 50% or 1,500 square feet, whichever is less.

Ms. Brown: I thought that got moved off.

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Mr. Apicella: It got moved to the next year.

Mr. Staranowicz: I knew they were talking about it but I wasn't sure if it made it all the way through.

Mr. Apicella: Next year that could be a different story.

Ms. Brown: I think it got tabled till 2025 so we're good for a year.

Ms. Evans: Alright. Is there any Unfinished Business? No Unfinished Business. Can we get the zoning Administrator's Report?

UNFINISHED BUSINESS

NONE

ZONING ADMINISTRATOR'S REPORT

Mr. Staranowicz: We did have two applicants applying for the zoning administrator position. We had actually set up an interview with one of them but unfortunately, he decided to take a job elsewhere. We just got notified today. We're supposed to interview him this Thursday. The other applicant that we were looking at unfortunately had a family emergency with his mom getting sick and he is in Iran at this time.

Ms. Evans: So basically, we're back to ground zero.

Mr. Staranowicz: We're back to where we've been for the last few months but we'll get through it I guess. I guess we'll have to get through it. Other than that, I don't really have anything except for what we've already discussed about the ADU stuff.

ADOPTION OF MINUTES

2. January 23, 2024 Board of Zoning Appeals Meeting Minutes

Ms. Evans: Alright, let's do the Adoption of Minutes. Can I get a motion to approve the January 23, 2024 BZA minutes, please?

Ms. Brown: Real quick, I did have one small correction that I already spoke with Stacie about. It was on page...and she's already corrected it... page 16 and it was on line 741. It was just a word change that needed to be fixed. So other than that, I would motion to approve.

Mr. Apicella: I do have one minor change on page 15 of 22, line 721. It says Life Road. I probably wasn't speaking correct English, but it's Wyche Road, so change Life to Wyche.

Ms. Evans: Any other changes? Alright, can I get a motion on the floor?

Ms. Brown: Motion to approve.

Mr. Blaisdell: Second.

Ms. Evans: Alright. There's a motion to approve. There's a second. Those in favor say aye.

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All members: Aye.

OTHER BUSINESS

3. 2023 Draft Annual Report

Ms. Evans: I should have said discussion then vote. The minutes are approved. Other Business – 2023 Draft Annual Report.

Ms. Brown: Somehow, I missed that in the package. Was that in last month's package? Was that in our package this month? I thought it was in last month but please tell me, did I?

Mr. Ireland: I think I saw it in this package.

Ms. Brown: Yeah, it looks like it's here.

Mr. Panjshiri: Yeah, it's in this one.

Mr. Staranowicz: Yeah, it's the last two pages.

Ms. Brown: I think it was in there last month too.

Mr. Staranowicz: No, it wasn't ready last month, so it wouldn't have been there.

Ms. Evans: Oh, gosh. Okay. So, everyone's seen the 2023 draft annual report? Are there any changes or anything, comments need to be made?

Mr. Mowery: Do you have an additional copy?

Mr. Staranowicz: I can give you this. Do you need to see it now?

Ms. Brown: Madam Chair, I would make a motion to approve it. But I do have a question for Mr. Staranowicz. Our three cases are in court. Do we have any movement on any case yet? A status or anything?

Mr. Staranowicz: No, we do not.

Ms. Brown: Okay. Thank you.

Ms. Evans: Alright. Is there a second?

Mr. Ireland: Second.

Ms. Evans: Alright, there's a motion on the floor to approve the 2023 Draft Annual Report. There's a second. Those are in favor say aye.

All members: Aye.

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Ms. Evans: Any discussion? I know. I always do it the wrong way. So, the 2023 Draft Annual Report has been approved. Yay, election of officers.

Ms. Brown: I have some other business. If we could just bring it up on the agenda. Two things. One of them was the FOIA training. And the other one is about how we engage with the attorney. I don't know how many people got the email. Last week, I don't remember what day it was maybe Tuesday night, one of the Planning Commissioners called me and asked me if I was going to the FOIA training the next morning. This was kind of late at night and I was like, it was here at the County. And I said no, I don't think so because I did not get an invite. And I was told that I was on the email as well as the rest of the Board. Now I assumed at the time that it was a problem with my email. We checked, everything was fine. It was the right address. So, I don't know why I didn't get it. Then then they tried to forward it to me and then it was, it wouldn't forward because it had some kind of Mimecast error in the attachments. So, I don't know how many of you all got the invite, but I was the only one that showed up. So, I just wanted to see, you know, let you guys know that we did have, the County brought in instead of the County Attorney, we brought in a person from Richmond from the FOIA Council down there to do it. So, it was a little better for us. Normally, the County Attorney just says "Talk to your own attorney, we can advise you". So, it was pretty good. And I think we're still gonna have some pro bono FOIA training coming up, maybe?

Mr. Staranowicz: I'm trying to work something out with Andrew.

Ms. Brown: Okay, which slides right into my next thing? Did anybody else get the invite? No, so nobody did? Okay.

Ms. Evans: But real quick. When it comes to the FOIA training, I don't know if Andrew did talk to you. I did speak with Meg about having monies for FOIA training. And she had told me that she would speak with Randy, to coordinate with Andrew to make sure that monies are set aside for FOIA training. So, did that happen?

Mr. Staranowicz: I was not aware of that. I know that there has been discussions going on.

Mr. Apicella: I still think we ought to go the pro bono route if we can. And then if that doesn't work with Andrew then we raise the issue of how much does he want. And I don't know that it's him, but it might be somebody else from his office who comes and does the training.

Ms. Evans: Right, we do pro bono. I'm with that. But I just wanted to let you know, I did speak with Meg.

Mr. Apicella: So, can I can I piggyback off that comment? I've also spoken to Meg and she assured me that if we need funds for an attorney, that she would make sure that we got it.

Ms. Brown: Well, that kind of slides into my second comment, and that was about, we have a very small \$5,000 budget, I guess, for attorneys and I was dismayed to find out last month that, you know, we're already wiped out halfway through the fiscal year. And I understand why, we've got, you know, a case that's pending in the Appeals Court right now. And my question is we have outside people that might be suing us, contacting our attorney directly without our knowledge or approval and running up our bill. So, we need to find some way to run interference on that, perhaps, you know, they contact the Chair or something before we engage our counsel, because I don't know how many hours or how many phone calls that that outside people that are trying to sue us made. And our meter is just going like this.

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And in our by-laws, you know, it says that we have a vote of the Board to go do that. But I just think that somebody, either the Chair or the Board needs to approve that before we have a lot of outside counsel, calling our counsel and running up our bill.

Mr. Apicella: So again, the conversation I had with the Chairman. My understand, she agreed with the notion that any money spent for the County to litigate BZA matters is separate from the money that we should normally get for our own counsel to help us with our business. So that's kind of the way it was left. And I don't know that it's \$5,000 or \$2,000, or \$10,000. I mean, at one point, it was \$10,000. I think the bottom line is, we'll get what we need, of course, it could be excessive, and then they might want to revisit it. But if we were to say like with this case, we wanted to utilize Andrew's services, we would let them know, and they would make sure that would happen.

Ms. Brown: Yeah and I agree with that. And I just I don't like the idea that somebody from the outside is making a direct call to our research attorney and you know, and he's speaking with them on our behalf and running up a bill and we don't even know about it. So that's all.

Ms. Evans: I don't think that that was the case. I think because of the issue that was at hand, that is why, and the possibility of us hearing, you know, the case that Stafford is being sued on. I think that was the issue. And that's the reason why that he was called in.

Ms. Brown: Right, right, I just think they should have reached out to the Board or the Chairman first before the opposing counsel picked up the phone and called our attorney. You know, we had no control over the spending we didn't even know was happening. I just think, and I agree we would have called them right away, but I think we should be making that call, not the outside people that are suing us. That's all.

Mr. Mowery: We should be able to set dollar limitation that they can't exceed without Board authorization.

Ms. Brown: Well, we're not allowed, we don't even get to, per our by-laws, engage our attorney unless we have a majority vote of the Board. So, I don't know. But it just it concerns me that somebody can just pick up the phone and call, you know, our research attorney and start running the meter without us.

Mr. Apicella: I don't disagree but that, again, my understanding and the conversation I had was that that should come from a separate pot. Not the money that set aside for us for our own counsel to help us in our business that we do every month. Not any litigation that happens as a result of our business but in terms of the council that we need to do our business, if that makes any sense.

Ms. Brown: So, has our money been restored?

Ms. Evans: So basically, what Steven is saying is that in the conversation, I know exactly what conversation that you had, because it's the same conversation that I had, is basically saying that the monies will be there. It's not depleted.

Mr. Apicella: There's not any money in there. There's zero money in there now but we were to ask, we would get it, which begs the question, going back to your other point is, let's just say this particular case turned out to be more complicated than it ultimately was. We got our package a little less than a week ahead. What process are we going to use going forward to decide, hey, this is complicated. We really need to get Andrew's help.

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Ms. Brown: Well, I think we have a Chair for that.

Mr. Mowery: I had specifically posed a question via email to the Chair and James last week, asking that exact question. How do I engage the lawyer to ask a question about ADA on this matter?

Mr. Apicella: Yeah. If you had a question you would go through the Chair but the question is, as Ms. Brown said, we decide that as a majority, right, so, again, we got the case, I think we got the package maybe Tuesday or Wednesday, maybe Wednesday. And, again, that's less than seven days ahead of the case. I just started reading it Wednesday night. I mean, I might not have read it until Thursday or Friday and then realize, Wow, this is this is a lot. This is something we haven't dealt with before. What should be an efficient process for us to engage each other to decide prior to that Tuesday, and giving our attorney enough time to actually look at the case when we get a doozy? Right?

Ms. Brown: Well, maybe it would be we meet as we should and then we decide if we're going to defer the case for that reason, because we can't be having, you know, meetings outside.

Mr. Apicella: Meeting, I mean, again, the Chair could poll.

Ms. Brown: Yeah, but I don't know if the attorney would have enough time to go through it. So, at that point, I would think we would need to meet and then vote on a deferral.

Mr. Mowery: The process would be messy, even to do a call because if everybody needed to submit their relevant questions for the lawyer...

Mr. Apicella: That's a separate, the first question is, do we engage the attorney? Right? That's question number one. And then secondly, then we decide through the Chair, here's a series of questions that we might ask. And it could be that as a result of that back and forth, Andrew says, Hey, I can't, that's more than I can do in two days. And then we would have to...

Mr. Mowery: It would be difficult to vote on whether we needed to engage with the lawyer, if we didn't know what the questions were trying to be posed.

Mr. Apicella: Well, that's fine. But usually it's can you take a look at this and give us you know, your advice. Kind of a broad-brush question, you know, dig into this and tell us what your view is, what you know, what state code provisions, what kind of case law is there to help guide us in our decision making here. But as you as you get more into it, you decide, hey, there's some questions. I really needed to ask, again, through the Chair, that Andrew might not have thought of or wasn't part of the initial ask, which again, goes back to, hey, if it's like Monday, well, are we going to meet? Are we going to have that meeting on that Tuesday and decided, we only have one case, just given a hypothetical. So, we've got a complicated case, we get it a week before, we just start reading into it, we decide we need a research attorney, we get it to Andrew by Thursday. How are we going to decide, are we actually going to meet that Tuesday, if there's just one case? Are we going to tell the applicant "hey, we've decided to defer the case"? I think we just need a process.

Ms. Brown: I thought we had to, once it's been advertised, we have to come here and vote on the deferral or not, and discuss that. And then we could do that, but I thought we had to hold the meeting. Am I incorrect on that?

Ms. Evans: Isn't it, I thought it was up to the Chair to defer the case. Do a vote have to happen?

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Mr. Apicella: In the past the Chair and the Vice Chair, we've allowed the Chair and the Vice Chair to speak for the Board on a deferral.

Ms. Evans: I thought it was the Chair that makes the decision on the deferral.

Ms. Brown: No, I thought that the Board had to vote on a deferral. No?

Mr. Apicella: I don't know what the answer is right now. I can dig into the by-laws. At a future meeting we ought to kind of work our way through this. Because again, what concerns me as they're saying, I don't mean any disrespect to our new members but there's sometimes some really complicated stuff that we get. And we don't know what we don't know until we start reading through the package. And I just, I think it would be helpful there are times when it's helpful to really engage the attorney to help out the rest of the Board, even if it's, even if one or two of us have had dealt with a specific case, the rest of us haven't and engage an attorney is a helpful process to kind of get to the right, in my opinion, the potential right answer collectively. So again, maybe at a future meeting, we can just kind of work our way through what that would look like.

Ms. Evans: Alright, did you have anything else unfinished?

Ms. Brown: No, that was that was it. Thank you though for indulging me.

ELECTION OF OFFICERS

4. A. Election of Chairman
- B. Election of Vice-Chairman
- C. Election of Secretary

Ms. Evans: Election of officers.

Ms. Brown: Well, speaking of the by-laws, which I don't have in front of me. Okay, well, I have like one page of it. I was actually hoping to make a motion to suspend our by-laws for tonight in the hopes that I could, we could wave 3-4 so I could nominate Ms. Kecia Evans for Chair again. But I think to do that we would have to vote if we wanted to suspend the by-laws or not before we could even consider that.

Mr. Apicella: What's the minimum vote on that?

Ms. Brown: He's got the by-laws. I read it earlier, but I...

Mr. Staranowicz: You said 3-4? An officer shall serve no more than two consecutive terms in the same office.

Ms. Brown: Though we wouldn't be able to vote on that. We would have to vote to suspend the by-laws first so we could even consider that I think. But I think what I need a second for that to be even like go further.

Mr. Apicella: Because I know for at least the Board of Supervisors, it's two thirds vote.

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Ms. Brown: I know and I read it in the by-laws and I only printed the page I needed for the section number. But Nathan, he's got it. So, hang on just a sec.

Mr. Mowery: It does say that the Chairman shall rule on all procedural questions which seems self-serving in this instance.

Mr. Apicella: I'm wondering if that's even possible if it's not already addressed in the by-laws, if they can be suspended.

Ms. Brown: Well, I think we've done it before for a couple of things. I don't remember what it was. It's been a while. Not for this though.

Mr. Mowery: It says the Robert's Rules of Order newly revised will govern the meeting. And all board meetings. I assume it'll be in there somewhere.

Ms. Brown: This is where I wish we had an attorney on the dais to help us out. I envy the Planning Commission that they could just kind of look over and get a (head nod).

Ms. Evans: Well, here's the Robert's Rules of Order.

Ms. Brown: Do we even have any interest in that at all? I mean, if I don't have a second, there's no point in doing this.

Mr. Apicella: I don't mean to be crass, Ms. Brown, but you've been on here, I think the second longest and, in the past, you've not liked the idea of people serving more than two terms. So, you've changed your opinion on that?

Ms. Brown: No, just in this one instance. We have the unique set of circumstances where we have a lot of new members right now and that is why.

Mr. Mowery: To address the question of how this would be conducted under Robert's Rules of Order, so it would follow the normal process of a motion, a second to the motion, discussion and debate and then a vote, which requires a majority in order to pass.

Ms. Evans: So, it's a majority, not a two thirds?

Mr. Mowery: That's correct.

Ms. Brown: Yes, Mr. Apicella, I have and I was the one, and I will readily admit that I insisted that go in. We had a long reign of legacy Chair people going on for a long time. We had a lot of members that had been on and a lot of experience. We're in a unique situation right now where we have a lot of new members and that's why. And I think because, Mr. Apicella think you're currently Chairing the Planning Commission right now, and I don't know that it would be appropriate for you to Chair both Boards.

Mr. Apicella: That's not my point. Again, I'm just, you've raised more than one time when I was serving as Vice Chair and Dean or Robert was serving as Chair and you raised issues with them serving...

Ms. Brown: Six or seven years.

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Mr. Apicella: Yeah, that's not the case.

Ms. Brown: Okay. Well, we recollect differently so...

Mr. Ireland: If it's allowed, I will second the motion. I think stability is good. Last year we have, what, three cases the whole year? It's not like we're gonna be here every other, every month, probably.

Ms. Brown: You just never know.

Mr. Ireland: True. I think I agree with you, stability is probably best right now so I second it.

Ms. Evans: I didn't know there was a motion. Okay, Dana made a motion. Okay, there's a motion on the floor. Wait, yeah, I was like, can you say your motion again? Because that was...

Ms. Brown: The motion was just to suspend the by-laws for this one night to consider waiving 3-4, so I could nominate you as Chair.

Mr. Ireland: And that doesn't, and I seconded it, and I still second it, but it doesn't preclude anyone else from being nominated and being selected.

Ms. Brown: That is correct.

Ms. Evans: Correct. Alright, there's a second. Is there a discussion or comment?

Mr. Panjshiri: I don't want to, like, so we can suspend the by-laws? Because that in my mind, just kind of like, it's not, it's not necessarily talked about in our by-laws.

Ms. Brown: Yeah, but Supervisors do it all the time too.

Mr. Apicella: Can I recommend, I don't have a problem with Ms. Evans serving another month but can we investigate? I don't disagree with what you say, Mr. Mowery, but we don't have it in our by-laws. I don't recall suspending our by-laws. I'm sorry, you may see things differently, Ms. Brown, but doing this 14 years, I don't remember suspending the by-laws. So, before we go down that path, I think we ought to investigate whether that's even an option in the absence of having it in the by-laws. That's my opinion. Again, next month or the next time we have a meeting, I don't know, do we have any cases next month? So, you might be Chairman for the next six months, if we don't have another case. It might be a moot point.

Ms. Brown: I don't know if you guys remember, but I think it was not this past January but the January before the Board of Supervisors suspended their by-laws for this exact same thing.

Mr. Apicella: They have a provision in their by-laws, that requires a two thirds majority to suspend the by-laws. It's in their by-laws. Right? I saw them, they referred to, when they did it, they referred to a specific section in their by-laws and they talked about that specific provision when they suspended their by-laws. So...

Mr. Mowery: If I could also chime in on that. It seems like if you're going to intentionally circumvent the rules that are placed on the committee, we would need to have an exceptional reason to do that. And

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in this case, I'm not sure it's an exceptional reason. It may be a good reason, but not necessarily an outside the normal reason that we could achieve stability in another way without...

Ms. Brown: That's fair enough, this was only for me to nominate. This was not a vote to confirm her. This was just for me to nominate her. That's all.

Mr. Panjshiri: And I don't disagree with that at all. I just think at the same time because we don't have it in our by-laws of what the procedure is, then I don't know if it's necessarily the correct procedure to go ahead with that and to suspend it, and then we, you know, whatever we come up with. And then at the same time for the stability point, I kind of argue at the time, how can other people, how can newer members of the Board get more experience, especially even, you know, how could you even move up into leadership position.

Ms. Brown: That's why we put it in. At the time, we had all experienced, you know, BZA members, not all experienced Chairs. And we did have a problem where we didn't have trained Chairs because we had the same kind of people just swapping back and forth all the time and that's why we put it in and the Board of Supervisors, around the time we did this had changed the rules for all of the other BACC's and yes, Mr. Apicella, I know it doesn't apply to us but it applies to every other BACC here in Stafford County, that they did term limit their officers, and I wanted to mirror ours to the same. Just that right now, I feel like we just need that right now. I just feel like we have a lot of new members I'm not sure that could handle some of our complicated cases. And I think Mr. Apicella is perfectly qualified and he'd be a good Chair. I just don't think it's necessarily the right thing to do to have him Chair both Boards at the same time. I think that is an issue for me. But if he wasn't, I would nominate Mr. Apicella. But

Mr. Ireland: So, if we cannot change or suspend the by-laws in this process, then I want to withdraw my second. And if there's no second than...

Ms. Brown: Well, I don't know who says we can't. I mean...

Mr. Mowery: In this case, the by-laws would dictate that the Chairman would decide on the procedural rule of whether we can or cannot suspend the by-laws.

Mr. Apicella: Yeah, I'm not sure I agree with that. I appreciate your viewpoint. I think that goes beyond what that provision says. In my opinion. Because if that were the case, that's a lot of authority for our Chairman.

Mr. Mowery: Well, not that the Chairman's decision would suspend the by-laws, but that would allow for a vote to suspend the by-laws.

Ms. Evans: It would be the motion on the floor.

Mr. Panjshiri: They would determine what is, in their view, of what is the correct procedure just to go about...

Mr. Apicella: Again, with all due respect, and no disrespect to you Kecia, a Chairman can decide three votes is good enough.

Ms. Evans: No, yeah, none taken.

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Mr. Apicella: I'm going to decide it all myself.

Ms. Evans: Right.

Mr. Ireland: Ok, let me throw another possibility, unless we have other people that really want this, but if we can't move to suspend the by-laws, can we move to move the election to the next meeting? And then in the meantime, figure out what to do with the damn by-laws.

Mr. Apicella: That's kind of what I was suggesting.

Ms. Brown: Well, just so you know about waiving the by-laws. Our by-laws say that they have to be in our February meeting. And last year, we did it in January. So, we must have waved the by-laws, Mr. Apicella to do that.

Mr. Apicella: Because we didn't have a meeting. That's why we didn't. Yeah, we didn't have a meeting.

Ms. Brown: But instead of waiting until the next meeting, we did it in January. So, we didn't do it per the by-laws is all I'm saying, if we're getting really technical, but anyway, I'm fine with waiting, I don't care. I have no problem with that.

Ms. Evans: And the waiting is to make sure that, to look at our by-laws, correct? To make sure that it's not...because what I don't want to happen is six months down the line, and we're here again, doing the same thing.

Mr. Apicella: Maybe ask James and, or go to Andrew, although there's no money yet. But I don't know if we want to, going back to threshold, the threshold question is, in the absence of having a rule and the by-laws allowing you just suspend the by-laws, how do you proceed forward? And I don't know what the answer is to that question.

Ms. Brown: How about this, we're going to have FOIA training by the attorney's office. Maybe at that point, instead of engaging specially just for this question, we could bring that up. Are we going to be having our FOIA training before the next two months?

Ms. Evans: Is Andrew doing it though?

Ms. Brown: His office, I thought was going to do it pro bono.

Mr. Staranowicz: Andrew would not be able to do it, we would have to have one of his colleagues come down. And they're actually asking, they would prefer virtual.

Ms. Evans: They prefer virtual?

Mr. Staranowicz: Yes.

Ms. Brown: I do not prefer virtual.

Mr. Ireland: Alright, let me try another one. If we have members who want to nominate themselves for Chair, why don't we allow that and take a vote on that. I mean, the first step right now with the by-laws, as it is, we put it in there for reason. Could we suspend it? Yeah, I suppose we could. But like I said, it

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could be six months from now and we're still having the same discussion. Are we going to vote on new by-laws to allow someone to serve more than two years? What if that fails?

Ms. Brown: I'm not suggesting that. My motion was to suspend the by-laws for tonight only for section 3-4. That was it.

Mr. Ireland: And any future person would have to go the two-year time limit?

Ms. Brown: Unless we did it again. Yeah, this is an unusual circumstance, I think. That's the only reason I'm suggesting it.

Mr. Ireland: Based on your comment, if there are folks who are new, even the new folks can get up to speed. You know, yeah, this is extenuating circumstance, we should have stability, but this isn't like the Board of Supervisors where you gotta be on your A game every night.

Ms. Brown: Actually, you do because we have no attorney. What I'm asking for is a variance.

Mr. Ireland: I'm on my A game like once every three or four months with this.

Ms. Evans: Well Jon, do you want to be Chair?

Mr. Panjshiri: It just says you can't serve two in the same office so it's not to say that you can't have a Chair who is newer to the BZA and then you can't have, if in this exact case, we want to say, you know, Keisha is our stability, can't be Vice Chair or you know, in another officer position that the new Chairperson, or whoever, couldn't rely on as a resource.

Ms. Evans: I think that's why Jon said if anyone else wants to be Chair speak up, nominate yourself.

Mr. Mowery: May I just know for clarity, who is term limited here. Is it only Kecia?

Ms. Evans: Yes.

Mr. Mowery: Okay. And neither Jon or Dana are term limited in their current positions?

Ms. Brown: I don't know. It says an officer.

Mr. Apicella: I think it's both...

Mr. Panjshiri: I've been reading it. It looks like it's all three officers. No, more than two in the same...

Mr. Mowery: Okay, so all three are ineligible under the current by-laws for their current positions, but could be rotated around in a different way and still achieve stability?

Ms. Evans: Correct.

Mr. Mowery: And that in that case, I would make a motion for Dana for Chair, Kecia as Vice Chair and Abraham as Secretary.

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Ms. Brown: Well actually I'm going to decline because I have some personal things coming up mid-year and that's why I did not want to be Chair. So, I respectfully thank you, that's flattering but I'm gonna...

Mr. Ireland: Can we do this by each position and then finish one and then start the others, maybe, because there may be multiple people who want to nominate themselves.

Ms. Evans: Yes. Let's do that. So, who like to nominate themselves as Chair? I'm like okay, so if no one wants to do it...

Mr. Staranowicz: You should just be asking for nominations for Chair.

Ms. Evans: Exactly, nominations for Chair. Okay. Alright, then I'll nominate myself for Chair.

Mr. Apicella: Again, the only way that's going to work is if we suspend the by-laws. I'm not saying you shouldn't be Chair or couldn't be Chair, I'm going to the issue of what our by-laws say which, again, Ms. Brown is the one that got us to put that provision in there.

Ms. Brown: I am not asking Ms. Evans to serve six terms and swap out.

Mr. Apicella: Let just research the issue between now and the next meeting, we'll see how we suspend the rules, if that's even possible, in the absence of having that provision in our by-laws. You will be Chair at the next meeting.

Ms. Evans: I totally agree with you, like, let's table this for, until what, the next month or the next meeting?

Mr. Staranowicz: Just because we don't have a case does not mean we cannot have a meeting.

Mr. Apicella: I don't want to meet if there's no case, so I'm saying the next time we have new business...

Ms. Brown: We can have our FOIA training, and that's why we would meet.

Mr. Apicella: You want to do it at the FOIA training?

Ms. Brown: I don't want to do that but we could add it to the agenda.

Mr. Apicella: Oh yeah, I'm not saying that we take the vote because that's not a public meeting anyhow.

Mr. Blaisdell: Technically it would be a public meeting if we are all there.

Ms. Evans: The FOIA training is not a public meeting.

Mr. Blaisdell: But at least three of us would be there therefore it would meet meeting required.

Ms. Brown: Yes, I definitely agree with you.

Mr. Apicella: I don't I don't think so.

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Ms. Brown: I just went to FOIA training last week.

Mr. Apicella: Another question we don't know the answer to. I'm not going to be at FOIA training because I've already been to FOIA training. I would ask that we do it at our next regular business meeting where we have I case.

Ms. Evans: I agree with that.

Mr. Ireland: I have another nomination for our Chair. Can I make another nomination? I nominate Abraham for Chair.

Ms. Evans: Okay.

Mr. Mowery: I'll second

Ms. Evans: There's a second. Those in favor?

Mr. Ireland: Did you say second? Who seconded?

Ms. Brown: I don't think it takes a second.

Mr. Ireland: Oh, that's right.

Ms. Evans: Those are in favor say aye.

Mr. Ireland: So, we have two nominations?

Ms. Evans: Yeah, I nominated myself.

Mr. Apicella: So, who's the other person? Nathan nominated himself?

Mr. Mowery: No. I seconded Abraham but I apparently there's no need for it, so therefore I did not.

Mr. Ireland: So, we have two nominations then, right?

Ms. Evans: And then, yeah, I nominate myself.

Mr. Ireland: No, I was gonna say are there any other nominations? Because it could be another personality that want to...

Mr. Apicella: I'm gonna say one more time per the by-laws. Unless and until we resolve that issue, and I'm fine waiting until the next meeting and it could wind up being Abraham and it could wind up being Kecia head to head. I would prefer to wait until the next meeting to see if Kecia can again serve as Chair rather than forcing ourselves to make a decision tonight. What is the urgency?

Ms. Brown: I'll second that motion. We defer this till the next business meeting. How about that? Sound agreeable?

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Ms. Evans: There's a motion on the floor. Steven motions to, for the election of officers to move to our next meeting. Dana, did you second?

Ms. Brown: Yes, I did.

Mr. Panjshiri: That for all of our officers, correct?

Ms. Evans: Yes, all of the officers. So, is there a discussion? There's no discussion.

Mr. Mowery: If I may, Madam Chair. I still think that it would require something exceptional for us to want to waive the by-laws and therefore I don't see a need to move to the next meeting.

Ms. Evans: Okay, so then those are in favor say aye. Those who are against say nay. Alright. So, the ayes got it. We table it for the next meeting. Alright. Motion to adjourn?

ADJOURNMENT

Mr. Apicella: Motion to adjourn.

Ms. Brown: Second.

Ms. Evans: Alright, there's a second. Those in favor say aye.

All members: Aye.

At 8:23 PM, Chairman Evans adjourned the February 27, 2024, Stafford County Board of Zoning Appeals meeting.