

In The Matter Of:
SPOTSYLVANIA BOARD OF ZONING APPEALS
V19-0002, Joseph Morgan and Dixie Morgan

February 18, 2020

Commonwealth Court Reporters, Inc.

540-372-6655

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COUNTY OF SPOTSYLVANIA
BOARD OF ZONING APPEALS
PUBLIC HEARING

Case Number:

V19-0002, Joseph Morgan and Dixie Morgan

A meeting of the Spotsylvania County Board of Zoning Appeals was held at the Marshall Community Center Auditorium, 8800 Courthouse Road, Spotsylvania, Virginia on Tuesday, February 18, 2020 at 7:30 p.m., before Colleen Good, Certified Court Reporter and Notary Public in and for the Commonwealth of Virginia.

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1 MEMBERS PRESENT:

- 2 Mr. Peter R. Kolakowski-Chairman, Lee Hill District
- 3 Mr. George M. Allen-Vice-Chairman, Berkeley District
- 4 Mr. Mark Stepongzi, Chancellor District
- 5 Mr. Larry Bramlette, Courtland District
- 6 Ms. Lynn Smith, Battlefield District
- 7 Ms. Nancy Biscoe, Livingston District

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9 MEMBERS NOT PRESENT:

- 10 Mr. Ronnie Hilldrup-Secretary, Salem District

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12 STAFF PRESENT:

- 13 Ms. Kimberly Pomatto, Acting Zoning Administrator

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1 P-R-O-C-E-E-D-I-N-G-S

2 PETER KOLAKOWSI: I'd like to welcome
3 everybody to the February 2020 Board of Zoning
4 appeals meeting. My name is Peter Kolakowski, I'm
5 the Chairman of the BZA, and we have here six of
6 our seven members. Unfortunately one of our
7 members is not feeling well this evening, so
8 Mr. Hilldrup is not here.

9 Our first agenda item is
10 announcements, and those announcements, I'd like
11 to welcome from the Battlefield District newly
12 appointment Ms. Lynn Smith. Welcome.

13 LYNN SMITH: Thank you.

14 PETER KOLAKOWSI: And also in the
15 Livingston District, Ms. Nancy Biscoe. Welcome.
16 And also Mr. Larry Bramlette, who represents
17 Courtland District has just been reappointed, so
18 welcome back.

19 LARRY BRAMLETTE: Thank you.

20 PETER KOLAKOWSI: I think that
21 concludes our announcements. Prior to us getting
22 into some of the actions of the agenda, we need
23 to, since Mr. Hilldrup is not here, and we may
24 need to have a secretary certify whatever
25 decisions we may make this evening, I would need

1 to have an acting secretary for this evening's
2 meeting and I would offer up Mr. Bramlette, since
3 he's just been newly reappointed, we make a motion
4 and I would entertain that motion for him to be
5 acting secretary for this meeting.

6 MARK STEPONGZI: I make the motion
7 that he be acting secretary this evening.

8 GEORGE ALLEN: Second that mention.

9 PETER KOLAKOWSI: Okay. Motion by
10 Mr. Stepongzi and seconded by Mr. Allen. Any
11 discussion? Seeing none, all those in favor say
12 aye.

13
14 (All Board Members responded in the affirmative).

15
16 PETER KOLAKOWSI: Seeing none
17 opposed, passes unanimously. Thank you.

18 Our next item on the agenda is the
19 approval of our BZA transcripts and meeting agenda
20 from our last meeting back in July of 2019. I
21 would ask the Board that with Mr. Hilldrup being a
22 full-time secretary, since he was present at that
23 meeting, that we postpone our review of those
24 minutes. I don't see anything pressing in regards
25 to that.

1 If there is no objection from the
2 Board -- is there any objection from the Board?
3 Okay, we will hold those over until our match
4 meeting.

5 Our next agenda item is the main
6 reason why we're here this evening, is to receive
7 a report as well as hold a public hearing in
8 regards to Case Number A19-0002-H. Clark Leming
9 and Joseph Morgan and Dixie Morgan case.

10 What I would like to do is, or the
11 Board's procedure in regards to doing this public
12 hearing is, one, we ask our administrator to
13 present the case, give us some background and then
14 what we do is ask the applicant to make a
15 presentation, that will be either Mr. Leming or
16 the Morgans.

17 And then what we will do is open the
18 public hearing and ask for those to come forward
19 and speak, those that want to speak for the
20 applicant and then after we hear those, we will
21 hear those in opposition to the applicant.

22 And what we ask you to do is when you
23 come to the podium, state your name, state your
24 address, please state the case number so we can
25 keep the minutes in accordance with what we're

1 doing, and please hold your comments germane to
2 the case and then we will proceed from that.

3 Ms. Kimberly, will you please present
4 to us the case and provide the background
5 information?

6 KIMBERLY POMATTO: Yes, sir. Thank
7 you, Mr. Chairman, members of the Board. Tonight
8 before you is appeal case A19-0002 Joseph Morgan
9 and Dixie Morgan.

10 The applicants request an appeal to
11 the Zoning Administrator's notice of violation of
12 Section 23-6.4.2 and 23-6.4.4 pursuant to Section
13 15.2-2311 of the Code of Virginia, and Section
14 23-3.6.1(a), a Spotsylvania County zoning
15 ordinance.

16 A notice of violation was issued for
17 unlawfully operating and --

18 LARRY BRAMLETTE: Let me just stop
19 you for a second. Can everybody hear her? Can
20 you talk just a little louder.

21 KIMBERLY POMATTO: I sure will.

22 A notice of violation was issued for
23 unlawfully operating an eating establishment,
24 carry-out fast food business as a non permitted
25 use in the Agriculture 3 district.

1 The appellants Joseph Morgan and
2 Dixie Morgan are the property owners of 7940 Rebel
3 Road, located in Spotsylvania County. This
4 property is approximately 1 acre in size, zoned
5 Agriculture 3, and servers as their primary
6 residence.

7 The property has no public road
8 frontage as it sits off of Partlow Road
9 approximately 890 feet and is accessed by a
10 private ingress, egress easement identified as
11 Rebel Road.

12 In May of 2019 the zoning office
13 received a complaint regarding an operation of an
14 eating establish known as the Dixie Joes Crab
15 Shack on the property.

16 Staff researched the complaint and
17 found that an eating establishment, carry-out fast
18 food as defined by County Code, was indeed
19 operating on the property.

20 The business specializes in the sale
21 of a variety of seafood and primarily operates on
22 the weekends between the months of April and
23 October.

24 Based on County records, no permits
25 have been issued or other significant affirmative

1 governmental acts authorizing any type of eating
2 establishment or other business to operate,
3 therefore on November 15th, 2019, a notice of
4 violation was issued for operating a non-permitted
5 use on the property.

6 The applicants are appealing the
7 Zoning Administrator's decision that they are not
8 a permitted use and contend that they have a
9 vested right to continue their operation.

10 So with -- at this point I will back
11 up and provide you some background information in
12 order to put all the facts into context tonight.

13 In 2012 the Morgans applied for, and
14 were issued, a building permit to construct a 12
15 by 16 foot accessory structure, a shed.

16 Zoning did not complete a review of
17 the permit as the Code and policy in place at that
18 time, based on the size of the structure, allowed
19 for an Agreement in Lieu of permit.

20 The Zoning Agreement In Lieu of
21 permit is a form completed by the owner
22 acknowledging that they agree to locate a
23 structure in accordance with the setback
24 requirements of the zoning district.

25 Subsequently to the building permit

1 being issued, there was an amendment which added
2 plumbing and electric and identified a cooking
3 area, walk-in coolers and a separate drain field
4 serving the accessory structure.

5 While the building department
6 reviewed the amended permit, there is no record
7 that the amended permit was reviewed or approved
8 by the zoning office.

9 The building permit was stamped
10 approved on -- excuse me. The building permit
11 issued was not approved or reviewed by the zoning
12 office and the stamped approved plan clearly
13 states no public uses or access allowed.

14 The former Deputy Zoning
15 Administrator, had provided -- excuse me. Let me
16 back up. I apologize.

17 While the building department
18 reviewed the amended permit, there is no record
19 that the zoning office reviewed or approved the
20 permit to the structure.

21 The issuance of a building permit for
22 an accessory structure allowed for only the
23 construction of the building. There is nothing in
24 the zoning ordinance which prohibits an accessory
25 structure with plumbing and electric to serve as a

1 cooking area on the property.

2 So in 2012 the Morgans were issued a
3 building permit to construct the building, but
4 that's it. There is no permit regarding the use
5 of that building.

6 In fact the approved building permit
7 plans, which were stamped approved on August 20th,
8 2012, there is a written note above the building
9 departments approval stamp which says no public
10 uses or access allowed.

11 The use of the building is the issue
12 at hand and there have been no permits issued
13 allowing a commercial use on the property.

14 In 2015 the zoning office received a
15 complaint regarding the crab business operating at
16 7940 Rebel Road. In response to the complaint the
17 former Deputy Zoning Administrator sent a letter
18 to the complainant indicating that the accessory
19 structure was legally permitted and the business
20 operation was regulated and licensed by the
21 Department of Agriculture.

22 The first component of this letter
23 which states the accessory structure was legally
24 permitted is accurate as the building permit was
25 issued.

1 The structure can be utilized to cook
2 crabs and or other food as designed. However, the
3 next statement related to the business operation
4 being regulated by the Department of Agriculture
5 provides no determination regarding the specific
6 permissibility of a specific use. It simply lacks
7 the necessary amount of detail required.

8 Now, as I previously stated, the
9 applicant is appealing the Zoning Administrator's
10 decision that they are a non permitted use and
11 contend that they have a vested right to continue
12 the operation based on the former Deputy Zoning
13 Administrator's 2015 dated letter.

14 Staff has thoroughly researched the
15 Morgan's vested right claim and determined that no
16 vested right exists based on Virginia State Code
17 and case law.

18 And I will also say that staffs'
19 determination related to the vested rights was
20 vetted by the County Attorney's office as well who
21 concurred with my decision.

22 At this time I want to clearly
23 identify what constitutes as a vested right. In
24 order for a Zoning Administrator's determination
25 to result in a vested right under Virginia Code

1 15.2.2307 it must satisfy three conditions as
2 outlined in 15.2- 2311(C). The person claiming
3 the vested right must carry the burden of proof to
4 demonstrate that he has met all three conditions.

5 The first is that they have a written
6 order for decision or determination by the Zoning
7 Administrator.

8 The second is that there are 60 days
9 from the decision or determination that has
10 passed, and three, they must demonstrate that a
11 material change in position was made in good faith
12 reliance on the Zoning Administrator's decision.
13 The appellants do have not have all three of the
14 required conditions.

15 First, they do not have a written
16 order requirement, decision or determination.
17 When vested rights accrue to a landowner as a
18 result of a significant governmental act, the
19 rights that vest are only those that the
20 government affirmatively acts upon and the
21 evidence to support the claims to those rights
22 must be clear, expressed and unambiguous.

23 This is the standard set by case law,
24 specifically the Board of Supervisors of Fairfax
25 County versus Cohn.

1 The building permit issued was not
2 reviewed or approved by the zoning office and the
3 stamped approved plan clearly states no public use
4 or access allowed.

5 The former Deputy Zoning
6 Administrator's letter states, this office has
7 investigated your complaint and determined that
8 the structure is a legally permitted structure.
9 This statement is clear and unambiguous.

10 However, the second portion of the
11 statement, with respect to the business, it is
12 regulated and licensed by the Department of
13 Agriculture. This statement contains no
14 determination. The statement is not affirmative,
15 clear, express and unambiguous regarding the
16 permissibility of a specific use and therefore
17 does not constitute a zoning approval.

18 Condition number 2 relates to the
19 passage of at least 60 days. This is the only box
20 which can potentially be checked by the
21 appellants. However, as I just presented, the
22 former Deputy Zoning Administrator's letters does
23 not constitute a zoning approval or determination.

24 Condition 3 requires that the
25 appellant demonstrate a material change in

1 position was made in good faith reliance on the
2 action of the Zoning Administrator.

3 The owner's position is that a
4 significant financial investment was made to
5 construct the building for this business operation
6 based on good faith reliance on the governmental
7 act.

8 As noted above, as previously stated,
9 the building permit for the structure was issued
10 in 2012 and not reviewed by the zoning office and
11 the approved plan stated no public uses or access
12 allowed.

13 The Morgan's investment was made with
14 the construction of that building after the
15 issuance of the 2012 permit. The former Deputy
16 Zoning Administrator's letter was issued three
17 years later, so while staff has already determined
18 that his letter was not a significant governmental
19 act, for argument sake let's assume that it did.

20 The owner's still do not have a
21 vested right claim as their financial investment
22 was made in 2012, three years prior to its letter.

23 In the appellant's application
24 materials, you will see they point to a couple of
25 other examples where the County made an

1 affirmative decision related to the Morgan's
2 commercial operation, and I'd like to speak to
3 those before I close.

4 The first is communication from staff
5 in 2019 in which staff stated that the use could
6 be permitted as a temporary use. This was a
7 letter sent by the Code Enforcement Officer during
8 the course of her investigation.

9 This communication was not a decision
10 or a determination made by the Zoning
11 Administrator. It simply documents what is common
12 practice during any code enforcement case in which
13 staff engages with citizens about potential
14 options.

15 Our goal is to always look for a way
16 to gain compliance with the zoning ordinance. The
17 code enforcement officer for this case was doing
18 just that, trying to identify options.

19 While the Morgan's did apply for a
20 temporary use permit, the permit was never
21 approved or issued. Ultimately staff was unable
22 to come up with any permit by right or other
23 option to allow the commercial use by right on
24 this property.
25

1 Secondly, the appellants indicate
2 that the former Deputy Zoning Administrator
3 verbally told them that their business was a
4 lawful agricultural use and they point to that as
5 his oral determination in order to make their case
6 for a vested right.

7 The appellant site case law,
8 specifically Lilly versus Caroline County to hold
9 that an oral decision of the Zoning Administrator
10 is subject to appeal requirements. However, the
11 Lilly case was specific in that it stands to
12 support one aggrieved by an oral determination
13 within the framework and context of an application
14 for specific relief.

15 In the Lilly case specifically, the
16 Caroline Board of Supervisors were granting a
17 special exception permit and during the meeting
18 the application was approved, the Zoning
19 Administrator opined that one of the uses, a radio
20 tower, was a by-right use in the zoning district
21 and therefore did not need the Board of
22 Supervisors to grant special rights.

23 At that meeting the Zoning
24 Administrator stated that this was a determination
25 that could be appealed to the Board of Zoning

1 Appeals, and the persons aggrieved by that
2 decision, which in that case were the neighbors,
3 were present at the meeting.

4 The important takeaway here is that
5 the oral determination was made during the special
6 use application process, which is the application
7 for specific relief.

8 That is not the case here for the
9 Morgans. There is further case law Vulcan
10 Materials versus Chesterfield County Board of
11 Supervisors that speaks to Zoning Administrator
12 oral statements as well.

13 The distinction with that case is
14 that the statements were not made in the framework
15 of an application for specific relief as was the
16 case with the Lilly versus Caroline.

17 For the Morgans to be approved --
18 aggrieved by the Zoning Administrator's decision,
19 the decision would have had to have prevented them
20 from doing something that they wanted to do since
21 they allege that they were told that their use was
22 legal, they were not aggrieved.

23 I will close by reminding the Board
24 of your powers and duties as dictated by State
25 Code. The applicant is appealing my determination

1 as the Zoning Administrator, that their carry-out
2 fast food eating establishment is not a permitted
3 in Agriculture 3 District.

4 Virginia Code Section 15.2.2309
5 states that the determination of the
6 administrative officer shall be presumed to be
7 correct and the appellant has the burden of proof
8 to refute such presumption of correctness by a
9 preponderance of the evidence.

10 This concludes my presentations and
11 I'm happy to answer any questions.

12 PETER KOLAKOWSI: Anybody have any
13 questions at this time for Ms. Pomatto? Seeing
14 none, I think we're ready to open the public
15 hearing. Declare the public hearing open and ask
16 the applicants and, presuming Mr. Leming, you will
17 be speaking on behalf of the applicant.

18 MR. LEMING: Yes, sir, that is
19 correct.

20 Good evening, my name is Clark
21 Leming. I'm here on behalf of the applicants --

22 PETER KOLAKOWSI: Mr. Leming, could
23 you make sure, because of the acoustics and those
24 of us that have some hearing issues, speak more
25 directly into the microphone, please.

1 MR. LEMING: Okay. Normally I don't
2 have any trouble being heard.

3 My name is Clark Leming. I'm an
4 attorney. I have been engaged in land use law in
5 this area for over 35 years. I have appealed over
6 100 Zoning Administrator's determinations to
7 various BZA's. Although I have appealed cases to
8 this BZA, they were resolved with the past Zoning
9 Administrator and with the Board and never reached
10 the BZA right here, so it's my pleasure to be here
11 before you this evening.

12 LARRY BRAMLETTE: Excuse me, sir,
13 could you state your address and the case number
14 so it will go into the record.

15 MR. LEMING: All right, sure. My
16 address is 233 Garrisonville Road, and the case --
17 in Stafford, Virginia -- and the Case Number is
18 A19-0002.

19 LARRY BRAMLETTE: Thank you.

20 MR. LEMING: Yes, sir. I also
21 appreciate, I understand you have made some
22 efforts to accommodate me in your schedule and
23 another hearing before you next month.

24 So I think it was a good idea not to
25 do both of these on one night, for you and me.

1 Now, another thing I did want to
2 bring to your attention, you do have one member
3 absent tonight, you probably are aware of this,
4 but the Code Section we're going to be talking
5 about tonight, 15.2-2311, contains a relatively
6 new subsection, it is D, and it specifically
7 states, any appeal taken pursuant to this section,
8 if the Board's attempt to reach a decision results
9 in a tie vote the matter may be carried over until
10 the next scheduled meeting at the request of the
11 person filing the appeal.

12 Now, as I think you know, normally a --
13 four votes are necessary to override a decision of
14 the Zoning Administrator, but this new code
15 provision does permit the applicant to request, if
16 there is a three to three tie -- and hopefully we
17 won't have a tie, but just wanted to bring that to
18 your attention.

19 Now, turning to the Morgans in 2011-2012,
20 Mr. Morgan had the idea of establishing a carryout
21 seafood restaurant, that was his area of expertise
22 and he had engaged in similar operations in
23 Stafford County. And I'll tell you in Stafford
24 County there are a number of crab shacks, most of
25 them are run by the Decatur family by the sides of

1 the road in this location, that location, not in
2 commercial zoning districts, but been there for a
3 number of years.

4 Now he and Mrs. Morgan, as good citizens,
5 first thing they did was to go to the County to
6 see what they needed to do in order to commence
7 this business and what permits would be necessary,
8 and their first stop was with the Deputy Zoning
9 Administrator. That's where they were directed
10 with the issues that were identified by some lower
11 Spotsylvania officials.

12 They explained their plan and were advised
13 that the proposed business was not regulated by
14 the County, but instead was regulated by the State
15 and that there would be no other permit other than
16 a building permit, which they applied for and
17 obtained, and you've heard that, no controversy,
18 but that's the direction that they were sent.

19 Now, there were no -- no secret about what
20 they were doing. I gave each of you a packet of
21 materials, and with my presentation I'm going to
22 bring your attention to a couple of things.

23 Now, on the application itself, I do not
24 see the word crab shack, but if you look at the
25 first item that I passed out to you, it's entitled

1 permit details, and this was their -- the tracking
2 system that the County uses, and you notice that
3 under details in the left-hand corner.

4 It describes the size of the shed
5 (inaudible) for cooking crabs, so that was from
6 the outset what this was to be utilized for.

7 Now, the application, the one that is
8 stamped, and this is actually in my appeal and in
9 the County package, now if I'm going to talk about
10 something that was both in my appeal package and
11 the County's package, I did not give you another
12 one, but I think probably most of you have looked
13 through the record and you're aware that there is
14 a drawing that is marked approved that sets forth,
15 lays out the rest of its -- it was prepared by
16 Mr. Morgan, and notably it says on its face, at
17 the top on the left it says cook area, on the
18 other side it says cooler box.

19 So again, consistent with the purpose that
20 they explained fully to the Zoning Administrator.
21 Now this passed all of the -- the permit was used
22 as Ms. Pomatto has indicated.

23 I want to call your attention to the
24 permit. Now you've heard about this agreement in
25 lieu, now, I never heard of that before. I don't

1 think it's in your ordinance, at least it's not
2 now.

3 So when this was brought to my attention,
4 I looked at it and she's correct -- set back some
5 things, but somebody at the County made the
6 determination that that was all that was necessary
7 for the zoning review.

8 Now if you look at Exhibit D, which is the
9 permit issued, the code compliance permit issued,
10 you'll see two boxes down at the bottom. There is
11 one for a building review and you'll see an
12 approval date and you'll see the building official
13 there, and then you also will see a zoning review
14 and an approval date for that as well.

15 I will tell you that in my experience in
16 every jurisdiction any time a building permit is
17 requested there is some form for zoning review to
18 see if what is being proposed is permitted.

19 Now, if Spotsylvania decided to do
20 something different in this case that wasn't the
21 Morgan's decision, but you will note that the
22 zoning review is part of the permit process and
23 there is a place for it and it's marked approved.

24 Now, as we will talk about later, that's a
25 pretty significant start, coupled with the fact

1 that it was the Deputy Zoning Administrator who
2 pushed them in particular directions and told them
3 what they needed to do to comply with Spotsylvania
4 law.

5 Now, the -- so the permit -- and the
6 Morgan's proceeded and they constructed their crab
7 shack. This is about a \$20,000 construction job,
8 and over the years with regard to construction and
9 materials and the cooking apparatus that is
10 necessary and the supplies, they spent well in
11 excess of \$50,000 over the entire period of time.
12 It's not all bunched up in front when the shed is
13 built, they're still spending thousands and
14 thousands of dollars each year buying seafood and
15 keeping their equipment modernized.

16 So we will come to that legal point in a
17 minute, but I want you to be sure that you know
18 that they're out there. They have spent money
19 from the outset and they've spent money all the
20 way through this process for the seven years that
21 the County has permitted them to operate this
22 facility.

23 Now, the business turned out to be very
24 successful and today they have been designated by
25 one of the local raters, the best carry-out

1 seafood restaurant in the Fredericksburg area and
2 the second best seafood restaurant overall, so
3 they have done well with their business.

4 Now the next thing that occurred that is
5 important is, it's a complaint that Ms. Pomatto
6 referenced, and that comes in 2015, and I think
7 you have probably already looked at the letter
8 from Mr. Roberson which is dated June 25, 2015,
9 and Ms. Pomatto has acquainted you with the
10 details, so the significance of this letter is
11 other than what she's indicated though.

12 What this does is to confirm what was
13 originally told to the Morgans, that the County
14 does not regulate this, that this is something
15 that is done by the State and they don't need any
16 County approvals. And he's telling the
17 complainant this, don't need anything from us to
18 do what they're doing, not our area. Okay.

19 Second time he has taken that position.

20 Now, we will go back to this whole
21 business of an oral determination in a minute when
22 we talk about the law, but let's get the facts out
23 there first.

24 So what happens here is that he is simply
25 reconfirming -- reconfirming where they started.

1 Now in relying on both of these things of
2 course the Morgans continue their business, they
3 were aware of this, and so they go on continuing
4 their business, spending their money, keeping
5 their place up, getting the equipment that they
6 need, buying the inventory that they need.

7 Now that brings us up to 2019 and another
8 letter from the County, another complaint and this
9 is one, as Ms. Pomatto indicated, comes from
10 Ms. Slingerland. I disagree completely about the
11 significance of this and we'll talk about the law
12 behind this in a moment, but what Ms. Slingerland
13 said to them, she doesn't say you're violating the
14 zoning ordinance.

15 She says, you can operate your business
16 with a temporary use permit that needs to be
17 applied for on an annual basis. That's what she
18 tells them.

19 So what do they do? They filled out a
20 permit, you know, how many days has lapsed since,
21 let's see, the 6th of June 2019, certainly more
22 than 60, so they filled out the application,
23 didn't hear anything else about it, didn't think
24 anything else about it until they got the
25 violation letter which comes in November after

1 this zoning official tells them that they can
2 operate their business with a seasonal permit,
3 though one more decision from the County, each one
4 of these things, and I'm going to explain why,
5 legally each one of these things is a decision or
6 a determination made by the County, there is no
7 magic about these things.

8 And we'll explain why the analysis that
9 you heard earlier is off on the wrong track all
10 together, with some other cases that somehow got
11 left out of this analysis.

12 Now, so what do the Morgans do? The
13 County has told them what they can do, what they
14 need, reconfirm that two times, and then in 2019
15 tells them, well, all you need now is a seasonal,
16 a temporary permit, you can get that and go ahead
17 with your business, so then what?

18 Now, fortunately the General Assembly
19 and -- let's see, I'm now going to talk about, and
20 you may have this before you, but I wanted to be
21 sure, the second handout that I gave to you is the
22 section, the only section that this appeal is
23 based on, and that is 15.2-2311(C).

24 Now, it has nothing to do with SAGAs or
25 with vesting or 2307, it is a form of vesting

1 statute.

2 I'm going to talk to you about a case
3 where the Virginia Supreme Court talks about this
4 Code Section and what it means and how you apply
5 it, but the important thing about -- the important
6 thing is that there are many vesting statutes, at
7 least six that I can think of just off the top of
8 my head.

9 There is 2307 that Ms. Pomatto spoke
10 about, the SAGAs, that's zoning vesting, and that
11 protects from amendments to the zoning ordinance
12 once a project is started but not finished. It
13 comes in to play with big developments.

14 Now that came into play in 1998. The
15 General Assembly codified common law, they've
16 always had a zoning vesting test, but it was a
17 common law test, but 2311 comes about in 1995 and
18 exists up until 2010 completely independent of the
19 other vesting statute that Ms. Pomatto mentioned.

20 Now, other vesting statutes, there are at
21 least four that I can tell you about right now,
22 15.2-2297 and 2298, basically they say that if you
23 build a public improvement, if you proffer to
24 build roads, transportation improvements, then the
25 rules, the ordinances can't be changed to deprive

1 you of your ability to go forward with the project
2 if you've made those proffers, so you're vested
3 for that project.

4 And then with regard to subdivisions, Code
5 Section 15.2-2260 is the subdivision vesting
6 statute, and that says you submit, after a final
7 preliminary plan has been approved, a best
8 preliminary plan, you submit something for final
9 plat (inaudible) for one year, you're good for
10 five years and then you can extend it beyond that
11 with other plats submitted.

12 In addition to that, 2261 is the vesting
13 statute for site plans. So there's a whole bunch
14 of these out there. We're dealing with one
15 tonight, 2311, and the significant language is
16 contained there at Section C.

17 And if you haven't, if you haven't looked
18 at it, it is very, very straight forward, and it
19 simply says that where there is a written order
20 requirement, decision or determination, any of
21 those (inaudible) made by the Zoning Administrator
22 or other administrative officer, including
23 Mrs. Slingerland, including Mr. Roberson who is
24 the Deputy Zoning Administrator, it's not subject
25 to change, modification or reversal by any Zoning

1 Administrator or other administrative official
2 after 60 days have elapsed from the date of that
3 decision requirement, and so forth, where the
4 person aggrieved has materially changed his
5 position in good faith reliance on the action of
6 the Zoning Administrator or administrative
7 officer.

8 Now we're going to talk about what that
9 means, too. Now, the only exceptions to that,
10 after 60 days, if you have one of those, the only
11 exceptions to that are fraud or malfeasance.
12 That's it.

13 If it was a mistake, it's a mistake, and
14 we're going to look at a case where that was
15 exactly what happened that the Virginia Supreme
16 Court decided in 2017.

17 Now, back to the relationship again,
18 because the County has brought up two statutes.
19 One we're proceeding under 2307, and talked about
20 SAGAs, Significant Affirmative Governmental Acts,
21 those are covered over at 2307.

22 Now, what happened, and probably the basis
23 for the confusion, in a case that I took to the
24 Virginia Supreme Court, actually defended at the
25 Virginia Supreme Court, called the Crucible, what

1 happened in that case is that I had a Zoning
2 Administrator's determination to move forward with
3 a particular project and then the County changed
4 the ordinance so they couldn't do it, and they
5 didn't have a site plan approved, so I said the
6 Zoning Administrator's determination is a SAGA, an
7 ordinance change, that was the issue of that case.

8 The Circuit Court agreed with me, and
9 said, yes, it's a SAGA, they get to move forward
10 with the project, but then the Supreme Court said,
11 wait a minute. It's not on our list, not on the
12 list, there is a list of six specific things at
13 2307 that are SAGAs, the Supreme Court says it's
14 not fair, it's not in our case law, so it's not
15 analyses.

16 Well, then what happened, the General
17 Assembly, at my behest largely, they changed the
18 statute to include a seventh SAGA which is a
19 Zoning Administrator or other administrative
20 officer's determination as to a specific use or
21 density.

22 Now, it does cross reference 2311, but for
23 this reason, if I qualify, if I've got one of
24 these 2311 analyses and I do have that protection,
25 if the ordinance changes, if there is an amendment

1 to the ordinance, I can bring that determination
2 or decision over to 2307 and say now it's a SAGA
3 because the General Assembly says so. That's the
4 only relationship between them.

5 Now, so that's why there may be some
6 confusion, but to talk in this context on this
7 appeal about SAGAs and 2307, 15.2-2307 is simply
8 wrong, dead wrong.

9 Now, I do want to talk to you now about
10 what the Virginia Supreme Court has said about the
11 Code Section that is at issue tonight.

12 Let me be sure I'm keeping up with my
13 handouts here, yes, the next one is a Supreme
14 Court case -- this was not discussed, it's not in
15 your packet, it wasn't discussed by Ms. Pomatto,
16 apparently not found by the County Attorney's
17 office or somebody, but this is the Board of
18 Supervisors of Richmond County versus Janie L.
19 Rhoads. It's a 2017 opinion.

20 Now, what this was about, a guy went in
21 for, you'll never guess it, a building permit to
22 build a garage. He wanted a two story garage. In
23 fact that was suggested to him that he build a two
24 story garage.

25 So he gets the review, and yeah, they look

1 at the whole thing, they look at the building
2 plans. There is a zoning check, you know all for
3 this project and they approve it. And the guy
4 builds his two story garage and then the County
5 comes back and says, oh, no, I'm sorry, that's a
6 violation. You are not -- we don't permit two
7 story accessory structures under the ordinance.
8 You're going to have to take it down. Well, wait
9 a minute, you approved it, you gave a, you signed
10 off on this thing.

11 So what -- the Zoning Administrator took
12 an interesting position. The Zoning
13 Administrator, well, I didn't really read the
14 whole thing. I'm not sure I understood it was
15 supposed to be two floors.

16 Now, of particular note, here is what the
17 Virginia Supreme Court is saying about this
18 case -- and what happened is that the Circuit
19 Court overruled the BZA and said, yeah, it's a
20 mistake. They keep it under 2311(C).

21 And that is the only statute utilized in
22 this case, the only one right -- and it's right on
23 point. And here is what the Virginia Supreme
24 Court says, and this is Judge Goodwyn, who writes
25 the majority of the land use cases in Virginia.

1 And he says the plain language of Code
2 Section 15.2-2311(C) indicates that the statute is
3 intended to eliminate the hardship property owners
4 have suffered when they rely to their detriment on
5 erroneous or void zoning decisions.

6 Now what he means by that is that before
7 1995 when this Code Section was adopted, if a
8 building permit was issued contrary to the
9 ordinance, it was considered void, nothing could
10 be done about it.

11 So this is a remedial statute. This is
12 the General Assembly saying this, this is not
13 something that we can accept, you know, the
14 private property owners, homeowners shouldn't have
15 to deal with mistakes to their detriment when they
16 rely on the County government to tell them what
17 they need to do. The County is the expert.

18 Now, he goes, he goes on to say the
19 remedial purpose, the remedial purpose of 2311(C)
20 is to provide relief and protection for property
21 owners who detrimentally rely in good faith on
22 erroneous zoning determinations and who would
23 otherwise suffer loss because of their reliance
24 upon the Zoning Administrator's error.

25 We've got a whole business that has been

1 built over the past seven years here, and
2 Spotsylvania County has weighed in three times on
3 what they're doing.

4 Now finally, Justice Goodwyn, and this is
5 very important, because you're hearing oh, it's
6 got to be clear, it's got to be precise, there
7 can't be any question about it, but here is what
8 the Virginia Supreme Court says: It is irrelevant
9 that the decision or determination evidenced by
10 the approval, which is another word here, makes no
11 reference to the height of the garage. The
12 approval didn't say anything about, okay, the
13 height is okay, or to the Zoning Administrator's
14 intent to waive the requirements. It doesn't
15 matter, all you had was an approval like what we
16 have here.

17 Such specificity is not, not, not required
18 by 15.2-2311(C). The issuance of the approval
19 here clearly constitutes a decision, a
20 determination by the Zoning Administrator of
21 building plans complied with the zoning ordinance.

22 I have a case like that right now down in
23 Colonial Beach where they approved a subdivision
24 plan back in 2014, a construction plan. And now
25 they're saying, well, there is a problem, we did

1 something wrong.

2 And I'm saying no, huh-uh, you approved
3 it. You signed off on the plan, you're bound by
4 it, same Code Section, because implicit in these
5 decisions, you know, we have -- the County would
6 like to confine their determinations to some
7 little, to small bucket and say well nothing else
8 is a determination, but that's not the way the law
9 works no matter what the County says the
10 determination is.

11 If you have a Zoning Administrator or an
12 Administrative Official looking at a set of facts
13 and applying them and checking to see what is
14 applicable from the zoning ordinance, that's a
15 determination, even if a complaint analysis, a
16 complaint comes in, you know it's a complaint
17 pertaining to a zoning ordinance, you have to
18 decide whether or not there is a violation of the
19 zoning ordinance and that's what they have done
20 here.

21 Now, so that is the governing case, and
22 that of course controls the circumstances here.
23 It doesn't deal with any, with most of what Ms.
24 Pomatto indicated. It's simply not part of the
25 analysis.

1 Now, in addition to that, we have the
2 issue of a material reliance. So lets talk about
3 that for just a moment. Incidentally, over at
4 2307, the vesting for changes in the ordinance
5 statute, they use the term -- it's a three-part
6 test -- and they use the term there, you have to
7 incur obligations or substantial expenses. That's
8 the language they use over there.

9 Applicable here though, the General
10 Assembly simply chose, materially changed his
11 position in good faith reliance on the County
12 determination or decision. That's all.

13 Now, the Stafford Circuit Court, Judge
14 Sharp, a couple of years ago, and I included this
15 case -- that's the next case in your packet -- and
16 you'll see the opinion by Judge Sharp.

17 And his analysis that is pertinent -- now
18 this was a case, this was a junkyard case, and
19 three times the junkyard received complaints and
20 the Zoning Administrator investigated it and said,
21 well, no, we think it's grandfathered, there is no
22 violation, three times.

23 But then the County changed its mind and
24 said, no, no, it really is a violation. Now, it
25 may have been but on three occasions, if you read

1 the circumstances of this case, the Zoning
2 Administrator had said it's not, it's not in
3 violation. So -- and the junkyard had gone on.

4 Now the issue came up, and let me give you
5 the status of this case, Judge Sharp found that
6 they were bound by those investigations and the
7 determination in the context of those complaints,
8 they were bound by that and they couldn't get
9 beyond it, okay.

10 And 2311 is the very statute that he uses,
11 no other statute, not 2307, no SAGAs, just 2311.

12 Now, here is what he says about -- the
13 County said, well, they didn't really materially
14 change their position, you know, because in this
15 case they were non-conforming use, if they expand
16 or change their position, that's an (inaudible) --
17 Judge Sharp didn't buy that.

18 Here's what he said: Given the testimony
19 of Mr. Newton and others, the Court is satisfied
20 by preponderance of the evidence that in the
21 acquisition of further materials, that is junk,
22 over the years upon the property, the petitioner
23 materially changed his position in good faith on
24 the County determinations which he indicated were
25 communicated to him (inaudible) complaints.

1 The Zoning Administrator told him what the
2 result was, that was verbal. So he relied on
3 that, went on with his junkyard, continued to buy
4 things for the junkyard. Every time they've had
5 interaction with the County they get another green
6 light, so they go on with their business. They go
7 on advertising. They go on purchasing, enhancing
8 their customer base, doing all those things in
9 reliance on the Counties' green light that has
10 been given to the Morgans now, three times. So
11 that's the Newton case.

12 Now, the Newton case was appealed by
13 Stafford County. The County just fights so hard
14 about things like this. I mean, almost they'd
15 rather the landowner suffer than admit some kind
16 of defeat, but the case was appealed. It was
17 rejected by the Virginia Supreme Court.

18 Judge Sharp's case, he says -- this is a
19 15th Circuit case, it governs Spotsylvania County.
20 Spotsylvania is in the 15th Circuit, so this is
21 precedent for Spotsylvania County as of course are
22 the Virginia Supreme Court cases.

23 Now, what do we make of this phrase no
24 public uses. Well, actually, you know, I looked
25 at that. I have no idea what exactly that means,

1 but what I did was to -- is when the ordinance,
2 and I looked at the definition of public use.

3 This is the last thing in your package.
4 I'm sorry, I'm skipping ahead by two, but it seems
5 relevant now.

6 Public use, this facilities last use,
7 means any area, building or structure held, used
8 or controlled exclusively for public purposes by
9 any department or branch of the Federal
10 Government, Commonwealth of Virginia or the County
11 Government under the direct authority of the Board
12 of Supervisors without reference to the ownership
13 of the building or structure and so forth and so
14 on.

15 It's nothing to do with this. Now, this
16 was in place, this definition was in place in 2012
17 when that stamp was made. So what does that mean?
18 I have no idea.

19 It certainly doesn't have anything to do
20 with what a public use is under your ordinance, so
21 I don't -- I would not attribute any great
22 significance to that -- I would add, this is not a
23 place where people are coming in and sitting down.

24 They simply come, and on the outside of
25 the building they pick up their seafood orders.

1 You know, that's the only public interaction that
2 occurs here.

3 Now, let me, if I -- let me walk you just
4 back through the analysis here and then I will be
5 done I promise, and I appreciate your patience.
6 It's a fairly complicated case, probably more so
7 than some that you get.

8 Now, going back to 2012, first stop, go to
9 the County, Deputy Zoning Administrator, someone
10 that makes zoning determinations all the time.
11 The Deputy Zoning Administrator tells them the
12 sale of seafood is not regulated by the County,
13 but they need only a building permit, and they do
14 that.

15 Now, the discussion about the Lilly case,
16 the circumstances that are described there are
17 generally accurate, but that case has been cited
18 many times since then for the proposition simply
19 that a zoning determination doesn't have to be
20 made in writing, okay.

21 It can be made orally. Now how do you
22 determine it? In the Lilly case there were
23 certain circumstances, doesn't have to be in a
24 public meeting. It can be done anywhere as long
25 as it can be proven.

1 It's the same thing as an oral agreement.
2 It's a contract, if you can prove what the
3 elements are of the agreement that was made.
4 Well, in this case what do we have to support it?

5 First, I did include in your package, just
6 if there is any confusion about that, this is an
7 e-mail from Ms. Slingerland to Ms. Pomatto, and
8 what it says, this is the next to the last, or
9 third from the last thing in your packet and just
10 a single sheet.

11 And what it says, this is not great print,
12 but we got this from a Freedom of Information
13 Request, and what it says is that -- going to the
14 second sentence there, ongoing complaints about
15 Dixie Joes Crab House, everybody knows it's a crab
16 house, both Rick and Troy advised them that no
17 permit is required for the use, no permit -- she's
18 stating exactly what Mr. Roberson told them and
19 what he put in his 2015 letter. Nothing is
20 required. We don't get into it, not our business,
21 not our jurisdiction. You don't need anything
22 from the County.

23 So they are reiterated that that's what
24 they have always been told. It's considered an
25 agricultural use and she goes on to say non

1 jurisdictional for zoning. No zoning decision to
2 be made.

3 So now the picture is starting to come a
4 good bit clearer, you know, we have something that
5 is alleged to have been said. It is repeated in
6 the 2015 letter. It's referenced -- and this
7 email is 2019 -- it's referenced just in 2019.
8 Here's what they have been told all these years
9 by -- and Mr. Tignor's reference, too -- by
10 Mr. Tignor and Mr. Roberson. Okay.

11 So now in 2015 it happens to occur in
12 writing, but you don't have to go there. You
13 don't have to go to 2015. What happened with all
14 of these surrounding circumstances and facts and
15 the behavior of the parties, what happened in 2012
16 is just as much a decision, a determination about
17 the Zoning Ordinance, specifically the lack of
18 applicability of the Zoning Ordinance. No
19 jurisdiction, not our call.

20 Now, there is one other thing that I did
21 include in your package because Ms. Morgan got in
22 touch with Mr. Roberson, she said, look, you told
23 us we could do this stuff. And she's put together
24 an affidavit and that's the next to the last item
25 in your package and he was very sympathetic with

1 her, and, and this is Mrs. Morgan relating to you
2 what Mr. Roberson said.

3 And she says that he told her that the
4 position he and Mr. Tignor took in 2012 and 2015
5 was right and it's still right.

6 Now, she said, well, please go and tell
7 them that. He says in the last, number 5 here,
8 that he's been advised not to get involved, and
9 was -- would appear only if required to do so by
10 subpoena, that was a little like impeachment
11 hearing, so he's out there, but he doesn't want to
12 show up. Unless you make him show up. You know,
13 these guys do have subpoena power, you know that.

14 So there is Mr. Roberson still, so far as
15 we know, based on what Ms. Morgan has said, is
16 still adhering to his position.

17 Now, the money. Every week, and I just
18 want to -- I do not want to put written
19 documentation into evidence of their finances and
20 their tax returns and all of that information, but
21 I do want to put some things into evidence.

22 I asked them to go and calculate, because
23 we're talking about materially changing their
24 position. What does that mean, if it's money. It
25 comes down to some money, changing their position,

1 going this way rather than that way, continuing to
2 do that.

3 Remember what Judge Sharp said, all you
4 got to do is continue with the business. That's
5 material reliance on the decision, okay. That's
6 the Court telling us how to interpret that
7 provision.

8 Now, and we went back just a few years,
9 but just as an example, in 2016, they extended
10 over \$100,000 just for food, that's how much food
11 they purchased. Now they sell it, so they get
12 money back.

13 In 2017 that cost was up to over \$130,000,
14 and in 2018 it was up to \$180,000, seafood gets
15 more and more and more expensive. So it's not
16 necessarily the quantity but the cost of the
17 seafood that they're buying it at.

18 Now, in addition to that, the expenses of
19 keeping up the place, and the materials that they
20 need for their business; the pots that they need;
21 the cleaning that is unnecessary. Because
22 remember, they do have, I think I mentioned this,
23 but I think you know, they do have a permit from
24 the health department to do this.

25 The health department came out and says,

1 now -- (inaudible) as far as the Department of
2 Agriculture and this whole thing, the role of
3 Department of Agriculture is to be sure that
4 they're not getting undersized seafood, that it's
5 legit. So they can conduct these surprise
6 investigations to be sure that we're not taking
7 out of the bay seafood that is not ready, or going
8 over the limit, that sort of thing. So there is
9 an apparatus for that.

10 Now, on the expenses alone in 2016, and I
11 did these all after 2015, but we can go back and
12 do the same thing in 2012, '13 and '14, \$7,500 in
13 expenses and not just for seafood but just
14 expenses in 2016, \$24,000 in 2017.

15 Now these are all from their tax returns,
16 that tell me the expenses that you reported to the
17 IRS. In 2018 over \$20,000. So there is serious
18 money at issue here and they -- there can't be any
19 question that they are relying on what the County
20 told them they could do and has sat by and
21 permitted them to do now for seven years knowing
22 full well what was going on.

23 Now, I submit that the purpose of this
24 Code Section, as Justice Goodwyn stated, is to
25 protect people like for Morgans from mistakes that

1 are made, not in bad faith if there was -- you
2 know, maybe Mr. Roberson is wrong, and I'm hard
3 going to hazard a guess (inaudible) he still
4 apparently thinks he's right, but it doesn't
5 matter under 2311 because the specific purpose of
6 that statute, as the Supreme Court has told us, is
7 to prevent their having to bear the weight of the
8 County's mistake, and the County's mistakes here
9 are threefold.

10 1, told them they could do what they
11 wanted to do when they started, pointed them in a
12 certain direction, told them what they needed, you
13 know, told them nothing else was necessary, number
14 1.

15 2015 same issue comes up again, stamped it
16 again, yes, okay, we don't get involved, not a
17 zoning issue. No applicability.

18 And then even as late as 2019
19 Ms. Slingerland is not telling them that they
20 can't do what they're doing that it's prohibited
21 by the ordinance. I'm a little confused with the
22 presentation that was given there. She's telling
23 them all they need is a temporary permit, which
24 they applied for. And then, boom, the zoning
25 violation.

1 So that's what the statute is all about,
2 and I ask you to uphold the appeal and overturn
3 the violation. It's inequitable, it's legally
4 wrong. It's contrary to the law in Spotsylvania
5 County and in Virginia and we analyze that, the
6 legal analysis that you have received here is
7 incorrect.

8 It has nothing to do with these other
9 statutes and SAGAs. This is a 2311 case just like
10 the Rhoads case and like Judge Sharp looked at in
11 the Newton case. 2311 period.

12 Okay. Thank you all very much and I'm --
13 thank you for your patience and letting me just
14 sort of go on. I'm happy to answer any
15 questions --

16 PETER KOLAKOWSI: Thank you,
17 Mr. Leming. Unlike the impeachment we don't have
18 a time limit upon the applicant, but I want to
19 open this, but I wanted to open this, any
20 questions from members of the Board?

21 GEORGE ALLEN: George Allen. I have
22 just one question. Does the State Code for areas
23 that are zoned as agricultural, and this would be
24 under Section 15.2-2288.6, and it deals
25 specifically with how agriculture areas would be

1 regulated, and part of it says that no locality
2 shall regulate preparation and sale of food in an
3 agricultural district.

4 MR. LEMING: Yes, sir.

5 GEORGE ALLEN: Have you researched
6 that?

7 MR. LEMING: Yes, sir. And I
8 think -- it says food. I mean, seafood is not
9 specifically called out, but, yes, I think there
10 is a basis under that Code Section, and that's
11 probably what Mr. Roberson was talking about, that
12 particular Code Section.

13 You may be aware that there are
14 prohibitions about getting involved in
15 agricultural activities of all kinds today;
16 wineries and other activities that occur in
17 agricultural districts, events and things. The
18 County stays out, but I think it's a plausible
19 reading of that statute to include, seafood is
20 food, there is no question about that, sir.

21 PETER KOLAKOWSKI: Other questions?

22 If I may, let me ask a couple of
23 questions. One is kind of a follow-up to
24 Mr. Allen's question. I believe that section also
25 states that in agriculture that Counties can

1 regulate in their agricultural districts, the
2 sale, and you know, household use of agricultural
3 products, but it's not for public sale or to be --
4 basically the way I read it, it to be a
5 manufacturer of it for being then resold. Is that
6 a correct reading of those words?

7 MR. LEMING: Well, Mr. Kolakowski,
8 you'll note that I did not reference that statute
9 in my argument or in the appeal itself, that's
10 because I do think it is somewhat ambiguous, but I
11 don't think it's what this case turns on.

12 I think this case turns on a strict
13 interpretation of 2311(C) and the case law, and
14 that's all that the BZA needs.

15 Now, if that statute is found to be
16 helpful in analyzing this, then by all means --
17 but you don't seem to think it's helpful, at least
18 as Mr. Allen did I think -- so I don't have a
19 definitive answer for you on that. I did not rely
20 on it.

21 PETER KOLAKOWSI: Well, kind of
22 follow-up is that when the Morgan's asked for and
23 received permission to build a building, the
24 assumption is that they knew that they were in an
25 A3 District --

1 MR. LEMING: Yes.

2 PETER KOLAKOWSI: -- is that correct?

3 MR. LEMING: The assumption is and --
4 but you have to add to that very quickly I think
5 that they're lay people. They went to the experts
6 to find out what they needed to do and were told.

7 So if it's -- I don't think it's like
8 ignorance of the law in the sense of a criminal
9 act. You know, there was another case that I had
10 in Spotsylvania County, another Supreme Court
11 case, called Glazebrook, and it's a 2003-2004 case
12 and that was when Spotsylvania had this massive
13 downzoning, everything got downzoned, and a group
14 of property owners retained me and we challenged
15 it.

16 The Court, throughout the zoning on
17 this basis; they said that the public notice which
18 went through every piece of the ordinance that was
19 being changed went on for pages, they said that
20 public notice was not comprehensible for the
21 layperson, that a layperson shouldn't have to go
22 out and do legal research to understand what an
23 ordinance says or what is being proposed here.

24 Zoning ordinances are complicated and
25 that's why -- and so this is, this pattern has

1 repeated itself so often in my business. Somebody
2 does the logical thing, the good faith thing to
3 do, here's what I want to do. I'll go talk to the
4 County about it see what I need to do, and that's
5 exactly what happened here.

6 So I don't think you can infer
7 anything like ignorance of the law, not an excuse,
8 I'm not arguing that, they're the experts and they
9 rely on what the experts in the County told them
10 to do, who should have and may have known their
11 business, for all I know at this point.

12 But the issue is not whether or not
13 at this point whether Mr. Roberson was right or
14 not. The issue is that he did tell them what they
15 needed to do and that the County didn't regulate
16 it and they relied on it.

17 PETER KOLAKOWSI: Mr. Bramlette?

18 LARRY BRAMLETTE: Yes, sir, now I
19 have a question after your comments. Would you
20 agree that the applicant got what he requested in
21 the building permit?

22 MR. LEMING: Only insofar as the
23 building permit is concerned, you know, that's on
24 a separate track from the rest of what was
25 necessary in order for them to proceed.

1 The other thing that was necessary,
2 actually that is one piece of it. And the other
3 thing that was necessary is an understanding as to
4 what else they may have needed, and Mr. Roberson
5 said nothing else was needed.

6 So yes, they got their building but
7 that was the province of the building permit. Now
8 I do think it's not insignificant that your
9 building permit includes right there on the permit
10 that is used year after year, a zoning review.

11 Now how the County chooses to do that
12 zoning review -- but I can tell you I have had a
13 large number of cases where somebody goes in for a
14 building permit and the County says, no, you can't
15 do that. That's not a permitted use and
16 (inaudible) district.

17 LARRY BRAMLETTE: That was my point.
18 The building permit was requested in 2012. It was
19 listed what they wanted to do. It was approved,
20 and it was reviewed after the building was done
21 and so forth, as that's what you asked for, that's
22 what you got. That's what is permitted in the
23 agricultural zone --

24 MR. LEMING: Well, I -- I think it's
25 too narrow simply because that wasn't their

1 starting point, and if the County had told them,
2 oh well, in addition to the building -- they
3 didn't go to the Code Compliance Department, they
4 went to your Zoning Administrator to find out what
5 they had to do for goodness sake. He doesn't run
6 the Code Compliance Department, but he says that's
7 what you need to do. Okay. And that's all that
8 you need to do.

9 Now if he had said to them, well, in
10 addition to the building permit you're going to
11 need this, you're going to need this, this and
12 this, but he didn't.

13 He said you don't need anything else.
14 We don't regulate -- and that's the, maybe the
15 most important point, it's not like he just took
16 it to a certain point and stopped. He
17 affirmatively stated that the County doesn't
18 regulate this, not our business, not our
19 jurisdiction. And you have three pieces of
20 evidence in front of you that stand for that
21 proposition.

22 One is what they were told
23 originally, and they're, well they can tell you in
24 their testimony, the second is the 2015 letter.
25 But third, you have a 2019 email that says that's

1 what both Mr. Tignor and Mr. Roberson told them,
2 that they weren't regulated, didn't have to do
3 anything else.

4 What are they supposed to do? I mean
5 they don't have -- you know, they were told, they
6 went to the County to find out what they needed,
7 they were told, should be the end of the story.

8 But that's exactly what this statute
9 is about to prevent people like that from getting
10 hurt who have come in, do what they're supposed to
11 do and then go off and do it and then the County
12 changes its mind. Oops, made a mistake guys.
13 Sorry, well, I know you spent a lot of money --
14 what is the County going to do, is the County
15 going to move them?

16 You know, the era that you're talking
17 about ended in 1995. Go back and look at what
18 Justice Goodwyn said. Justice Goodwyn said, that
19 all came to an end, the voidness of a zoning
20 permit erroneously issued, that's over now,
21 because of 2311. Those days are gone --

22 LARRY BRAMLETTE: But there was no
23 error in the zoning permit. You agree with that?

24 MR. LEMING: I think it's -- but as
25 far as that goes it's irrelevant to what happened

1 with regard to zoning and use.

2 That is where they were given a whole
3 different direction. You don't need anything. So
4 the fact that part of it worked as it should be
5 expected to work is fine, but it's only half of
6 the story. And if they had been told to do
7 something else they would have done it, but they
8 weren't.

9 Your Zoning Administrator gave them,
10 what appears to be now, erroneous information and
11 not just once. So that's what they're stuck with.

12 Now, I think the law requires that
13 you not permit that to happen and that the County
14 not permit that to happen. This statute doesn't
15 just apply to our County. What is to be gained
16 here, you know? As I say, is the County going to
17 move them? Going to pay for their move to another
18 location where they can do this because of the bad
19 information the County gave them?

20 PETER KOLAKOWSI: Mr. Stepongzi has a
21 question.

22 MR. LEMING: Yes, sir.

23 MARK STEPONGZI: Yes, my question is
24 to the Zoning Administrator. We were provided
25 with a sheet that is listed as permit details, and

1 the details on the first line it says shed 12 by
2 16 with 10 by 16 screened area for cooking crabs.
3 Would that entry have to have been put into the
4 system back in 2012?

5 KIMBERLY POMATTO: So this is the
6 amended permit, and so it would appear that they
7 added this detail on an amended permit to describe
8 the use of the shed for cooking crabs.

9 But what I'll get back to is that
10 there is nothing violating the zoning ordinance
11 for the Morgans to have their shed with their
12 kitchen, with their cooking area, which a cooler.
13 They can cook crabs there. There is nothing in
14 violation of the ordinance by having that shed
15 with that kitchen.

16 The violation is the commercial use.
17 It's the eating establishment, and so they had the
18 permit to construct the shed. They constructed
19 the shed, they can cook out of the shed. You
20 know, I'm giving you an example of food trucks in
21 the county.

22 We have business owners throughout
23 the county that own food trucks that have similar
24 operations where they're cooking at their home.
25 They get a home occupation permit.

1 It's an administrative by-right
2 permit in all of our residential districts. They
3 get a home occupation permit, they cook their
4 food, and they go to an appropriate offsite
5 location for the commercial aspect, for the sale
6 of those goods. Same thing with folks who have a
7 business and they go to the farmers' market or
8 something like that.

9 There is nothing wrong with having
10 the accessory structure there with the kitchen.
11 It's the eating establishment on the property.
12 It's specific to the use.

13 PETER KOLAKOWSI: Mr. Leming --

14 MR. LEMING: Yes, sir, if you
15 would -- thank you. It's not an eating
16 establishment. It's a pickup establishment. They
17 don't eat there.

18 KIMBERLY POMATTO: Mr. Chairman,
19 eating establishment is defined in the County
20 Code, eating establishment carryout fast food
21 means any establishment whose principal business
22 is the sale of foods, frozen desserts or beverages
23 in ready to consume individual servings primarily
24 for off premisses consumption including all eating
25 establishments providing drive-through services.

1 They are a carryout food
2 establishment as advertised.

3 MR. LEMING: The point is it's not a
4 restaurant.

5 MARK STEPONGZI: Mr. Chair, my
6 question was, was that line entered into the
7 system back in 2012? And I got my answer.

8 PETER KOLAKOWSI: Does the Board have
9 any other questions of Mr. Leming?

10 Does that conclude your presentation?

11 MR. LEMING: Yes, sir. I would
12 just -- with regard to the permit, this is also
13 why simply we got the FOIA, all of the dates on
14 here are 2012 where it says cooking crabs.

15 I don't see any later entries or any
16 indication that that would have come at some later
17 point in time. As I said, it was certainly on
18 their part, there was no intent to say -- to pull
19 the wool over anybody's eyes and not say what they
20 wanted to do. It was their business, they started
21 it immediately upon what they believed was their
22 approval. Didn't grow into something. But yes,
23 but that does -- yes, sir.

24 PETER KOLAKOWSI: Thank you. Thank
25 you, Mr. Leming.

1 MR. LEMING: And thank you for you
2 all's courtesy.

3 PETER KOLAKOWSI: We want to hear all
4 the facts.

5 Now for the public hearing, again, I
6 would like to ask first of all those that are in
7 favor of the applicant's position that, please
8 come to the microphone and state your name, your
9 address and the case that we're discussing this
10 evening.

11 So we have a list of people here but
12 we didn't have it for or against, so those that
13 are for, would the first person please come to the
14 podium.

15 REBECCA HENRY: I have one question
16 for ya'll.

17 PETER KOLAKOWSI: Please, name,
18 address --

19 REBECCA HENRY: Okay. My name is
20 Rebecca Henry, my address 10403 Bluebird Lane,
21 Spotsylvania. The accordinance (sic) is A190002.

22 PETER KOLAKOWSI: Thank you,
23 Ms. Henry.

24 REBECCA HENRY: So over seven years
25 you're trying to tell me that the County of

1 Spotsylvania took revenue from these people for
2 business and now they're trying to be shut down
3 for something irrelevant? I have never seen box
4 food go out there, I see seafood.

5 And the next question is they should
6 be able to fix whatever the County overlooked and
7 it looks to me the County looked over a whole lot
8 and now they're paying the price for two people
9 complaining.

10 It's sad county that we live in if
11 you're going to take a young couple and disgrace
12 them and take their business. Thank you.

13 PETER KOLAKOWSI: Thank you,
14 Ms. Henry.

15 KATHY GODLEY: Good evening, my name
16 is Katherine Godley, 4649 Courthouse Road,
17 Mineral, Virginia. My district is Livingston.

18 I have been going to the Morgans
19 business for years to get my seafood. They serve
20 the citizens in this county. They do an excellent
21 job, their establishment is always clean, they're
22 more cleaner than a couple of the restaurants that
23 are right up the road here.

24 I don't think it's right what
25 Spotsylvania County has done to these people and

1 has commanded this meeting that shouldn't even
2 have happened, and I hope that ya'll take into
3 consideration what's being done to these people
4 because I feel like they being railroaded, and for
5 ya'll to do the correct thing and give these
6 people their business the way it should be.

7 I don't want to have to go to
8 Fredericksburg, Stafford to pickup my seafood. I
9 enjoy getting off of work, call Dixie, get my
10 food, go home, open a bottle of wine and sit down
11 and eat it, rather than go to an establishment and
12 sit there and drink my wine, eat my seafood and
13 get on the road and drive home. Which is better?
14 Thank you.

15 PETER KOLAKOWSI: Thank you.

16 JOHN SHIPE: How you doing, my name
17 is John Shipe. I live at 5801 Paynes Lane.
18 Excuse me fellas, I'm just ordinary me. Let me
19 put on my glasses. Let's see here, 190002.

20 PETER KOLAKOWSI: Thank you.

21 JOHN SHIPE: I have been getting my
22 seafood from Dixie Joes. They have been very
23 good, clean, respectful, well mannered. It's, you
24 go in and go out respectfully. I can't see how
25 anyone could have a problem in the world with

1 these people.

2 Every time I pass there, I get the
3 yummy for my tummy. I can't understand why we
4 have an American run mom and pop business, and we
5 don't see this anymore, and why we're railroading,
6 you know, this in the wrong direction. I don't
7 think it's right.

8 You know, I can tell you some other
9 A3 zoning issues that I have encountered on the
10 end of Paynes Lane that the Board, the Zoning
11 Department does nothing, and that's definitely
12 trashy.

13 These people here have a nice run
14 legal business and they should be allowed to
15 continue to do what they're doing because
16 everybody in the whole county and the surrounding
17 counties love them and love their food. Thank you
18 very much.

19 JAMES GODLEY: My name is James
20 Godley. That's my wife that spoke before me. I
21 live at 4649 Courthouse Road, Mineral, Virginia,
22 Livingston District at Lake Anna. The number is
23 V19-0002.

24 I would like to stay over the years I
25 do get to appreciate what they have delivered, the

1 service that they do for us. I like to think that
2 if I had a business open and I went to somebody
3 that was supposed to know what they're doing, that
4 I could get you to tell me what to do and I could
5 depend on it, and that's, I'm sure is what these
6 people done because they're good people.

7 When I go down there, my wife sends
8 me down, I get food, there is a road there, I
9 always run down it 10 miles an hour because I'm
10 always leery if there is a kid at a house or so.
11 It can't be nothing about people's feeding food.
12 In my (inaudible) people coming through here at
13 different times like July 4th it might be a little
14 heavier there, but these are good people and they
15 deserve to keep that business open.

16 And I don't want to go to Caroline, I
17 don't go to hell's place or run to get something
18 that I can get right here at the edge of
19 Spotsylvania. It's all really (inaudible) for me
20 at Lake Anna there and I appreciate what they're
21 doing, and I appreciate what you all are doing,
22 too, and I appreciate you all helping them. Thank
23 you.

24 PETER KOLAKOWSI: Thank you. Any
25 others wish to speak in support of the applicant?

1 DANIEL BOSTON, JR.: Hello, my name
2 is Daniel Boston, Jr. I live at 102036 Tower
3 Road, Unionville, Virginia. I'm here for case
4 A0019.

5 First of all I'd like to say I'm a
6 small business owner myself. I have a
7 construction company, a Class A license. I pay
8 workman's comp and liability insurance. I'm also
9 a farmer. I take care of my cattle, worm them,
10 make sure they have all their shots and try to
11 offer a good product to the public, that's what
12 Americans do.

13 This family here runs a small
14 business, too, they work very hard at it and they
15 did everything that they thought was in the right
16 to get their business going and that's what makes
17 Americans, and I ask that you please rule in favor
18 of their business. Thank you very much.

19 PETER KOLAKOWSI: Thank you.

20 TERRY FITZGERALD: How you doing,
21 ladies and gentlemen. My name is Terry
22 Fitzgerald. I live at 7211 Millstream Drive,
23 Spotsylvania, Virginia. I don't know what
24 district it is, but I have been to the
25 establishment, very clean, very clean.

1 You've ever been to any seafood
2 places you know if you let it sit around and stink
3 and the smell you get from them, very clean
4 business, been there multiple, multiple times. I
5 passed cars going in and out, but I've never seen
6 nobody on the gravel road, dirt road, no sides,
7 nothing, you know, do the speed limit and it's a
8 very, very reputable business and very good people
9 and I think it's wrong what is getting done to
10 them. I think you go in their favor and let the
11 business keep going on.

12 PETER KOLAKOWSI: Thank you.

13 TERRY FITZGERALD: Thank you, sir.

14 BETTY COX: Good evening. My name is
15 Betty Cox, and my address is 4001 Pinebrook Court,
16 Partlow, Virginia. I'm here for case A190002-8.

17 I've heard all these people speak on
18 behave of the Morgans and they do have a wonderful
19 establishment. My question is, if someone comes
20 to you for advice and you give them advice, would
21 you stand behind that? I know I would because I'm
22 a teacher, well, a retired teacher, and I've had
23 plenty of students come up and ask me for help for
24 suggestions on how to write a paper, for
25 information and how to do something. It would be

1 horrible for me to give them advice then they
2 write a beautiful paper and me to tell them I'm
3 sorry, you got an F because you did not do this,
4 or it's not up to what I expected.

5 So I really hope that you think on
6 what these folks have gone through. They have
7 asked for guidance. They have asked for help on
8 what the next step is and they have been
9 railroaded. Thank you.

10 JESSICA LEIGH BOLINKSY: Good
11 evening, ladies and gentlemen. I'm Jessica Leigh
12 Bolinsky. I live at 7211 Millstream Drive in
13 Spotsylvania myself. The number A19002H.

14 I have been sitting here tonight
15 listening to you, listening to the attorney,
16 considering everything that I have learned
17 throughout this process of the Morgans and their
18 business, not quite sure exactly what is going on
19 as far as the adversity to the property did they
20 move in next to the Morgans after the business has
21 been established? What exactly is the issue? I'm
22 not sure of that, but what I did sit here tonight
23 and learn that is these people did what they were
24 told to do by the government of the County.

25 You are the professionals, you guide

1 us as citizens to do the right thing. They built
2 a business, this is their livelihood, what now I
3 ask you are they to do?

4 Are they to go transport themselves
5 to another county, do they go out to the road to
6 sell their crabs? Okay, we as citizens count on
7 our County officials to guide us to do the right
8 thing.

9 What I heard tonight is that these
10 people followed everything by the book, okay,
11 their plans instituted a kitchen, their plans
12 instituted a porch.

13 I have been there several times, it
14 has been nothing but clean. People have been
15 nothing but courteous as you come in and out of
16 respect to the neighbors and their properties,
17 yes, this is a mini subdivision if you will, not
18 that I like that word, that's why I'm here in
19 Spotsylvania.

20 These people built a business, what
21 has happened after that in these few years is not
22 to their fault of their own. That is what I sat
23 back there and I listened to and I learned. This
24 gentleman, their attorney, spoke very eloquently
25 stating a lot of facts regarding to statures (sic)

1 and that sort of thing, which is way above my
2 head, but bottom line, these people built a
3 business and a respectable one.

4 They followed the rules. They filled
5 out their paperwork, even paperwork that sounded
6 to me like it was just, we'll just do one more
7 step, keep going. Now you have to do this, oh,
8 well, wait, wait, wait. Let's just do one more
9 thing.

10 How far do they need to go to hold on
11 to their livelihood? They have been forced at
12 hand to employ a lawyer, where do they get that
13 money? Who's giving that back to them? Thank
14 you.

15 PETER KOLAKOWSI: Thank you.

16 Anyone else wish to speak in support
17 of the applicant? Seeing no one else to rise, is
18 there anyone here that wishes to speak in
19 opposition to the applicant's case?

20 JULIE DEEVERS: Good evening, I am
21 Julie Deavers, and yes, I was the initial
22 complainant. My address is --

23 PETER KOLAKOWSI: Would you talk into
24 the --

25 JULIE DEEVERS: I'm Julie Deavers. I

1 was the initial complainant for 2019. My address
2 is 6808 Partlow Road. The Case Number is
3 A19-0002.

4 I appreciate that the customers love
5 Dixie Joes, that's great. It's a clean
6 establishment, they enjoy their crabs, they're the
7 best seafood in town, they're the best restaurant.
8 I get all that, that's great.

9 That has nothing to do with all, that
10 has nothing to do with my property getting
11 vandalized, has nothing to do with the fact that
12 they have no road frontage. It has nothing to do
13 with the fact that they go through my private
14 property to get down there.

15 So the road is an ingress egress,
16 it's not a shared driveway. They do not have
17 permission to have 200 cars a day going down it.
18 It's my property, my husband's property, ours.

19 The ingress, egress is for three
20 parcels back there, one was a trailer, one was the
21 property that this young couple has bought, and
22 then Dixie Joes.

23 And I know there is a ton of law with
24 agricultural, my understanding was that you have
25 to have 5 acres, you actually have to have -- if

1 you're doing food it has to be something that you
2 grow, but you can't use it for public consumption.
3 There is so many details that I could go into with
4 that.

5 You guys already have all that in --
6 I know that, but I have written letters to
7 Mr. Kevin Marshall, I have talked to Ms. Pomatto
8 and she has been very helpful through the whole
9 thing. I have consulted an attorney.

10 First I'm going to read something
11 that my attorney wrote. If I may verbatim read
12 what he wrote.

13 PETER KOLAKOWSI: Could you just,
14 please, get a little closer to the microphone.

15 JULIE DEAVERS: Is that better?

16 PETER KOLAKOWSI: Yes.

17 JULIE DEAVERS: Okay. Zoning
18 ordinances are put in place to not only place
19 limitations and restrictions on the use of
20 property by its owners, but are also put in place
21 to protect the owners of surrounding or adjoining
22 properties for the nuisances caused by the misuse
23 of property. I believe the job of the Zoning
24 Administrator is to enforce the zoning code.

25 Ms. Pomatto is doing a wonderful job

1 of enforcing that in my opinion. She has brought
2 up many, many points and I understand some of
3 their points as well.

4 So when I bought the house, we were
5 not informed that there was a business there. We
6 bought the house to 2014. We were not told by the
7 realtor that there was a business establishment
8 there. We soon found out.

9 I did work with them for a while. I
10 was a stay-at-home, mom so over the summer I
11 worked with them, got paid under the table, cash.

12 I worked there for about two and a
13 half years, and over even the two and a half years
14 that I worked there my husband and I had
15 conversations with them, starting then, which
16 would have been in 2015-2016 about the traffic and
17 how much of a nuisance it was and how bad it was
18 getting, and mind you back then it was still
19 growing. It wasn't like it is now.

20 And on their Facebook page, which
21 they do have pictures of customers sitting and
22 seating at the establishment, but neither here nor
23 there. Sorry.

24 The conversations were made in great
25 detail about the traffic just flying by the house

1 and at the time the road from Partlow Road back to
2 their property was one single lane. Only one car
3 could go in and one car could go out, and once
4 they got struck there was no place to go except
5 for in my grass.

6 So over time we agreed to widen the
7 driveway. We erected a fence, paid for the entire
8 thing, they did help pay for the gravel for the
9 second part of the driveway, not the front, that
10 was just to keep the cars off of our driveway.

11 Even from Partlow Road through, I
12 guess the first, I'm not good with distances, lets
13 say seven car lengths, only one car can go in and
14 only one car can come out.

15 Now, when you're coming in from
16 Partlow Road and going into the driveway, there is
17 a line of cars. Traffic is stopped both ways.
18 You cannot, the visual, I guess, space that you
19 have to be able to come out of the driveway is not
20 very good. There is, like (inaudible) you can't
21 see very well, they used to have a sign right on
22 the Rebel Road sign, you couldn't see the sign
23 that we allowed them to keep there for a very long
24 time, and it was kind of blocking the -- so I
25 personally saw four accidents coming into the

1 driveway and going out, where cars were rear ended
2 or one would pull out and get side smashed. I saw
3 four of them myself, and mind you I'm not home all
4 the time, so I'm sure there is a lot more than
5 that.

6 So I spoke with the County regarding
7 if there is that much traffic shouldn't there be a
8 turn lane or some kind of regulation for that. I
9 brought up so many points over the years, but
10 again going back to the conversations with Joey
11 and Dixie and I was telling them, expressed our
12 concerns over and over and over about the traffic
13 coming in and out.

14 We had a car, a truck get sideswiped,
15 my carport has been sideswiped, my fence has been
16 hit twice.

17 The last straw was my son was
18 walking, you have to understand with the privacy
19 fence when you first come up the driveway all you
20 see is my privacy fence, and that's where only one
21 car can come in and come out.

22 At the end of that privacy fence is
23 my carport where I park my personal vehicle. So
24 my son was walking behind my carport, behind my
25 vehicle, still in my driveway, car was coming this

1 way, car was coming this way.

2 So this is only one lane, this car
3 pulls over behind my carport where my son was
4 standing to let this car go back. My husband had
5 to grab my son and yank him out of the way, that's
6 not okay, on my private driveway.

7 So that was the last straw, so then
8 we tried to speak to them about putting in speed
9 bumps, reasonable request, nothing drastic,
10 nothing too high or too crazy, which is, the
11 previous owner that used to own their house tried
12 to do the same thing, and at that -- it got ugly.
13 We spray painted to come out and (inaudible) the
14 marks that we were going to put there, it got
15 really ugly after that.

16 So then I went and removed their --
17 and I had already talked with a lawyer at this
18 point -- that is when I went and removed their
19 signs from my property.

20 They have absolutely no road frontage
21 whatsoever to have any business back there, they
22 have one acre, and you guys are the zoning, let
23 you guys handle that part, but to me that makes
24 absolutely no sense.

25 And actually and Mr. -- I'm so sorry

1 I forgot -- their lawyer --

2 MR. LEMING: Leming.

3 JULIE DEAVERS: Mr. Leming pointed
4 out their expenses for 2011 and so on for food.
5 2011 was 130,000, jump to 2018 it's 180,000, so
6 you can imagine how much traffic has increased
7 just by that. I mean that's just like the one
8 small portion of it.

9 To me that's common sense, when
10 you're outgrowing the space that you're in, which
11 they even admitted many, many times that they
12 should move out of respect for my property they
13 should move, but they didn't want to pay the
14 overhead.

15 They were going to -- talking about
16 they don't want to have to go to another county to
17 go get their food, well they had an opportunity to
18 rent right there at Snell and right across from
19 your neighbors knowing full well that they should
20 have done one of two. They continue to this, so
21 hence, why we are where we are.

22 I have a reasonable expectation to
23 have a good quality of life at my own house. I
24 have a reasonable expectation to have my son be
25 safe in my own driveway. Does that mean that my

1 son can play in the driveway? No because it is an
2 ingress egress, but it wasn't in the driveway. He
3 was in my parking spot behind my carport, my
4 personal vehicle.

5 PETER KOLAKOWSI: Does that conclude
6 your statement?

7 JULIE DEAVERS: I could keep going,
8 but if you want me to stop, I'll stop.

9 PETER KOLAKOWSI: Thank you very
10 much.

11 JULIE DEAVERS: Thank you.

12 PETER KOLAKOWSI: Anyone else wish to
13 speak?

14 TROY DEAVERS: Hello, my name is Troy
15 Deavers. I live at 6808 Partlow Road, Case Number
16 A19-0002.

17 I'm going to start out agreeing with
18 everybody that is here to support Dixie Joes and
19 that they are a great seafood place, 100 percent.
20 Good food, very clean.

21 Joey was actually a very close friend
22 of mine for many years, and I'm very sad that it
23 really had to come to this, but when my private
24 property, my carport was hit, my red truck was
25 sideswiped, my son was almost hit, injured or

1 killed, my fence has been hit a couple of times.

2 It's not for here, it's for later, I
3 have endless hours of video surveillance, some
4 before the fence was installed but I spent \$8,000,
5 when I heard that everybody, they have a vested
6 right to stay in business, the vested right is at
7 my expense and my other neighbors expense also.

8 \$8,000 on a fence. I wake up one
9 morning, a little late actually, getting some
10 coffee, my sliding glass door, car sitting right
11 here, all the way up right in front of my sliding
12 glass door, people coming in, people coming out,
13 people can't go nowhere.

14 People that come every now and again,
15 they don't see what I see, I live there. I
16 just -- stuff started getting damaged, I asked
17 nicely, hey, let's put some speed bumps in, they
18 don't see it. I call down there and complain,
19 ain't nobody going 30 miles an hour down the road,
20 yeah, they are, when you can see a dust cloud,
21 they're all the way at the end, they don't see it.

22 4th of July these people come in,
23 they've been drinking, not all of them, most of
24 them are good people, most of them I know.

25 I was born and raised in Spotsylvania

1 County my whole life, never been -- been right
2 there, Partlow, Virginia my whole life.

3 I am a good old boy, I love a good
4 old boy business, it's fine, but a good old boy
5 business and their good old boy permits that they
6 got, and the verbal permits they got, those days
7 are gone.

8 And we talked a little bit about my
9 wife writing a letter to Kevin Marshall, you talk
10 about Mr. Roberson, a lot of these people, it was
11 good old boy stuff.

12 I know these people, I know that -- I
13 know just stuff and it is what it is, is it their
14 fault, probably not, probably not Joey's fault,
15 but I hired Steven Judy he started writing Ms.
16 Pomatto.

17 He's talked to Kevin Marshall, he's
18 talked to other county people and it was a sad day
19 when I had to do what I had to do, it really was.

20 Me and Joey were very close. We were
21 hunting buddies, very close, but when people --
22 when I tell somebody my truck was just hit, when I
23 tell somebody my kid was almost just hit -- matter
24 of fact, when I called down there and said my kid
25 almost got hit, I was called a liar and I was just

1 trying to start shit.

2 700 feet of that driveway from
3 Partlow Road to the T intersection, belongs to me.
4 I pay taxes on it, okay. I widened the driveway,
5 they paid for the gravel, I built an \$8,000 fence,
6 no problem. I let them put their signs out front
7 no problem, but just -- when my stuff starts
8 getting, when people start complaining about my
9 wife's bus being at our own house, on our driveway
10 (inaudible) I'm just not going to deal with it and
11 the son was the last straw.

12 My nextdoor neighbor to the right of
13 me, if you're looking at my house from Partlow
14 Road, Allen and them to the right of me, which the
15 edge of the right-hand side of the driveway starts
16 their property, their fence is roughly three to
17 four feet off their property, ruts all on their
18 property because cars can't go around each other.

19 It is an as-is easement, which I
20 have, it's an as-is easement. It's an ingress,
21 egress easement, it is not a shared driveway.

22 I pay the taxes on it, it's my land.
23 If I want to put speed bumps I know that I can
24 because my lawyer says that I can and I know that
25 if I apply with what the code is, I can. I can

1 change the name of the road, it's mine. I pay
2 taxes on it.

3 And if you all do decide to overturn
4 this, I will then go forward with the burden of
5 easement which it is a huge burden to me, it's a
6 huge burden to my neighbors, the only person it's
7 not a burden for is the people all the way up
8 there making the money, which is great, wonderful,
9 everybody needs to make money.

10 I'm not going to say anything
11 negative at all about Joey and Dixie, I do know
12 some other things, those may come out at a later
13 date, I'm not going to just because I try to be a
14 little more classy than that.

15 I'm just not going to get into that.
16 I do like Joey and I wish, I really do wish them
17 the best. Let's see here -- and just how they
18 spend money all year long on their business, I
19 spent money all year long repairing their business
20 ruts, gravel, I've put gravel -- they have put
21 gravel, but I spend money all year long, along
22 with them to -- from the mess. They don't see the
23 cans, the bottles. I'm not the cleanest person in
24 town, but it's my property. If somebody throws
25 stuff out on the ground, I got to pick it up.

1 It's not mine. It's my driveway. They have a
2 right to go to their house and that's it.

3 If they get out and they walk around,
4 they're trespassing, which I did file a -- we did
5 have to file a thing on them because Dixie kept
6 coming up there and pulling signs and stuff on my
7 property, my front yard, so I had to file a thing
8 on them. They're not allowed to wonder around
9 over there no more. If they do I'm calling the
10 law.

11 They say it's not their property.
12 It's an easement for them to get to and from.
13 It's not a shared driveway at all. I pay the
14 taxes on it. It belongs to me.

15 And the next part of the driveway
16 belongs to my neighbors over here, same deal.
17 It's theirs until it gets to their property. It's
18 not shared, it's theirs. They pay taxes on it.
19 The boundary lines are simple and they are there.

20 So, with all that being sad, I wish
21 them the best. I just want a good life and I want
22 my kid to be safe. I don't want my stuff to get
23 hit. I've had stuff stolen, there are hundreds
24 of -- let's just say on the 4th of July, which I
25 know it's more than this, 150 bushels of crabs,

1 that's 300 trips, that's not including their fried
2 seafood they're selling, their crab cakes, their,
3 you know, all this other stuff, you're talking
4 hundreds and hundreds of vehicles a day.

5 When I first moved in the 20 or 30
6 cars a weekend, that was actually tolerable, but
7 now on really any weekend, they're busy now,
8 they're big dogs on the block. I'm glad for them.
9 Move right down the street and pay \$1,000 a month
10 rent, don't make me pay for shit on my own
11 property getting fixed. Thank you all, have a
12 good day.

13 PETER KOLAKOWSI: Thank you.

14 KATELYN KEEFER: Hi, I'm Katelyn
15 Keefer and I live at 7944 Rebel Road in
16 Spotsylvania, Virginia. 19-0002.

17 I just bought the house that is one
18 of the three houses on Rebel Road in August, and I
19 can attest that they have great seafood. I have
20 bought from them, I have talked to them, but my
21 problem is nobody sees what we see every single
22 day.

23 I can't even let my dogs out without
24 a car driving past so fast that they're going to
25 get hit. I have texted Dixie about it. She has

1 apologized, thank you, but this is my property. I
2 own three acres, the driveway and land on the
3 other side, so in that case my dog can go anywhere
4 on our property without having to be worried about
5 getting hit.

6 Also, on my grass, there have been
7 marks from cars driving so fast, and it was just
8 raining, and they have no care in the world,
9 people have pulled into my driveway because they
10 can't get by.

11 I've already talked about moving from
12 the property because I absolutely hate the amount
13 of traffic that is there every single weekend, and
14 I have only seen four months of it. Thank you.

15 PETER KOLAKOWSI: Thank you.

16 KATELYN KEEFER: Oh, I also didn't
17 know the business was there when I bought it
18 either.

19 PETER KOLAKOWSI: Is there anyone
20 else that wishes to speak?

21 DOLLY BARTLEY: My name is Dolly
22 Bartley. I live at 6013 Wickindon Street,
23 Fredericksburg, Virginia 22407, Case Number
24 A19-0002.

25 Bear with me, I'm a little nervous.

1 I am Dixie's twin sister, Dixie's identical twin
2 sister, so I know her better than anyone here.

3 I'm just going to start off by saying
4 that I lived on the property, in the Deavers
5 house, I grew up there. I also lived on the
6 property as an adult.

7 I can't imagine what these people are
8 going through having lived there and playing
9 outside as a child, my daughter playing outside as
10 a child. I feel sorry for these people because
11 they cannot have that normal life in the rural
12 dirt road that we grew up on.

13 Secondly, Dixie claims to be an
14 upstanding business owner, but she does very
15 little. She claims to do everything legal, but as
16 we know, as family, friends, former employees,
17 that's not the case.

18 I was the one that told her after
19 five years that she had to pay business taxes.
20 For the first five years of her business she was
21 not paying business taxes and she was paid cash,
22 and all of her employees can attest to that.

23 I would like Dixie to show records of
24 where she is pumping out her tanks, her waste
25 tanks, actually pumping them and paying a company

1 to do.

2 I would like them also to show where
3 they are taking their dead crabs and dumping them.
4 I know from a little investigation that Livingston
5 is the only dump that they are permitted to bring
6 those crabs to in that kind of volume. Livingston
7 has no record of their business or their names,
8 I've checked into it.

9 They have been dumping at all area
10 dumpsters around Partlow. They have been dumping
11 at Hams Ford Creek, the residents there put signs
12 up saying please stop dumping your dead crabs in
13 our creek.

14 Those of us, I know from Joey himself
15 telling me he was dumping the dead crabs. I know
16 from Dixie they weren't paying taxes.

17 I know from, let's see, well, let's
18 just jump to the support from her customers. I
19 agree with everyone else that they have great
20 seafood. I've bought seafood there. I've been
21 there. They're not just a carryout restaurant, it
22 is an eat-in place. I actually brought her
23 several tables and chairs, and if you look at
24 their seafood page, you'll see all the eatery out
25 there.

1 They have outgrown the business.
2 We've had this discussion before. She has
3 admitted that they have outgrown the business and
4 that she didn't want to pay rent and that it was
5 convenient because her house is on the property,
6 she gets up, she walks nextdoor to the building, I
7 get it, but it's not fair to the neighbors.

8 It's not fair to what she's putting
9 them through. The speed bumps, when my dad was
10 alive and he put speed bumps in Dixie and Joey
11 went out there and dug them up. They do not like
12 speed bumps and they only want things their way.

13 Neighbors I know have tried to work
14 with them and they do not work with anyone. It's
15 their way or no way. They are selling not only
16 crabs but shrimp, fried foods, seafood baskets,
17 it's all on their menu, it's all on their page.

18 If you go to their Facebook page
19 you'll see all the tables out there, the chairs,
20 people eating out there, you will see all of the
21 fried foods they sell without a fried food permit.

22 And again, it's all with (inaudible)
23 and Mr. Roberson, it's all hearsay, with Dixie
24 it's always they told me this.

25 I know just from experiences with

1 Dixie that she doesn't always tell the truth. I
2 have proof of that here, that Dixie doesn't tell
3 the truth and you want to talk about money? Where
4 did she get the money? I have proof here where
5 Dixie got some of the money and it wasn't
6 honestly, and I have proof so I think I can speak
7 of it, it's money she stole from my parents. How
8 she had power of attorney over my parents, all the
9 money she stole from them, I think this is
10 relevant because they claim to be upstanding
11 citizens and claim to be following the law, but
12 that's not the case. I am her identical twin
13 sister and I am testifying to all of this, of
14 knowing this and I also have proof to it if anyone
15 would like it to back up what I'm saying.

16 PETER KOLAKOWSI: Does that conclude
17 your --

18 DOLLY BARTLEY: One more thing. As
19 they ask where -- again, where was she getting the
20 money. One, that she stole the money and the
21 other is I know how much money -- I know how much
22 money that they have. I have it right here.

23 LYNN SMITH: Mr. Chairman, I think,
24 aren't we getting a little off topic here?

25 DOLLY BARTLEY: If you want the proof

1 I have it.

2 PETER KOLAKOWSI: -- thank you. Is
3 there anyone else that wishes to speak about
4 the -- yes, ma'am?

5 JENNIFER MARTIN: Do I have to sign
6 in to speak?

7 PETER KOLAKOWSI: No, it's just a
8 guide to help us to see how many speakers we have.

9 JENNIFER MARTIN: Okay. Good
10 evening. My name is Jennifer Martin. I live at
11 13417 (inaudible) Brooks Lane, Spotsylvania. I
12 live in the (inaudible) district.

13 I didn't know if I was going to come
14 in here and speak. I wanted to hear both sides.
15 I listened for hours at your last board meeting
16 regarding zoning before the sanctuary county
17 meeting that you had. Thank you guys for that by
18 the way. I have had bushel of crabs from them --

19 PETER KOLAKOWSI: That wasn't us.
20 That was the Board of Supervisors.

21 JENNIFER MARTIN: Sorry. It was,
22 okay. So anyways listened to past ones where, you
23 know, you have to go through the County to get
24 building permits, you have to have plans drawn up
25 and whatnot.

1 I've listened to both sides. There
2 is no turn lane that goes into this business which
3 would make it a safer, it's listening to them
4 about the egress -- that's their property. I have
5 a similar situation where I live, I live on a
6 private road out by Lake Anna, my proposal is part
7 of that road, and there is several houses that we
8 all live there full-time.

9 We have people that live close to the
10 lake that rent. Now the business that comes
11 through there is nothing near, as the crab
12 business but it's enough to be annoying with
13 people, boaters, vacationers, partiers and
14 whatnot.

15 And I'm thinking about their quality
16 of life here, and also he was representing some of
17 these stories about people that had businesses in
18 place, this might have been 20 or 30 years ago,
19 but they just started their business in 2013.
20 I've been in this county since 2005.

21 What happened to obtaining proper
22 business permits? Are we going to set the
23 standards for everybody else? Am I going to go
24 and build a building on my property, I got the
25 greatest place to eat crabs right by the lake, am

1 I going to start boiling them and saying come to
2 my house but for a fee and then turn around and go
3 to the County and say well, you gave me permission
4 to build that building.

5 You're setting a standard today if
6 you approve this. Somebody is going to come back
7 and look at you guys and say, well, they approved
8 it for them, you better approve it for me because
9 I've had that building on my property. That's all
10 I have to say. Thank you very much.

11 PETER KOLAKOWSI: Thank you. Anybody
12 else wish to speak in opposition to the
13 petitioner, the applicant? Hearing none, before I
14 close the public hearing I give the opportunity to
15 the applicant to briefly provide a final statement
16 for us.

17 MR. LEMING: Thank you, Mr. Chairman.
18 I get the hint. In the same way that all of the
19 accolades you heard about how good the business
20 is, how clean it is, how good the food is, what
21 great business people they are, in the same way
22 that that is irrelevant, the legal issue before
23 you so is what you've heard on the other side.

24 In fact, Mr. Roberson is the one who
25 in 2015 told that first complainant, this easement

1 issue is a private issue. It all depends on the
2 terms of the easement, are there restrictions on
3 it? Where exactly is it?

4 There is an independent ability to
5 enforce that one way or another. That doesn't
6 have anything to do with what we're here for
7 tonight.

8 What we're here for tonight and what
9 the appeal goes to is whether or not the Code
10 Section that we relied on here establishes their
11 right to continue to do what the County told them
12 they could do and told them again they could do in
13 the first place.

14 Now, we even got into some pretty
15 nasty sisterly battle here, and I'm sure you don't
16 want to hear the other side of that, but there is
17 another side to that, there is another side to the
18 traffic, but that's not the issue before you.

19 The issue before you is the narrow
20 one of whether or not they're entitled to rely on
21 what the County told them they could do, simple as
22 that.

23 So again, if you have any other -- is
24 that brief enough, Mr. Chairman? I'll stop right
25 there, but I appreciate the opportunity and again

1 appreciate your courtesy and I recognize these are
2 not easy decisions, there are points on either
3 side which is why you go for the narrow legal
4 issue, because the rest of it is simply not
5 germane to what has been brought to you. Thank
6 you.

7 PETER KOLAKOWSI: Thank you,
8 Mr. Leming. The public hearing is now closed.

9 Bring the -- I'll ask the Board for
10 what they wish to do this evening, if they wish to
11 make a decision this evening.

12 MARK STEPONGZI: Mr. Chair, I first
13 make a motion that we take into evidence all the
14 written material that was provided to us this
15 evening.

16 PETER KOLAKOWSI: We have an
17 appropriate motion to receive the materials that
18 were provided to us by the applicant. I believe
19 we have the other items that were provided to us
20 before. Is there a second?

21 GEORGE ALLEN: I second that motion.

22 PETER KOLAKOWSI: Okay. Mr. Allen
23 did second. Is there any discussion? All those
24 in favor say aye.

25 (All Board Members responded in the affirmative).

1 PETER KOLAKOWSI: Okay, is there any
2 discussion?

3 LARRY BRAMLETTE: Mr. Chairman, I
4 would like to make a motion that we address this
5 case this evening, given that we have the
6 materials that he have before us, and having heard
7 from the audience as we have.

8 MARK STEPONGZI: I second.

9 PETER KOLAKOWSI: It's appropriately
10 moved and seconded that we make a decision on the
11 case this evening. All those -- well, first of
12 all, any discussion? I'm sorry?

13 GEORGE ALLEN: I second the motion.

14 PETER KOLAKOWSI: I think we had
15 already appropriately moved and seconded.

16 All those in favor?

17 (All Board Members responded in the affirmative).

18 PETER KOLAKOWSI: None opposed. All
19 right, what is the Board's pleasure?

20 LARRY BRAMLETTE: Mr. Chairman, some
21 of the facts that I have heard addressed this
22 evening have -- I've taken a great deal of notes.

23 The first thing that I would like to
24 point out is that in 2012 we had a proper
25 application for a permit to build a shed of a

1 certain size valued at about \$2,000, and it was,
2 in fact, to have electrical and plumbing and it
3 was going to be, had an area for cooking crabs.

4 It was properly processed. It was
5 properly reviewed, and so the permit to build a
6 shed I do not think is in question.

7 What is in question is what it was
8 then used for after it was built, because there is
9 nothing in this permit, and the request for a
10 permit, about sales to the public of any type of
11 edible materials; crabs, shrimp or otherwise.

12 The Zoning Department does not
13 regulate the operation of restaurants, that's not
14 our job. That's a function of other State
15 agencies, county agencies, and even though they
16 have in fact gotten good comments, good reports,
17 run a proper restaurant, that does not mean that
18 that restaurant is properly zoned.

19 To answer some of the other questions
20 about subdivisions, vesting and so forth, this is
21 not a subdivision. There is no vesting involved
22 in this case.

23 If you build something that requires
24 something to be vested, i.e., roads, sidewalks,
25 putting in trees whatever, but that's not required

1 in an A3 for building a shed.

2 Like I said there was no request for
3 any type of commercial use in the request for the
4 shed. The shed request was 2012. The one comment
5 that they keep going back to about Mr. Roberson's,
6 and in that particular email that said 2012-2015,
7 in 2012 there was no issue.

8 In 2015 there was an issue and the
9 question is, I'm not certain that everyone knew
10 exactly what was going on out there in 2015.

11 The expenses, profits, money wise,
12 that has nothing to do with this particular case.
13 That's not in question if they're making money or
14 not making money.

15 And when someone comes in and
16 requests a permit to do something, it is not the
17 responsibility of the zoning official to ask what
18 future uses are you planning to do with this
19 building, shed or whatever that you're requesting
20 a permit for.

21 You're requesting a permit, you're
22 receiving a permit and that's what you have asked,
23 that's what I have approved.

24 Now, there is some other issues that
25 need to apply here which have really not a whole

1 lot to do with the permitting.

2 You have traffic issues, you have
3 safety issues. And if a commercial use permit had
4 been asked for, there would have been then items
5 such as proper driveways, proper access, stop
6 signs, all of that would have had to be put in
7 place for an item to be commercial use. None of
8 that was put in place because that's not what it
9 was asked to be done for. So that's my notes from
10 what I've heard today. Thank you.

11 PETER KOLAKOWSI: Mr. Stepongzi.

12 MARK STEPONGZI: Yes, I'd like to add
13 a little more to it, while the original permit
14 details were just, was the screened area for
15 cooking crabs. It wasn't until three years later
16 when an official letter was issued stating there
17 were no issues with having the business out there.

18 And that Mr. Roberson had gone and
19 had validated and had provided approval for that,
20 and then with the case actions letter, under the
21 Freedom of Information Act that was provided to
22 us, the statement both Rick and Troy advised them
23 that no permit is required for the use because
24 it's considered an agricultural use by the code
25 enforcement, a Code Enforcement Officer, lends

1 credence that the County had given approval.

2 There are a lot of issues on, that
3 were presented tonight, but the one issue before
4 us is does Code 15.2-2311(C) apply on all three
5 criteria met, and that's what we have tonight.

6 PETER KOLAKOWSI: All right. Let me
7 ask you a question then, does that lead to a
8 conclusion or do we need some additional
9 information to reach a conclusion?

10 MARK STEPONGZI: I believe we have
11 all the information we need for, to make a
12 conclusion tonight. There are a lot of other
13 issues that were presented this evening that other
14 County departments are going to have to look into.

15 But for us, the case tonight in my
16 opinion is does 15.2-2311(C) apply, have the three
17 criteria been met?

18 PETER KOLAKOWSI: Other comments from
19 the Board? Other questions that we have? Does
20 somebody want to make a motion?

21 LARRY BRAMLETTE: Mr. Chairman.

22 PETER KOLAKOWSI: Mr. Bramlette.

23 LARRY BRAMLETTE: Seeing that there
24 is no further comments, I make a motion that we
25 vote on the decision to approve or not approve.

1 My position is, I make the motion that we vote to
2 deny the appeal request.

3 PETER KOLAKOWSI: We have a motion to
4 deny the applicant's request. Is there a second?

5 LARRY BRAMLETTE: And Mr. Chairman,
6 by rules of this Board if we have no second, then
7 my motion is dead.

8 MARK STEPONGZI: Mr. Chair, I make
9 the motion that we approve the appeal before us.

10 PETER KOLAKOWSI: Mr. Stepongzi has
11 made a motion to approve the appeal. Is there a
12 second?

13 GEORGE ALLEN: I second the motion.

14 PETER KOLAKOWSI: Mr. Allen seconds.
15 Is there any additional discussion? Did you want
16 to say something, Mr. Bramlette?

17 LARRY BRAMLETTE: Yes, being that
18 this is an unusual situation for us and that we
19 normally deal with requests for variances versus
20 this being an appeal of a decision, we don't have
21 the leeway now, as we would in a variance, to
22 demand certain things be done in order to meet a
23 variance, i.e. fixing the road, fixing the safety
24 issues and so forth. That we would normally take
25 care of if we were trying to deal with a variance,

1 but we're not here.

2 This is strictly do we agree with the
3 appellant or do we disagree. So that is my
4 position why I go with, I would prefer to go
5 against the appellant on this case.

6 PETER KOLAKOWSI: Let me just make a
7 comment that like all the cases, whether they be
8 variance or this kind of case, there is always a
9 lot of other issues that surround these things and
10 what comes before the Board of Zoning Appeals is,
11 it has to look at what is the legal case that is
12 brought before us.

13 A legal case that I understand that
14 the Zoning Administrator has brought for his --
15 that the applicant has appealed the Zoning
16 Administrator's decision that essentially in an A3
17 area on a 1 acre plot, it clearly violates the
18 zoning ordinance for A3 in Spotsylvania County.

19 And as presented to us, the
20 information of what was originally permitted, and
21 we've also seen both from the Zoning Administrator
22 as well as the attorney for the applicant, that
23 there is at best a muddled case of what was
24 assumed, what was talked about and an
25 interpretation of words, and do we take an

1 expansive view of this, or as the applicant is
2 suggesting to us, if not directly telling us, that
3 we should take a narrow view of this and that
4 State Law and case law says that if a mistake is
5 made by a previous Zoning Administrator or a
6 perceived mistake, then that carries forward no
7 matter what.

8 You know as I grew up, the old saying
9 two wrongs don't make a right, kind of sticks in
10 my mind in having to deal with these things. But
11 the law is the law, and there is -- that's what
12 we're asked to look at.

13 So if I just make those comments to
14 state that we are, we are looking at it strictly
15 as a legal issue and all of the other issues that
16 are probably as important, but they really don't
17 rise to this Board's level of decision.

18 So with that said, is there any other
19 comments on the motion? The motion that is before
20 us is that the applicant's position or grant for
21 overturning the Zoning Administrator's
22 determination be granted.

23 All those in favor say aye. All
24 those opposed? So we have, four to two. It
25 passes four to two.

1 I do have a couple of other items
2 that we need to talk about here. We have a March
3 meeting and one of the items that we do need to
4 review is, everybody should have received our
5 public hearing calendar.

6 I would entertain a motion to approve
7 the calendar that was presented to us.

8 GEORGE ALLEN: I move to approve the
9 public hearing calendar.

10 LARRY BRAMLETTE: Second.

11 PETER KOLAKOWSI: Mr. Allen

12 approves --

13 LARRY BRAMLETTE: I second.

14 PETER KOLAKOWSI: Mr. Bramlette
15 seconds. I don't think there is any need for
16 discussion, all those in favor say aye.

17 (All Board Members responded in the affirmative).

18 None opposed.

19 With that being said, we do have a
20 meeting in March, and Ms. Pomatto do you want to
21 share with us the fun time we will have in March?

22 KIMBERLY POMATTO: Yes, sir, it's
23 another appeal application. This is related to
24 the sPower project --

25 PETER KOLAKOWSI: (speaking to the

1 public audience) Could you please take your
2 discussions outside please so we can continue and
3 finish our meeting? Thank you.

4 KIMBERLY POMATTO: Yes, sir, this
5 will be another appeal application for the sPower.
6 SPower is a solar energy facility that was enabled
7 by a special use permit last year, so they've been
8 going through the site plan process and the
9 concerned citizens of Spotsylvania County are
10 appealing the Zoning Administrator's decision on
11 what may or may not be located within the 100 foot
12 setback it buffers as identified in that permit.

13 So you will have a staff report, as
14 usual, available no later than a week before your
15 meeting. We will be meeting again in the Hobart
16 Building, our regularly scheduled meeting. I
17 would fully expect that to be a very well attended
18 public hearing.

19 MARK STEPONGZI: Are you sure that
20 the Hobart building will be big enough for that
21 meeting?

22 KIMBERLY POMATTO: Well, the majority
23 of the public hearings were held there and we will
24 try to get a gauge if we can on the attendance and
25 we will always have the fire marshal on standby if

1 we need to monitor the attendance in the room.

2 MARK STEPONGZI: Thank you.

3 PETER KOLAKOWSI: When the Board of
4 Supervisors had their public hearing, did I read
5 or see on TV that they had a deputy there because
6 they were concerned about the crowd?

7 KIMBERLY POMATTO: They did and I'll
8 be notifying everybody as well to be on standby.

9 PETER KOLAKOWSI: Okay. Good.

10 KIMBERLY POMATTO: Monitoring the
11 meetings. Because I fully expect it to be very
12 well attended.

13 PETER KOLAKOWSI: It's sad when you
14 have to do that, but I think for not only the
15 citizens but for us, for all of us.

16 But one of the things that in the
17 past that has benefited other Board members, since
18 we have two new Board members, especially
19 something like sPower, when we have a chance to go
20 out and view the property, because pictures are
21 good, and as they say pictures are worth a
22 thousand words, but sometimes being on site, and
23 especially with this, I would ask you, Ms. Pomatto
24 to maybe when you send the packet out to say any
25 board members if we can arrange, or who would be

1 interested in seeing some representative issues
2 around the determination that we're looking at on
3 the appeal, I just hope we're not boxed in with
4 dealing with a narrow question versus the larger
5 question.

6 MARK STEPONGZI: Please remember that
7 if we are to go ahead and do an on-site visit that
8 this will have to be, we will have to let the
9 office know well ahead of time because they have
10 to go and they have to advertise that.

11 PETER KOLAKOWSI: There's three of
12 us --

13 LARRY BRAMLETTE: That's what I
14 understand, there was no prohibition against us
15 actually going out individually and looking at the
16 properties and so forth, it's just we are not
17 allowed to do that as a group because we are
18 liable to sit in the van on the way back and
19 discuss the issue. So you know, the last thing
20 that we did I went out on an individual basis, but
21 not this one unfortunately.

22 MARK STEPONGZI: The other thing is
23 that the press can go along with us should they
24 choose, so it's a little more than that. While I
25 have never been on one where you have any coverage

1 before, there is always that chance and this one
2 could be one of those that we could.

3 PETER KOLAKOWSI: Just the subject
4 matter of it.

5 KIMBERLY POMATTO: Mr. Chairman, I
6 would suggest, I can send an email out to everyone
7 just try to get a gauge of who would be interested
8 in a site visit, and depending on how many express
9 an interest, it will of course go in the
10 appropriate -- take the appropriate actions we
11 need to for public notice and making those
12 arrangements.

13 The sPower site is an active
14 construction site and so it's a secured site, and
15 so we would certainly need to coordinate any site
16 visit with sPower so that we can be guided on
17 site, have the appropriate safety equipment and
18 everything.

19 So it's going to take a little bit of
20 planning, so we'll send out an email to everyone
21 probably this week so that we have enough time to
22 coordinate such a --

23 PETER KOLAKOWSI: What I would
24 suggest is you pick a date and a time and if we
25 can make the date and the time, let's find out who

1 can do that because, you know, even on a, when we
2 used to do it on a Saturday at the most we used to
3 have what, three people, most of time there was
4 two.

5 Why don't I suggest that you pick a
6 date and time so that way you coordinate with them
7 and if we get more than a couple of people that
8 can make that, I would suggest that's how we do
9 it, otherwise we're going to have to rely on the
10 materials and your own, your own good judgment.

11 How does that sound, Ms. Pomatto?

12 KIMBERLY POMATTO: That will be fine,
13 so I'll send that out this week.

14 PETER KOLAKOWSI: Okay, great. One
15 other item that I wanted to bring up, before I ask
16 for any other business that anybody else may have,
17 you noticed that you had a copy of the bylaws in
18 front of you, you also notice that they're about
19 seven years old and things have changed a little
20 bit both at the State level as well as within the
21 County level.

22 I've asked Ms. Pomatto to kind of
23 look at the bylaws from her perspective and any
24 other offices within the County administration to
25 provide to us any suggestions that they may have

1 as well as when we went through the last process,
2 you know, it took us almost six months to come up
3 with the version that you now have to make sure
4 that we had what procedures we wanted to have in
5 there as well as at that time what was the current
6 standing with the State as well as the County as
7 well as just within the zoning community best
8 practices.

9 So maybe April or May. I don't think
10 we will have any time to do anything at the March
11 meeting, but if we have a meeting in April or May
12 or whatever the next meeting is, we can start on
13 revising or updating is probably a better word,
14 updating the bylaws. Is there any objection to
15 that?

16 Okay, if you need something to fall
17 asleep reading at night, make some notes with it,
18 so be prepared to talk about that in a future
19 meeting. With that anybody have any other
20 business?

21 LARRY BRAMLETTE: Yes, I one other
22 thing. Ms. Pomatto is there funds available, we
23 have two new members who have not taken the
24 course, whenever it's offered. I don't know how
25 often it's offered, but do we have funds available

1 so that they may attend that course?

2 KIMBERLY POMATTO: I know off the top
3 of my head we have at least one that was in the
4 budget, and so I'll go back and confirm. The
5 training is offered annually and so it would be
6 coming up in October. They do their registrations
7 in the summer, so I'll report back what the budget
8 allows, what we have in the budget.

9 PETER KOLAKOWSI: Anything from the
10 Board? Ms. Pomatto, did you have anything else
11 for us?

12 KIMBERLY POMATTO: No, sir.

13 PETER KOLAKOWSI: I'll be happy to
14 entertain a motion, all those in favor of
15 adjourning please stand and leave. Thank you very
16 much.

17 (The hearing concluded at 10:05 p.m.)

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