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REGULAR MEETING OF THE  
BOARD OF ZONING APPEALS  
City Council Chambers  
300 Park Avenue  
Falls Church, Virginia 22046  
Thursday, July 16, 2009

1. **CALL TO ORDER:** Vice Chair Murphy called the meeting to order at 7:35 p.m.

VICE CHAIR MURPHY: Before we do our roll call, I'd like to welcome Mr. Castillo to the BZA. This is his first meeting with us and I have to do the ceremonial presentation of the name plate.

MR. CASTILLO: Thank you very much.

VICE CHAIR MURPHY: You're now a member of the Board.

2. **ROLL CALL:**

Members Present:	Mr. Castillo
	Mr. Murphy
	Mr. Williamson
Members Absent:	Mr. Stoodley
	Mr. Taylor
Administrative Staff Present:	Mr. John Boyle, Zoning Administrator

VICE CHAIR MURPHY: So we do have three present which is as far as I know a quorum to hold a meeting. Any actions that we take tonight have to be done on a unanimous basis because we have to carry the majority of the Board for each vote on actions, not for minutes and things like that.

Do I have a motion to amend the order of the agenda? We do have minutes and resolutions which I don't think will take too long but we also have New Business before us that we do have people waiting on.

MR. CASTILLO: I'll move that, yes, to go ahead with the New Business.

MR. WILLIAMSON: And I second that.

VICE CHAIR MURPHY: We have a motion from Mr. Castillo to move Item 7, New Business, in place of Item 3, and shift everything else down.

With that, we have Item 7 -- we need to have a vote first.

All those in favor?

Upon voice vote, the motion passed unanimously.

VICE CHAIR MURPHY: All in favor then.

So we'll move on to New Business.

7. **NEW BUSINESS:**

**U1471-04 R Application for Special Use Permit by Homestretch, Inc., for group home "Ives House" located at 209 East Broad Street, property owner Falls Church Presbyterian Church (prior Special Use Permit issued in 2004).**

VICE CHAIR MURPHY: Before we begin consideration of this item, I have some questions for the Zoning Administrator regarding whether or not this item is properly before us this evening.

In reviewing the staff package that came in, a number of questions came up. The first question is whether or not the Resolution that granted the Special Use permit was defective. The minutes of the meeting are fairly clear as to what the issue was, what the conditions were, and what the vote was. But under City Code and State Code, the Board of Zoning Appeals acts by Resolution and the Resolution does not include the conditions and does not include the vote of the membership.

So I'm somewhat concerned from a process standpoint about the validity of any Special Use permit that may have been issued. If we can get past that, I have

57 a second question regarding the validity of this before us and our ability to hear  
58 it because the current permit has expired.

59 And I'm not sure that we have the authority or the jurisdiction to renew a  
60 permit that doesn't exist because it expired.

61 This is all procedural. This has nothing to do with the content of the  
62 application but I would like to get the position of the Zoning Administrator on  
63 those questions.

64 MR. BOYLE: My sense is that the renewal is appropriate because there is no  
65 limitation for reapplying after an expiration.

66 My feeling is that there is no limitation or no deadline for reapplying. Is  
67 it one day after the expiration, is it six months? I'd leave it to the Board's  
68 discretion whether this is properly filed. Perhaps we need a Rules of Procedure  
69 when things expire.

70 As for the content of the Resolution, the minutes are clear that the vote  
71 was unanimous. It's an approved Resolution that's been in place for a little over  
72 3 years. And we've done some research with the City Charter and it does say the  
73 Resolution needs to show how each member voted. However it also does provide for  
74 the Board to amend its previous decision and in the language for amending its  
75 previous decision, it does not reference your Rules of Procedure.

76 I think a possible path would be to consider amending the previous  
77 resolution to reflect the vote that occurred that evening, so not revise the  
78 content or the duration but simply refer to the vote taken which is in the minutes  
79 you were provided and put that question out there. It's an action technically that  
80 the Board could be appealed on but you'd be moving I think in the intent of  
81 correcting the document to reflect what the minutes reflect.

82 Your second question, I think I'll wait until we cross that bridge.

83 VICE CHAIR MURPHY: I guess I have a couple follow on questions then.

84 In our Rules of Procedure, in order to reopen an issue, someone who voted  
85 affirmatively on the issue has to bring that before the Board. And looking at,  
86 which will flow into my next question, the unapproved draft minutes of the Board of  
87 Zoning Appeals, Mr. Pelletier, Ms. Earman, Mr. Stoodley, and Mr. Stewart are not  
88 present.

89 MR. BOYLE: Correct.

90 The question I would raise, do your Rules of Procedure take precedence over  
91 the City Charter? There are sections of the Charter that refer to your Rules of  
92 Procedure. This particular section to amend your previous decision does not refer  
93 to the Rules of Procedure.

94 I have no preference how you proceed but I think it could be proposed that  
95 you have the authority to amend a previous decision of this Board as we see with  
96 courts and quasi-judicial bodies in other examples and place that out there for  
97 consideration: Does this Board have the authority to amend itself?

98 VICE CHAIR MURPHY: I guess I need to think about that for a minute.

99 But my second follow on question is past practice. Have there been any  
100 recent requests to come in and renew expired Special Use permits and what was the  
101 result of those requests if there were any?

102 MR. BOYLE: Usually the reapplication is shortly preceding or immediately  
103 after an expiration date. This would be longer than we usually wait. That's  
104 probably the burden of staff more than the applicant.

105 There was a long standing policy in my office with my predecessor that  
106 Special Use permits were not brought back to the Board and there's an  
107 interpretation there as to why that was. The Code does provide for approving  
108 Special Use permits for one year or three years or indefinite. His policy was not  
109 to bring Special Use permits back for renewal to this Board.

110 So, in some way I think it's unreasonable to burden the applicant. They  
111 were not notified until recently to come back in. Decision of the Planning  
112 Director, General Manager of Development Services, was to go ahead and have these

113 brought back in for renewal so there will be one or two others that have expired  
114 that will be coming back before you. They have not applied yet.

115 So we have a situation where the applicant's acting in good faith and the  
116 permit has expired. It's a, like I said, it's an open question as to whether it's  
117 so long a period that it's no longer worth renewing, should we just have them fill  
118 out a new application.

119 But I'd suggest to the Board to consider your authority to, one, amend your  
120 previous decision so it's the Board acting and not the individuals and consider  
121 that the City Charter gives you that authority without reference to your Rules of  
122 Procedure.

123 And I think then we have to decide whether this is a matter that's properly  
124 before you or not and how to proceed.

125 The applicant is getting college credits for civics here. I appreciate your  
126 patience.

127 VICE CHAIR MURPHY: Justin, if I may, may I see your brand new spanking new  
128 Rules of Procedure?

129 Thank you. I have the 2006 without the change.

130 MR. BOYLE: It's an interesting question. I think if the question comes up,  
131 should these matters even come back, it's a separate discussion we'll have to have.  
132 But we have an applicant here tonight that acted in good faith. I think it's  
133 worthy of consideration for renewal. Planning Commission issued an opinion.  
134 Staff's prepared to suggest that it be reapproved without limitation. We always  
135 have the ability to withdraw a permit if there's issues. But we do have this  
136 procedural issue which we certainly want to be clear on.

137 MR. CASTILLO: My concern is whatever we do, we have to do pursuant to our  
138 powers and if we don't have the power to do this, then I don't think we should  
139 proceed.

140 I was looking at the Special Use permits portion of the Code and it talks  
141 about, we do appear to have some discretion. We may authorize the issuance of a  
142 Special Use permit. We can stipulate the requirements. Then under Section G,  
143 issuance and expiration, any Special Use permit or variance may be authorized and  
144 issued for a limited or indefinite period of time.

145 There is the issue of lapse and I don't know, it seems to me lapse is only  
146 applied if it is never implemented which I don't think happened here.

147 So it's an interesting question, as the Zoning Administrator noted.

148 MR. WILLIAMSON: Well, I would first commend the Chair for his thorough  
149 review of the record. Certainly we can always count on that.

150 I would agree with what the Zoning Administrator has said in that we have a  
151 record, the best record we will have of the vote that took place before us. We  
152 have the motion and, in effect, the resolution as it was described and made clear  
153 in the minutes.

154 We have an applicant who is here before us tonight operating in good faith.  
155 And I think that all these things being the case, that we should -- we should go  
156 ahead and review this renewal.

157 MR. BOYLE: If I can add, I think it's important also to consider that the  
158 Resolution was available to appeal within 30 days of it being enacted. Does the  
159 lack of the recording of the vote on the Resolution make it faulty to the extent  
160 that it's not valid? That's a fair question. If it were to be revised, do you as  
161 a Board have authority to revise the Board that made that decision and is the  
162 revision going to be such a leap that it renders this original Resolution  
163 meaningless?

164 Would your revision be to change the limitations or conditions of this  
165 Resolution? You know, that would be extreme but to simply reflect what was  
166 obviously the intent of the Board where if someone that evening had said, Oh, we  
167 have to put the vote on there, everyone would have agreed, I think.

168 You know, we have the recording. We can check and make sure that the

169 minutes for whatever reason show the draft but I'm confident that reflects the  
170 intent of the Board for that evening. So I leave it to your consideration.

171 I think it's something reasonable to consider.

172 MR. CASTILLO: I'll just ask a question since I'm new here. Are the  
173 criteria for a new permit, are they any different than they would be for renewal?

174 MR. BOYLE: No. They're essentially the same.

175 MR. CASTILLO: So I think that at least provides -- we could consider this  
176 for all practical purposes a new application, couldn't we?

177 VICE CHAIR MURPHY: I think ultimately the cleanest way to handle this is to  
178 consider this as a new application. The problem with that is this has been  
179 advertised as a renewal and it went before the Planning Commission and their  
180 recommendation is it being on a renewal. We haven't gotten to the second question  
181 yet as to whether or not we have the authority to renew a permit that's expired and  
182 doesn't exist.

183 We have in our Rules of Procedure a revised section for reconsideration and  
184 rehearing. That was revised a couple of years ago based on a reconsideration and  
185 rehearing that was overturned by the Arlington Circuit Court. And essentially the  
186 requirements are any rehearing shall be had or shall not be had except by motion of  
187 a member of the Board who previously voted for the decision which shall not be made  
188 later than the regular meeting of the Board held in the month succeeding the  
189 meeting at which the decision was rendered.

190 So our Rules of Procedure say this is several years out. And unfortunately  
191 the only member on the Board still on the Board, Chair Stoodley, is not present  
192 tonight. So following our Rules of Procedure, we could in fact come up with three  
193 affirmative votes if we could actually get someone who was here originally to raise  
194 the issue.

195 If we did raise the issue, no motion for rehearing shall be entertained  
196 unless new evidence is submitted that could not reasonably have been presented at  
197 the original hearing. I don't think that's the situation we're in here either. I  
198 don't think there's any new evidence. I think we had some procedure problems.

199 The request for rehearing shall be in writing reciting the reason for the  
200 request filed not more than 15 days after the date of the meeting at which the  
201 decision was rendered. That's if there's a request from the applicant for a  
202 rehearing.

203 If a rehearing is granted, the case shall be put on the agenda for a  
204 rehearing at the next regularly scheduled meeting, which at this point would be in  
205 September because we don't have a regularly scheduled meeting in the month of  
206 August.

207 I'm not comfortable going against our rules of procedure on this one and  
208 would tend to not go in that direction simply because the Rules of Procedure are in  
209 here for a reason, to make sure that what we do is consistent and transparent over  
210 time.

211 I'm not -- I know we can probably on motion of the chair suspend the rules,  
212 and I was trying to find the section in our Rules of Procedure that allow that and  
213 it's not in there any more.

214 MR. BOYLE: I believe it's in Robert's Rules.

215 VICE CHAIR MURPHY: Robert's Rules of Order. I'm willing to accept that as  
216 a legitimate reason to suspend the Rules of Procedure. And I reserve the right to  
217 do so but I would like to get into the -- the second issue before I mangle our  
218 Rules of Procedure, should I chose to do so.

219 And that's the issue of whether or not this Board has the authority to renew  
220 a permit which has ceased to exist. It expired. I'm not sure, and staff can  
221 probably fill us in on this, it appeared from the staff report that was provided in  
222 our package, that it was granted for one year contingent on inspection by the  
223 Zoning Administrator and then it could be extended for two additional years after  
224 that. It was unclear whether it was ever extended for the two years

225 administratively. That's not included in the record right now. But in any case,  
226 it's been some time since this has expired.

227 MR. BOYLE: If I can as an aside, explain what's just been presented to the  
228 Board.

229 After receiving Mr. Murphy's questions this evening, we did some research  
230 and you have in front of you a copy of the Charter Section with the highlighted  
231 portions. It's section -- for the record, Section  
232 17.20 and it deals with the form and scope of decisions for the Board of Zoning  
233 Appeals from the City Charter.

234 And we note that this is where it describes that the Board shall act by  
235 formal Resolution which shall set forth the reasons for its decision and the vote  
236 of each member or participant therein. That's where the vote is necessary to be  
237 shown on the Resolution itself.

238 Continuing, the Board may upon affirmative vote of three members reconsider  
239 any position made and upon such reconsideration render a decision by formal  
240 resolution.

241 That's where I would point out that it does not reference, you know,  
242 something to the effect as controlled by the Board's Rules of Procedure.

243 So the question is does the City Charter take precedence over your Rules of  
244 Procedure? There are other sections of the City Charter that mention Rules of  
245 Procedure and I think it's significant that this one does not.

246 The next section on your reference we gave you is from the Code itself,  
247 Section 38-9, meetings, quorums minutes, voting and rules. It's noteworthy that  
248 the Board shall keep minutes of its proceeding including a full record of its  
249 findings and showing the vote of each member upon every question. That was done.

250 So I would suggest that we have evidence that indicates what the intent of  
251 the Board was on that evening and that you have the authority to revise that ruling  
252 to reflect -- to revise that Resolution to reflect the votes that took place.

253 Lastly, I think if all acts of the Zoning Administrator constitute decisions  
254 that are appealable and decisions that reflect an interpretation of the Code, when  
255 this application was advertised, a decision was made that this is a renewal. I'd  
256 suggest that that's a decision that can be appealed. I've determined that it's a  
257 renewal and we can discuss why I feel it's a renewal as opposed to a dead issue  
258 that's expired but it's been brought to the Board as a renewal.

259 So I guess the Board can consider appealing the decision of the Zoning  
260 Administrator, which probably is one appeal we haven't had yet but -- and I say  
261 that only half lightheartedly.

262 The -- there is considerable language about what my obligations are in  
263 preparing a matter to come before the Board. I have to determine whether the  
264 application is complete and properly filed and the act of advertising it, I have  
265 always taken as a statement that it is complete and properly filed. I've used that  
266 to not send items to the Board which has been a separate and interesting  
267 conversation. Applications which I deemed were not properly filed have been  
268 withheld. So the act of advertising this and sending it to the Planning Commission  
269 whose findings you have, I would take as a position that this is a complete  
270 application and it's a renewal.

271 Perhaps we need an additional Rule of Procedure to define when an expired  
272 item can come before the Board. It's a very fine point that's probably not  
273 reasonable to assume a code or a charter would cover but that's why we have rules  
274 and that's why we have Zoning Administrators to interpret things.

275 Now your second point.

276 VICE CHAIR MURPHY: The second point was the --

277 MR. BOYLE: Has it expired?

278 VICE CHAIR MURPHY: Yes, and is there something in fact to renew once the  
279 permit has expired.

280 MR. BOYLE: I'll say I did give some thought to is it expired, is it an item

281 that has no standing. And I thought it was important to phrase it as a renewal.  
282 So those that are going to be reviewing it and the public that see it know that  
283 this is something that's already been in place. This is not a new item or a new  
284 activity that we're bringing into the City, but this is something that has been in  
285 place. It went through previous public hearings. There is a record available to  
286 review, and it strikes the reader and the public very differently if it says  
287 renewal or simply says this is an application to do this.

288 By putting renewal in the description, it was an attempt to make it clear  
289 that this is something that's already been up and running and in place and anybody  
290 that had any issue with it would have long ago come forward and objected to it.

291 That's part of my reasoning behind advertising it as a renewal. The  
292 applicant had no say in how it was going to be phrased. But that's a key point.  
293 There is a difference between a new item and an item that has already been in  
294 place.

295 MR. WILLIAMSON: I would say that calling -- whether it's a new application  
296 or a renewal, I would think that the decision making in reviewing such an  
297 application would be very similar in that you're taking into consideration a lot of  
298 the same -- well, a lot of the same considerations in either a renewal or a new  
299 application.

300 The second thing I would say is that as you pointed out, we have records of  
301 the Planning Commission before us who has reviewed this and has recommended it to  
302 the Board of Zoning Appeals. We have a long standing and publicly available set of  
303 records that could be reviewed, and lastly we have an entity that's been in  
304 continuous operation for some time.

305 And at least in the record I'm not aware of any issues that have been  
306 brought forth. So I think for all of those reasons, hearing the original concerns  
307 that were raised in review of the records, you know, it's my view that we should  
308 proceed.

309 VICE CHAIR MURPHY: Mr. Castillo.

310 MR. CASTILLO: Well, my -- as I look at it based on what we have before us,  
311 if it had not been validly approved in 2004, we could devise a method to consider  
312 this as a new application. Assuming it had been validly approved in 2004, we still  
313 run into the problem of what happens given the fact that it expired, even with all  
314 the extensions I believe two years ago. And that then presents the issue of how do  
315 you characterize a renewal that by its very terms no longer has any force.

316 I don't think you can characterize it as a renewal in light of that without  
317 more to explain under what powers exist to basically bring it current. That's the  
318 concern that I face.

319 I don't have any doubt that we can accomplish the goal of continuing the  
320 operation of Ive's House but I am concerned that we not do it haphazardly. I would  
321 rather make one right turn than three left turns, I guess. We'll end up in the  
322 same direction but it does seem that we may be elevating form over substance a bit  
323 but I think it's important substance and I do think we need to treat seriously the  
324 fact that this permit did expire and I think we need to tread carefully before we  
325 act in haste.

326 MR. BOYLE: And it does protect also the applicant so that you're operating  
327 with a document that would withstand review.

328 MR. CASTILLO: And I guess the only other thing I'd add is if we've gone two  
329 years, what's a month or two more to do it correctly? That would be my thought.

330 VICE CHAIR MURPHY: So I guess I placed on the table a number of questions  
331 about the authority of this Board to hear this item before us. It has not been  
332 opened yet. I have read it but before opening it wanted to raise these questions.

333 We've had some discussion. We've had some more discussion on a number of  
334 issues ranging from the validity of the initial Resolution and were we to severely  
335 relax our Rules of Procedure, it's possible that in fact we could resurrect that.  
336 However it needs to then be at least held over for the next month. Without having

337 a meeting in the month of August, unless we completely extend our Rules of  
338 Procedure and it was the hearing on the same night that caused the notice problems  
339 last time.

340 Then I have the second issue as to whether or not there's even a permit  
341 there because of the expiration. If there was ever a valid permit, because the  
342 expiration, there doesn't appear to be any more so it can't be renewed.

343 I would however ask for a motion from the Board on what to do in this case.  
344 I guess the first thing we need to resolve by formal vote is whether or not the  
345 Board has the authority to hear this issue based on the materials that were placed  
346 before us this evening and the discussion that we just had.

347 MR. CASTILLO: Let me just ask a clarifying question. If then we were to be  
348 considering this as a new application, the notice would be -- there would have to  
349 be a new notice, correct?

350 VICE CHAIR MURPHY: That would probably be a question for legal counsel.  
351 It's going to come down to whether or not we think that a renewal and a new permit  
352 are substantively different.

353 We have had discussions that it's basically the same process and it's  
354 basically the same procedure to hear a renewal and to hear a new -- a new  
355 application for a Special Use permit. I think the Zoning Administrator did opine  
356 that they're not that different and that in his judgment and his determination that  
357 this is in fact a renewal.

358 However I also believe it's the authority of this Board to decide what is  
359 appropriately before the Board. So I don't know if that clarified your question  
360 but in short, a new application would require notice to property owners, mailing as  
361 required by state code, and a recommendation from the Planning Commission.

362 MR. WILLIAMSON: If I understand this correctly though, this Board could act  
363 tonight in viewing this as a new application. We cannot?

364 VICE CHAIR MURPHY: My opinion would be no. Because in fact we have not  
365 advertised a new application, we have not gotten a recommendation from the Planning  
366 Commission on a new application. If it was that simple, we'd be in very good  
367 shape. I'm concerned that it's not that simple.

368 MR. WILLIAMSON: Are you inclined to agree with the Zoning Administrator  
369 that the process including the decision making process that takes place in either a  
370 renewal or a new application are similar and thus the Board could act -- would be  
371 acting in a very similar manner in either case?

372 VICE CHAIR MURPHY: I'm in agreement that the Board would be acting in a  
373 very similar manner to the best of my knowledge and the Zoning Administrator can  
374 correct me if he'd like, there really is no difference in the application  
375 requirements. I'm not sure about the fees. But essentially the same information  
376 is going to be required on application for a renewal as application for a new  
377 permit.

378 Is that correct in your understanding, Mr. Boyle?

379 MR. BOYLE: Yes, it's essentially a rehearing of the previous -- in fact,  
380 some of this information is from the original record. The burden is certainly the  
381 same. When you meet to decide Special Use permits, you're considering is there a  
382 negative impact on other uses that abut and if so, do those need to be mitigated  
383 with conditions. Those are all reconsidered on renewal.

384 MR. WILLIAMSON: So if I were to boil down the issues, so to speak, one is  
385 the consideration as a new application or renewal, I think that's the first one. I  
386 think the second one is the review of the past resolution that does not include a  
387 recording of the vote.

388 Is there another issue that would extend beyond that or are those  
389 essentially the two issues that we would be faced with?

390 VICE CHAIR MURPHY: That's basically the two issues. Is there a permit in  
391 existence for renewal? Because a renewal was advertised, and can we renew a permit  
392 that doesn't exist, either because of faulty resolutions that therefore never

393 authorized the Special Exception or the Special Use permit, or because it has  
394 expired and therefore it no longer exists to be renewed.

395 MR. WILLIAMSON: And the City Charter, if I understood it correctly, would  
396 authorize this Board to amend a past resolution. If I understood that, but there  
397 was a component of the Rules of Procedure that there was a concern with.

398 MR. BOYLE: It sets additional conditions. The Rules of Procedure are a  
399 higher test.

400 MR. WILLIAMSON: So the steps would be, as you pointed out, suspension of  
401 the Rules of Procedure as well as amendment of the prior Resolution. That would be  
402 sort of a series of steps and then a decision by this Board to view an existing or  
403 a new application in substantively the same manner.

404 VICE CHAIR MURPHY: Yes, in essence. I think the first thing the Board  
405 would have to do is in fact successfully move a suspension of the Rules of  
406 Procedure in order to reconsider this item. Beyond our Rules of Procedure, dates  
407 of the next meeting, beyond the issue of new evidence, beyond the issue of if a  
408 hearing is granted the case shall be put on the agenda for rehearing at the next  
409 regularly scheduled meeting. There's a lot of issues that we'd have to consider.

410 The one that I'm least comfortable with, frankly, is voting to modify an  
411 action of the Board that I was not present for that I took no part in, that frankly  
412 none of us at the dais tonight was present for or took part in. And we need three.

413 MR. CASTILLO: I would interject it expired two years ago any way. My  
414 concern is what happened in 2004 is surmountable. But where I run into difficulty,  
415 it may not be surmountable tonight but it's surmountable.

416 The more vexing issue to me is what do you do with something that under the  
417 best of circumstances has lapsed two years ago? It may just be as simple as  
418 recharacterizing this as a new application and issuing the notices.

419 MR. BOYLE: We could. That's an option. We could readvertise, take an  
420 application for a new permit there. The date is the same. You simply pose it to  
421 the Board as a new item and then the old Resolution goes away. Your Rules of  
422 Procedure are followed. That is an option you can take.

423 VICE CHAIR MURPHY: I certainly think I would be most comfortable following  
424 proper procedure on this. From our Rules of Procedure from -- I'm not a lawyer so  
425 I don't know whether it's particularly what the issues are. But I'm hung up on  
426 whether or not we can ever renew something that's expired. I'm not sure.

427 And I'm also somewhat concerned because I think you mentioned earlier a  
428 number of these will be coming before us. It's unfortunate for this applicant that  
429 this may be the case that straightens out what the procedure is going to be for  
430 bringing expired Special Use permits back before the Board. And I think probably  
431 the cleanest way to do it is to bring them in as new Special Use permits.

432 Certainly all of the information relating to the expired Special Use permit  
433 can be brought into evidence to show that, in fact, it was at one time authorized  
434 as -- that it was legal at some point and it had been considered by the Board at  
435 some point.

436 But I am increasingly uncomfortable with the fact that I don't have before  
437 me approved minutes. I have draft unapproved minutes. I'd be voting on an  
438 unapproved document to change the official actions of the Board of Zoning Appeals  
439 on a new official document, one I wasn't present and I'm not sure I'm very  
440 comfortable with draft unapproved minutes being the basis for overturning something  
441 I wasn't at.

442 Again, other comments from the Board?

443 MR. WILLIAMSON: Do we know if Chair Stoodley is going to be at our next  
444 meeting?

445 MR. BOYLE: He had intended to be here tonight so I assume he will.

446 I would suggest allowing a reapplication but for the September meeting.  
447 Send it back to the Planning Commission and direct that it go back to the Planning  
448 Commission and we'll gauge the applicant's process to the extent we can and put it

449 on the agenda for September. The other applications that are out there are being  
450 processed as new applications.

451 **MR. CASTILLO:** Well, I would move that we pursue that course.

452 VICE CHAIR MURPHY: Is there a second?

453 MR. WILLIAMSON: Before I decide on that, what will happen in the meantime  
454 to this application, to the status of this application?

455 MR. BOYLE: I think we have to phrase it as you'd have to decide that it's  
456 not properly in front of you and let's come back with a new application. Staff is  
457 not going to require the applicant to do anything different than they've been  
458 doing. We'll just -- if the Board directs, we'll bring this back as a fresh  
459 application and this one will be withdrawn.

460 MR. WILLIAMSON: My concern is making sure there is no -- I think you're  
461 saying this -- undue burden on the applicant. If this Board were to consider this  
462 at the September meeting, that there will be no, frankly, impact, action taken at  
463 this point while we complete our process.

464 MR. BOYLE: Staff would reconstruct the paperwork to reflect a new  
465 application, advertise it to reflect that, and put it back in front of the Planning  
466 Commission to come to you.

467 The September meeting would be the 17th. The Planning Commission, I believe  
468 is meeting in August. But they'll definitely meet before the 17th in September so  
469 you'd be looking at the September 17th meeting.  
470 They should meet in September and if this is on their agenda, they will meet in  
471 September.

472 MR. WILLIAMSON: **I would second the motion that was put forth by Mr.**  
473 **Castillo.**

474 VICE CHAIR MURPHY: Discussion.

475 MR. CASTILLO: My only thought in terms of discussion is I think this course  
476 is the best way to avoid dredging up what happened four years ago. It sets up a  
477 clean, new process which I think is in the best interest of everyone.

478 MR. WILLIAMSON: I certainly agree in particular with the comment earlier  
479 about not revisiting a past decision when one of the members of the Board is not  
480 present. I think that's a prudent course of action.

481 VICE CHAIR MURPHY: **I'd like to offer a substitute motion for consideration**  
482 **by the motioner and the seconder.**

483 **Because of defects in the original BZA resolution granting U1471-04 and**  
484 **because the permit expired and is therefore not properly before this Board, and the**  
485 **Board feels the most appropriate process is to resubmit an application for a new**  
486 **Special Use permit, therefore the Board of Zoning Appeals of the City of Falls**  
487 **Church rejects hearing this application this evening.**

488 Is that an appropriate substitute motion?

489 MR. CASTILLO: I didn't know we got paid by the word here, but I think I  
490 would -- I think that would be appropriate, yes. **I would second that.**

491 VICE CHAIR MURPHY: We try to state the reasons for our actions in the  
492 motions for the record and that would form the basis for the resolution that will  
493 be officially --

494 MR. CASTILLO: That would be prudent.

495 VICE CHAIR MURPHY: Any further discussion?

496 So the motion is to not hear the Special Use Permit Renewal U 1471-04.

497 May I have a vote please or roll call vote?

498 RECORDING SECRETARY: Mr. Murphy.

499 VICE CHAIR MURPHY: Yes.

500 RECORDING SECRETARY: Mr. Castillo.

501 MR. CASTILLO: Yes.

502 RECORDING SECRETARY: Mr. Williamson.

503 MR. WILLIAMSON: Yes.

504 VICE CHAIR MURPHY: I'd like to thank the applicant for showing up tonight.

505 I apologize for the long discussion and the procedural issues but the Board does  
506 feel that it's important that we follow the proper procedures and make sure that we  
507 have our Is dotted and our Ts crossed.  
508 We look forward to receiving a new application for this Special Use permit  
509 for as quickly as the process will allow.

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511 3. MINUTES AND RESOLUTIONS:  
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513 VICE CHAIR MURPHY: Now we'll move back onto minutes and resolutions. We  
514 have a couple of items before us. We have the minutes from our March 12th meeting  
515 and we have a resolution from that meeting as well.

516 On the minutes, are there any comments on page one?

517 Page 2. Page 3. Page 4.

518 And page 5.

519 MR. CASTILLO: Not having been present, I don't have anything to say here.

520 MR. WILLIAMSON: On page 5, I think it's line 221, Mr. Williamson is saying  
521 "That I think with Ray we did both." I don't think that was me who would know  
522 that. I think it would have been another member of the board.

523 VICE CHAIR MURPHY: I believe it was Mr. Murphy, not Mr. Williamson on line  
524 221. Because I did follow up with "Susan organized it."

525 Okay. So line 221 should be changed from Mr. Williamson to Mr. Murphy.

526 Are there any other comments on page 5?

527 MR. WILLIAMSON: No.

528 VICE CHAIR MURPHY: Do I have a motion?

529 MR. CASTILLO: Move to approve the minutes.

530 VICE CHAIR MURPHY: Second?

531 MR. WILLIAMSON: Second.

532 VICE CHAIR MURPHY: All in favor?

533 Upon voice vote, the motion passed unanimously.

534 VICE CHAIR MURPHY: Opposed, none.

535 Okay. So the minutes of the March 12, 2009, meeting of the Board of Zoning  
536 Appeals are approved as amended on line 221.

537 The second item we have before us is a Resolution from the March 12, 2009,  
538 meeting.

539 Any comments or changes to this Resolution, which I note from the minutes  
540 includes the proper conditions and the vote of each member present.

541 MR. WILLIAMSON: No. I think this looks good.

542 VICE CHAIR MURPHY: I have one suggested change. In the first "Whereas  
543 clause" since we don't have line numbers on this, in the description of the  
544 application, U1466 renewal, the property address should say "On premises known as  
545 1000 South Washington Street, lot 502, Section 5 of Greenway Downs of the City of  
546 Falls Church," and continued on there.

547 So the change should be delete "12" "Section 16", and replace it with  
548 "Section 5 of Greenway Downs."

549 Are there any other changes?

550 (No response.)

551 Do I have a motion?

552 MR. WILLIAMSON: Motion to approve the Resolution as drafted and amended  
553 from March 12, 2009, for application U1466.

554 MR. CASTILLO: Second.

555 VICE CHAIR MURPHY: All those in favor?

556 Upon voice vote, the motion passed unanimously.

557 VICE CHAIR MURPHY: Okay. The resolution from the March 12, 2009, meeting  
558 of the Board of Zoning Appeals related to application U1466 is approved as amended.

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560 4. OTHER BUSINESS: None.

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5. OLD BUSINESS: None.

6. PETITIONS: None.

8. ADJOURNMENT:

VICE CHAIR MURPHY: Do I have a motion for adjournment?

MR. CASTILLO: Move to adjourn.

VICE CHAIR MURPHY: All those in favor?

(A chorus of "ayes.")

VICE CHAIR MURPHY: The meeting is adjourned at 8:30 p.m.

Respectfully Submitted,

Noted and Approved:

Ann Hieber

Recording Secretary

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