

**BOARD OF ZONING ADJUSTMENT MINUTES**

**April 25, 2017**

Regular meeting of the Clay County Board of Zoning Adjustment, Commission Hearing Room, 3<sup>rd</sup> Floor, County Administration Building, One Courthouse Square, Liberty, Missouri.

Call to Order

@ 5:30 pm: Kipp Jones, Manager

Roll Call: Kipp Jones, Manager

Members Present: Buddy Raasch, Larry Whitton, Randall Morris, Kristi Soligo  
Fleshman and Zachary Kramer

Members Absent:

Staff Present: Kipp Jones, Manager  
Debbie Viviano, Planner  
Andy Roffman, Assistant County Counselor  
Angie Stokes, Secretary

**Mr. Jones:** I am going to call the April 25, 2017 Board of Zoning Adjustment meeting to order, just a couple housekeeping items this is our first meeting for the year so we will elect a Chairman and Vice-Chairman, it's towards the end of our agenda but we will move that up and have it toward the top, I will steer the ship until that point. Just to remind everybody we are recording the meeting tonight so if you wish to speak we will swear everybody in at one point after we have a Chairman and Vice-Chairman and then we ask that you come up to the podium give your name and address, speak as clear as you can and please reframe from speaking from the audience, it kind of jumbles everything up and makes it hard to transcribe the minutes. We want everybody who wants to speak to have a chance to speak. So we will start with roll call and then move to the election of Chairman and Vice-Chairman, Buddy Raasch?

**Mr. Raasch:** Present.

**Mr. Jones:** Randall Morris?

**Mr. Morris:** Present.

**Mr. Jones:** Larry Whitton?

**Mr. Whitton:** Present.

**Mr. Jones:** Kristi Soligo Fleshman?

**Ms. Fleshman:** Present.

**Mr. Jones:** Zachary Kramer?

**Mr. Kramer:** Present.

**Mr. Jones:** Okay so we will move onto the election of Chair, we will start with the Chairman and we will do two votes, a vote for the Chairman and a vote for the Vice-Chairman so at this point I will entertain any motions once we have a motion we can have a discussion.

**Mr. Whitton:** I would like to nominate Buddy Raasch.

**Mr. Kramer:** I will second it.

**Mr. Jones:** Okay we have a motion and a second, any discussion? Seeing none we will take a vote, Randall Morris?

**Mr. Morris:** Approve.

**Mr. Jones:** Larry Whitton?

**Mr. Whitton:** Approve.

**Mr. Jones:** Kristi Soligo Fleshman?

**Ms. Fleshman:** Approve.

**Mr. Jones:** Zachary Kramer?

**Mr. Kramer:** Approve.

**Mr. Jones:** Buddy Raasch?

**Mr. Raasch:** Do you want me to vote for myself?

**Mr. Jones:** Or you can abstain.

**Mr. Raasch:** Abstain.

**Final Vote 4/0/1 Approve Buddy Raasch; Chairperson**

**Mr. Jones:** We will move to Vice-Chair, I will entertain a motion.

**Mr. Whitton:** I nominate Kristi.

**Mr. Raasch:** Second.

**Mr. Jones:** Okay we have a motion and a second, any discussion? Seeing none, Buddy Raasch?

**Mr. Raasch:** Approve.

**Mr. Jones:** Randall Morris?

**Mr. Morris:** Approve.

**Mr. Jones:** Larry Whitton?

**Mr. Whitton:** Approve.

**Mr. Jones:** Zachary Kramer?

**Mr. Kramer:** Approve.

**Mr. Jones:** Kristi Soligo Fleshman?

**Ms. Fleshman:** Abstain.

**Final Vote 4/0/1 Approve Kristi Soligo Fleshman; Vice-Chairperson**

**Mr. Jones:** So we will turn that over to Mr. Raasch.

**Mr. Raasch:** I guess we will start with approving the minutes of the last meeting.

**Mr. Jones:** We will do the approval of the minutes yes.

**Mr. Raasch:** Do I hear a motion to approve the minutes as written?

**Ms. Fleshman:** I move that we accept the minutes as written.

**Mr. Raasch:** Do we have a second?

**Mr. Kramer:** I will second.

**Mr. Raasch:** All in favor say aye.

**All:** Aye.

**Mr. Raasch:** Opposed say so. Okay that passes....

**Mr. Roffman:** Mr. Chairman let's go ahead and do roll call votes on everything, rather than aye formation.

**Mr. Jones:** So we will do a roll call on the approval of the minutes. Randall Morris?

**Mr. Morris:** Abstain.  
**Mr. Jones:** Larry Whitton?  
**Mr. Whitton:** Abstain.  
**Mr. Jones:** Kristi Soligo Fleshman?  
**Ms. Fleshman:** Approve.  
**Mr. Jones:** Zachary Kramer?  
**Mr. Kramer:** Approve.  
**Mr. Jones:** Chairman Buddy Raasch?  
**Mr. Raasch:** Approve.

**Final Vote 3/0/2 Approve Minutes from November 22, 2016**

**Mr. Jones:** The motion carries. Next order of business Chairman is the swearing in the individuals that wish to testify tonight and it is up to you if you want to do them individually but typically we have done it as a group swearing in.

**Mr. Raasch:** Okay anyone who wishes to speak tonight should come forward, who would like to testify for any of the hearings, all people who would like to testify come forward.

**Mr. Jones:** Can I swear them in or does the Chairman have to do it Counsel?

**Mr. Roffman:** The Chairman, (*inaudible*)

**Mr. Raasch:** Raise your right hand do you solemnly swear the testimony provided will be the truth, the whole truth and nothing but the truth so help you God.

**Audience:** Yes.

**Mr. Jones:** I think that is good Chairman.

**Mr. Raasch:** I think that is all we need you may sit down. Can we hear the staff report for our first case?

**Mr. Jones:** I am at your will so however you would like to organize these, if you want to introduce the first case that is fine or if you just want me to..

**Mr. Raasch:** Why don't you go ahead and introduce it for us.

**Mr. Jones:** Our first case tonight is case number 17-101BZA and I would like to add the staff report as part of the official record, Chairman.

**Mr. Raasch:** Yes.

**Mr. Jones:** Our first case actually has two variances a request for two variances. The first request for a variance to Section 151-8.1(C)(1) of the 2011 Clay County Land Development Code pertaining to the platting of property. The second request for variance is to Section 151-8.4(A) of the 2011 Land Development Code pertaining to the minimum lot width to depth ratio in a Residential Rural (R-1) District, Summarized the staff report 17-101BZA dated April 7, 2017.

**Mr. Raasch:** Do we have any comments?

**Mr. Jones:** If you don't have any questions for the staff then the applicant can come forward.

**Mr. Raasch:** Any questions for staff or would you like to have the applicant come forward?

**Mr. Hayward:** Thank you, Steve Hayward, 16714 Plattsburg Rd, Kearney, MO and I am the applicant along with Roger Scarbrough of Scarbrough Farms, kind of the long and short of this is that the adjoining landowner Roger Scarbrough built a house in the red area about where that 18 is so his house over sees that three acre tract and ultimately this

farm was divided into two pieces originally between the Shawn's and the McQuerry's we bought the Shawn half Scarbrough Farms bought the McQuerry half so this three acre piece that jets out if you will was kind of the result of that after we purchased the property. So in order to protect Mr. Scarbrough's property he would like to purchase that three acre tract, we already have four pin places of that three acres piece based on already the platting that we've done. Our tract, Lot 2A would be a 15 acres tract would still continue to meet the platted subdivision criteria; Roger Scarbrough of Scarbrough Farms will continue to meet the unplatted piece by having a description entailing the three acre tract with this legal description. We feel also that requiring Mr. Scarbrough to actually do the platting could also create a public issue because of the additional lots and line of site relative to where the road would be situated or where a driveway would be positioned. There are other reasons we have in the petition that we feel like the properties will continue to meet the criteria set before the Clay County Board of Adjustment the exception being the code is not allowed for a platted plot portion to be purchased by an unplatted piece so that is kind of the situation we have, if I can answer any questions or your concerns.

**Mr. Raasch:** Yes.

**Mr. Kramer:** Just a point of clarification are you saying there is actually a house where number 18 is right now that we cannot see?

**Mr. Hayward:** That is correct.

**Mr. Kramer:** So when it says that the adjacent landowner wants this to protect the privacy of the residence it's at that point.

**Mr. Hayward:** That is correct.

**Mr. Jones:** I should probably should add, I didn't have it in my staff report is this piece would be added to the Scarbrough property by a legal description so what would happen is this one is zoned, the one in green is zoned R-1 so the Hayward's would replat this it will be a smaller lot it still meets the R-1 zoning standards, this by legal description will go with the larger AG zoned piece but this would stay, there is not a rezoning case because they are not platted so that will stay R-1 zoned at this point and it has, the Hayward property has an Agricultural Land Preservation which just means that half of, or where the Agricultural Land Preservation is they cannot build structures on it so that piece has the Agricultural Land Preservation on it as well so it will exist by legal description with the larger property but still be zoned R-1 and have the Agricultural Land Preservation over the top of it, just for clarification.

**Mr. Raasch:** Is there a particular reason why the Scarbrough's don't want to be platted?

**Mr. Hayward:** Well, one the cost, number two the number of variances that he feels he would actually incur and his long scope plans for his property is to continue to run it as AG even though there is a house on it but he has a cattle operation and he is running it in conjunction with that. So I believe that was the main reason why Mr. Scarbrough did not want to have his platted, he is wanting to retain his AG designation like we pointed out we think that when you look at the road frontage and the driveway where Mr. Scarbrough has he would actually have to have some sort of easement across any platted lots to get to a portion of this property creating other issues so for anybody wanting to purchase that from a platted subdivision stand point if it were to be replatted. I know when we went through the initial platting process we had to have certain line of sight for road frontage and various other things which we met, I don't know that his property based on the diagram you see there road frontage would meet that criteria based on the County

requirements. So all we are really trying to do is engulf that three acre piece in his AG property entailing roughly 46 acres our middle lot 2A would go from 18 to 15 acres still meeting the ten acre requirement of a platted subdivision and long and short of it is both tracts would meet current County code it just that code does not allow for a situation where a platted versus unplatted come into play, if that makes sense.

**Mr. Raasch:** Is there anything else?

**Mr. Hayward:** Not at this time unless there are any questions that I can answer.

**Mr. Raasch:** Any other questions?

**Mr. Kramer:** Where does his driveway come in?

**Mr. Hayward:** His driveway would come in on Plattsburg Road where that red tract kind of ...

**Mr. Kramer:** At the top.

**Mr. Hayward:** You can see it as the road comes around the corner he has a driveway but there is also the driveway for the...

**Mr. Jones:** We can zoom in and you can get a better picture.

**Mr. Hayward:** You can see where the red hits that road as it curves that's where the actual road frontage he has on that particular tract sits.

**Mr. Jones:** I just want to make sure the Commissioners are clear they don't have to subdivide that to plat, now they may have to get some variances depending on the road frontage where the width to depth ratio but they would not have to create an additional lot unless they wanted to, actually creating an additional lot would make their or possibly make it not to have to get any variances, but they don't have to create an additional lot there. Debbie's zoomed in on that.

**Mr. Hayward:** The driveway, I believe sits right about right there is where his driveway sits relative to the portion of the property that backs up to Plattsburg Road.

**Mr. Raasch:** Are there any other questions? Thank you. Do you have any people in the audience that would like to comment on this? At this time I would like to entertain some discussion from the Board, does anyone have a comment?

**Mr. Jones:** I just want to remind the Board that there are two variances so we will have two separate votes it will be the variance from platting the property in red and then the width to depth ratio for the property outline in green.

**Mr. Raasch:** What will be the first vote?

**Mr. Jones:** The first one will be the platting.

**Mr. Raasch:** Does anyone like to make a comment on that? Can we have a motion on that one way or the other?

**Mr. Whitton:** I move to approve not requiring the platting.

**Mr. Raasch:** Do I have a second?

**Mr. Kramer:** Second.

**Mr. Raasch:** We will have a vote of the Board.

**Mr. Jones:** Randall Morris?

**Mr. Morris:** Approve.

**Mr. Jones:** Larry Whitton?

**Mr. Whitton:** Approve.

**Mr. Jones:** Kristi Soligo Fleshman?

**Ms. Fleshman:** Approve.

**Mr. Jones:** Zachary Kramer?

**Mr. Kramer:** Approve.

**Mr. Jones:** Chairman Buddy Raasch?

**Mr. Raasch:** Approve.

**Final Vote 5/0/0 Approved Case 17-101BZA  
Variance Request/No Platting Required for 3±  
acre platted piece and un-platted Scarbrough  
property**

**Mr. Raasch:** So we go to the second question, can you restate the second question?

**Mr. Jones:** Yes the second request for a variance is to the width to depth ratio, if you go to your second page of your staff report it's the width to depth ratio for County standards it can only be four times as deep as you are wide on your lot, so they are deeper than four times wide for the road frontage so they are requesting a variance from that width to depth ratio, maximum width to depth ratio.

**Mr. Raasch:** Do I hear a motion over that?

**Mr. Whitton:** So moved.

**Ms. Fleshman:** Second.

**Mr. Raasch:** Let's hear a vote.

**Mr. Jones:** Randall Morris?

**Mr. Morris:** Approve.

**Mr. Jones:** Larry Whitton?

**Mr. Whitton:** Approve.

**Mr. Jones:** Kristi Soligo Fleshman?

**Ms. Fleshman:** Approve.

**Mr. Jones:** Zachary Kramer?

**Mr. Kramer:** Approve.

**Mr. Jones:** Chairman Buddy Raasch?

**Mr. Raasch:** Approve.

**Final Vote 5/0/0 Approved Case 17-101BZA  
Variance Request Width to Depth Ratio**

**Mr. Raasch:** We will move on to the next case.

**Mr. Jones:** Yes sir.

**Mr. Raasch:** Can we have a staff report.

**Mr. Jones:** Yes and I would like to add the staff report as part of the official record. The next case is 17-102BZA this is a request for a variance to Section 151-6.3(B)(5)(b) pertaining to the placement of an accessory structure being located forward of the principal dwelling unit in a residential rural R-1 district, such accessory structure placement will be non-compliant with the 2011 Clay County Land Development Code. Summarized the staff report 17-102BZA dated April 11, 2017.

**Mr. Raasch:** First we will hear the public comment?

**Mr. Jones:** We can start with the applicant.

**Mr. Raasch:** Can the applicant come forward?

**Mr. Mayrand:** Good evening, my name is Dennis Mayrand, I am at 14204 N Virginia Ave, we would like to put a garage in in front of our house and I think the staff report

shows that there is a garage existing on the property, it's not necessarily a garage it's in the back and it is more of a storage shed/workshop, that is where I do a lot of woodworking in there so it has a garage door on but I think a lot of sheds do for access. We would like to put the garage in the front of the house about where that black spot is, I think that is actually my wife's car there, the garage would be set back, it would be back this way so it would cover about the back 1/3 of the house it will set in from the edge of the driveway here approximately ten feet and it will go 20 feet deep into the bank here. Actually this by County Code this is the front of our house but there is no door here, this is actually the front of our house it is facing east, it is a semi or contact home, it is not a full contact home because a earth contact home would technically have concrete on three walls where ours only has concrete on the back wall with wings, so it's a semi contact. And we are on hillside this being the high side here, Wilkinson Creek is right down here, and from our house here to right about here on the other side of this drive that goes to the back there's close to a 20 foot incline drop within 30 feet it drops this way approximately 20 feet down or so, so to put a garage back behind the front line of the house here it would almost be impossible, I would have to fill in the 20 feet then this here the driveway here that goes to the back, it also goes from the front here where it is level it makes a huge dip when it goes to the back and I believe it's between eight and ten feet drop right there. So that is why we don't want to build anything back here to park because in the winter time it's really icy and slick so we want to stay up here where it's level with the road. We would like to as far as the outside of the garage we plan on making the roof pitched the same pitch that is on the house, it's a 5 to 12 right now and it won't be higher than the house it will actually be, the base of the garage will be four feet below the base of the house, because the house is built up higher, but going into the bank the pitch of the roof will be lower than the pitch of the house and we will finish the side, we will, the roof will be the same shingles and everything that is on the house and the side of the garage because most of it is going to be in concrete whatever concrete that shows will be painted the same color as the house, we will match as best we can, I don't think we can put siding on the garage to match the house because it will be down into the dirt and I don't think that will last. Do you have any questions, I did have one of my neighbors came by last night to offer some support and he just signed a short letter just stating that he has no problem with it.

**Mr. Jones:** Can we attach this as Exhibit A? Can you pass it so the Commissioners can see it?

**Ms. Fleshman:** Can I ask which neighbor this is?

**Mr. Mayrand:** His property is up the hill here on Sunrise, it is the street that comes around here and it's a cul-de-sac up here with several houses and his property is right here (pointing at the map).

**Mr. Kramer:** So his property is across the street from yours? You can see the back of his property?

**Mr. Mayrand:** Yes there is probably from here to his house there are no houses in this area here, it's all wooded and his house is probably...

**Mr. Jones:** Debbie is going to zoom out so you can see the surrounding area.

**Mr. Morris:** According to Exhibit B, your measurements included you expect the garage to be 100 feet from the road?

**Mr. Mayrand:** No our house is 100 feet from the road I think the front of the garage will be in 60's approximately 66 feet if I remember correctly.

**Mr. Morris:** Okay then I am misreading this then, I see 66 there and then 34 at ...

**Mr. Mayrand:** Yes you are right, I am sorry, it is 100 feet.

**Mr. Morris:** That is the garage.

**Mr. Mayrand:** And it is going to be sit back from the front of the house, back there.

**Mr. Jones:** I think I can summarize, you can see on the site plan from the road it has the measurement of 66 feet to that first bend in the driveway and then there is the additional 34 feet so I believe Mr. Mayrand, Mr. Morris was correct it is about 100 feet.

**Mr. Mayrand:** Yes I am sorry.

**Mr. Jones:** So your site plan is correct it is 100 feet from the edge of the street.

**Mr. Kramer:** Sir how tall is the garage door going to be?

**Mr. Mayrand:** The garage door will be seven feet tall, just a normal door. We are going to put one single garage door in there, or it's a double 7' x 16' but the height of our garage will be ten feet do to the depth of the bank, when we have to go back in we are going to be between eight and half to nine feet of dirt so we are going to have to go ten feet so the height of our garage is going to be ten feet.

**Mr. Raasch:** Is there a reason why you want to build the garage here instead of this side behind the house?

**Mr. Jones:** Instead of where?

**Mr. Raasch:** Behind or beside the house, it looks like there is a lot of area in the legal zone.

**Mr. Jones:** Debbie can zoom back in on Mr. Mayrand's parcel, thank you.

**Mr. Mayrand:** You mean back up here?

**Mr. Raasch:** The other side.

**Mr. Mayrand:** Back here, because of the topography of the property there is quite a drop, from right here from the edge of this driveway, I believe I put that on this map here, if you go 20 feet out from the edge of the driveway out this way that is a 20 foot drop, because the property has such an incline there.

**Mr. Raasch:** At a 45 degree angle.

**Mr. Mayrand:** Just about yes sir, the whole the property is probably a 30 degree before they stopped off at the end of the house and leveled out the yard and the drive that goes around there and the rest of the bank picks up more aggressively once you get to the other side. And then couple that with the fact that this driveway here is a ten foot drop in front of the house so if we are going downhill if you are trying to get to the garage so in the winter time it is really tough, that is all I have.

**Mr. Raasch:** Any other questions?

**Mr. Kramer:** So the construction, the side that is going into the side of the hill will be concrete and the walls coming out will also be concrete?

**Mr. Mayrand:** Yes.

**Mr. Kramer:** The whole structure will be concrete except for the roof?

**Mr. Mayrand:** And the front.

**Mr. Kramer:** The front, okay.

**Mr. Mayrand:** I have more of a drawing here, this is the proposed garage so this is the concrete walls and these are just wing walls here.

**Ms. Fleshman:** So are you saying that the garage goes into the bank?

**Mr. Mayrand:** Yes.

**Ms. Fleshman:** Okay so it would mimic your home, so the garage will go back into the bank, hence his question about being concrete on three sides as well it will mimic how your house is, is that correct?

**Mr. Mayrand:** Yes, except for the fact that our house is only concrete on the back wall but the house sits here so then the garage next to it will be concrete but it will have walls because it's going to be completely, it will be underground, but the house was a flat spot that was leveled out where the house sit on that was just the back wall with wings.

**Ms. Fleshman:** Okay.

**Mr. Raasch:** Anything else, anymore questions?

**Mr. Kramer:** So the front of or the wood part of the front will it match the front of the color of the house?

**Mr. Mayrand:** Yes, the front of the garage will be made out of wood so will...

**Mr. Kramer:** It will be the same, yes.

**Mr. Jones:** Mr. Mayrand will the concrete walls step down or will they be full height on the sides?

**Mr. Mayrand:** Well they possibly step down because of the way the slope of the roof we may try and go ten feet in the back and 10 feet on the side's half way then step down to eight feet.

**Mr. Raasch:** Any other questions? Okay I think we are through with you at this time.

**Mr. Mayrand:** Thank you.

**Mr. Raasch:** Is there anyone else that wants to make comments on this? At this time I think we need some discussion from the Board or this is just one variance, or a motion on the variance.

**Ms. Fleshman:** I move that we approve the variance that the applicant is asking for.

**Mr. Whitton:** Second.

**Mr. Raasch:** We are ready for a vote.

**Mr. Jones:** Randall Morris?

**Mr. Morris:** Approve.

**Mr. Jones:** Larry Whitton?

**Mr. Whitton:** Approve.

**Mr. Jones:** Kristi Soligo Fleshman?

**Ms. Fleshman:** Approve.

**Mr. Jones:** Zachary Kramer?

**Mr. Kramer:** Approve.

**Mr. Jones:** Chairman Buddy Raasch?

**Mr. Raasch:** Approve.

**Final Vote 5/0/0 Approved Case 17-102BZA  
Variance Request Outbuilding Forward of House**

**Mr. Raasch:** We had a similar case like this last fall?

**Mr. Jones:** Yes very similar.

**Mr. Raasch:** Okay we will move on to the next case, would you like to tell us about this one.

**Mr. Jones:** Yes sir, this is case number 17-103BZA and I would like to add the staff report as part of the official record, this is a request for an appeal of an Administrative

Decision pursuant to Section 151-3.15 of the 2011 Clay County Land Development Code pertaining to a written interpretation given on March 22, 2017, regarding; whether or not Church or Religious Assembly as used in the Code allows for a Church to manifest in any residential option-whether that be clergy/staff housing, convent, monastery, homeless shelter, battered women's shelter, guest housing, retreat center or any other traditional and common way that a Church might feel led by their faith (or exigencies) to manifest their Church, the applicant is Doug Perry, The Church of Liberty, representing Millin Co., LLC. Summarized the staff report 17-103BZA dated April 6, 2017.

**Mr. Raasch:** Any questions from the Board? I am sure there are some.

**Mr. Jones:** The applicant is here and I do not believe Mr. Perry was sworn in so we will need to swear him in.

**Mr. Raasch:** If you will come forward we will swear you in and anyone who wishes to speak. Raise your right hand do you solemnly swear the testimony provided will be the truth, the whole truth and nothing but the truth so help you God.

**Mr. Perry:** I so affirm.

**Mr. Raasch:** Would you like to make some comment on this?

**Mr. Perry:** Yes sir, thank you. Ladies and gentlemen I come with two issues, one is the way that the code is being interpreted and the other is the way the code is written. Churches have a unique position in Constitutional Law in this Country and the Government has to show it has a strong burden before it can manipulate or control or legislate the manifestation of a Church. My first issue is with the way the code is interpreted if I can refer to the exact definition it's in the letter that I included for you, I believe, no it's not, if you go to page two hundred and something of the code here it defines religious assembly as a use located in a permanent or temporary building providing regular organized religious worship and religious education incidental thereto, but excluding private primary/secondary educational facilities, community recreational facilities, daycare facilities, parking facilities. Property tax exemptions obtain per pursuant to state law shall constitute (*inaudible*) evidence of religious assembly, which of course we have and then religious assembly mega it says a place where religious assembly that contains parking for more than 300 cars or sanctuary seating more than 400 persons and they also have accessory uses such as gymnasiums, school classes during the week daycare etc. and then it defines religious assembly standard as a place for religious assembly that contains parking for less than 300 cars or sanctuary seating for less than 450 persons, classrooms and fellowship hall. Now that is a very typical, very American definition of a typical mid-western Christian Church, dividing them between mega and standard is not a problem you can decide what size parking lot goes with which, the problem is that the code is being interpreted as, even though it says such as or it says etc. those are the only things that a church can do. If I ask Kipp can we have a retreat center, he says no that's not on there, even though retreat center is in the definition on the next page as a facility used for professional educational or religious conveys, meetings, conferences or seminars which may provide meals, housing and recreation for participants during the period of the retreat or program only. Says here it may not be utilized by the general public for overnight accommodations. Retreat center is never repeated in the Code anywhere, we've done word search, Kipp confirm it the word retreat doesn't exist in the code anywhere. So how does a church have a retreat center when it assumes churches can have retreat centers when there is no residential option for churches at yet retreat center is listed in the code as if it ought to go somewhere and yet

there is no link to it anywhere. So I went through it about a month ago, we're currently doing animal production, our goal for the farm has always been to be an intentional community to live out our faith in community as fifteen hundred Christian Communities all over the United States do and have throughout history, to be a teaching farm to teach let's say the ability to be a place where people can come and learn how to raise rabbits, how to raise goats and all the other things we do, we currently have rabbits, quail, goats, sheep, pigs, geese, chickens and other things on the land. Under animal production which we are zoned for in C-3, about a month ago or two months ago now Kipp called and said you are raising rabbits that's not listed under animal production, rabbits are listed under domestic not farm animals, where animal production says...

**Mr. Jones:** Chairman, does this have any reference to the questions he has asked?

**Ms. Perry:** It does, because my point is that the code is read as a list of only things you can do even when it says such as or etc., it's being read as the only things because rabbits were not on the list of farm animals I had to go to talk to Missouri State Conservation, I had to get documents from Missouri showing that they are traded at the livestock auctions that they are under livestock as far as Missouri is concern. If we have one rabbit and called it Fluffy that is one thing but we have 200 rabbits and we sell them to people to eat and we eat them on the farm, that's livestock. But using that as an example of how the code is being read as the only things churches can do, if I ask Kipp can I have a bus ministry for the church, he says you have to be zoned for a commercial parking lot to park the bus. If I say can we have a puppet show, well you have to be zoned for outdoor entertainment or indoor entertainment to have a puppet show, no those are the things churches do and if we were a Buddhist Monastery or a Convent or a Muslim all kinds of other groups where people live on site with the temple with the church this description doesn't apply to us at all, there is no pathway to be a church and to have a residential option even though retreat center is listed in there so one problem I have is that the code when it says such as should not be the entirety of the list of what the church can and can't do. Churches are at a very unique position as far as law and you have to show why in a C-3 zoning where we are we can have hotel, we can have congregate living which is essentially a homeless shelter which is what we said we didn't want to be but we are permitted by right and could have been all along, a group home with a conditional use permit, convalescent center permitted by right, a hospital with a conditional use permit, we could be a hotel/motel, we could have accessory apartments and accessory dwellings those are all residential options that are allowed in C-3, if we can have a hotel you have to show why, you have an overwhelming burden to deny us being a church that is residential that has people staying on site that has a retreat center and I reference RLUIPA which is the Religious Land Use and Institutionalized persons Act and the Federal Code for RLUIPA that talks about that this is the law of the land and the Constitutional and the courts have decided that the churches, especially new and unusual churches that might face persecution or prejudice need to be handled very carefully in terms of zoning. There is also the Religious Freedom Restoration Act for Missouri that essentially says the same thing. So you are the Board of Zoning Adjustment and I am suggesting that there needs to be some adjustment to the zoning because what is just a description that somebody wrote, hey this is kind of what a church looks like has ended up being the only things that a church can do and that's not Constitutionally okay, that is a violation of the establishment clause, it's been two years on the property trying to fit in the cracks here and there and find what we can do, we had a zoning application but we

were treated as a big developer and that's not the point at all. The point is that we are a church that wants to live out it's faith by living on the property we are not trying to get around the zoning, building codes or anything else, the whole question is do you have the authority to tell a church that they can't manifest church residentially and I don't dispute that Kipp is reading what the code says but Kipp is reading what the code says as a list of the only things that churches can do and if you meant to write the code that way you should have allowed for a whole lot of other things in there that churches do just as a normal basis of some. I have given you in the letter one after another, St. Ann's has people living there in Excelsior, St. John's has priests living there, other's that have homeless shelters others that have battered women's shelters and they are all just zoned church, they don't have to go and get some big neighborhood zoning or multifamily whatever those are some of the things that churches do and when I present that the argument is "well not in Rural Clay County". In Liberty they do and in Excelsior they do and in other places they do Providence Baptist Church has a parsonage but the was grandfathered in so every example that I say look what about this, what about this well that's not here, well that's because they know they're not supposed to live in churches that way and restrict so tightly the manifestation of our faith as a group. I will be glad to answer any questions you might have.

**Mr. Raasch:** Any questions from the Board? At this time I would like to invite anyone who would like to speak in opposition to come forward.

**Mr. Jones:** Mr. Chairman we can open it up for any public comment either opposition or in favor.

**Ms. Niemeier:** My name is Elaina Niemeier, I am located at 14621 Old Quarry Road, I reside and am the only house directly across from the cave area where Mr. Perry is speaking. For the record I would like it known that our Attorney John Rowe is still representing, David and Shanon Colvin, Richard and Shawna Johnson, Jim and Gail Colvin, Rob and Pat Wysong, JT and Carol Stockwell and myself Elaina Niemeier. Mr. Rowe was unable to be with us this evening due to a scheduling conflict however he felt after reviewing the appeal that Mr. Perry had appealed; that he felt Mr. Jones' official decision is still correct. Mr. Jones does not have to prove that he is right, the burden is on Mr. Perry to prove to you that Mr. Jones was wrong and once again he has failed in that burden. The Administrative Official, Kipp Jones, did not make an error. The interpretations were correct. Mr. Perry's intent to once again attain zoning and zoning approval by intimidation is inappropriate; he continues to stand in front of you asking you to tell him that you should be the one to determine what is wrong. The intimidation tactic is not correct and we would urge each one of you to not succumb to that intimidation technique because it is not appropriate, what is appropriate here is that interpretation of the entity charged with interpretation this, interpreting this code, and they have already reached the right conclusion. Mr. Perry wants to talk about Religion and Religious Acts, we would like to point out that when you look at the Religious Acts it is very clear that the Act is not a blanket exemption from zoning laws as a general matter. Religious Institutions must apply for the same permits and follow the same requirements and go through the same land use processes as all other land users have. The act is not to pre-empt or replace the normal zoning code but that's what the applicant is trying to get you, this evening to do. He is attempting to threaten the County by citing various legal actions, trying to pre-empt or allow him to do something that is not allowed by your code, your code. He is simply required to follow the same codes and ordinances that everyone

in Clay County has been asked to follow, church or not. Today's pretty simple, you have a request for an interpretation by an applicant, you've gotten a written decision on that by the Staff, you have an appeal to you by the appellant and your code, your code, says that you have to presume that Mr. Jones was correct and you have to place the burden of persuasion on the applicant to show an error has been made. He did not. Instead, what he did was talk to you about having him tell you why you're doing what you are doing and that is not how this whole process is supposed to come about. He mentioned earlier about, I have here the presumption that Mr. Jones told you is correct the mandatory, that your star presumption the word shall is a mandatory word how do we know that because your code tells that in Section 151-1.10 the words shall and will must and may are not may are mandatory. He makes mention of St. Ann's which is inside the city limits, St. Ann's has one home, one home on that ground for the priest. This is not comparing because he is asking to have several people live there not an entire Congregation is at St. Ann's Catholic Church in Excelsior Springs. So because he has failed in his burden you are obligated to affirm the decision and we ask that you respectfully to affirm the decision made by Mr. Jones and deny this appeal once again this year, thank you.

**Mr. Raasch:** Thank you, any other comment?

**Mr. Wysong:** Robert Wysong, 1216 Ann Ave. I don't know how many churches are in Clay County but I am pretty sure that they all fit the zoning laws of the County and he said it himself, Mr. Perry he wants an intentional community, that's what he's going for he is trying to skirt the zoning laws, thank you.

**Mr. Raasch:** Thank you.

**Ms. McGovern:** Molly McGovern, City Manager of Excelsior Springs, I just have one question really, there has been no comment about the requirement for sewer to support residential uses on the property, I really thought that's partially what this conversation was about, I think residential uses requires sanitary safe housing and that is in compliance with development code with the County as well as DNR/EPA County Health Codes, isn't that really what we are about is supposed to redirect and what is included what churches can and cannot be about.

**Mr. Jones:** I can answer that question if you would like me to Chairman.

**Mr. Raasch:** Yes.

**Mr. Jones:** Tonight is about the interpretation of the code, Clay County does not have an application for any type of development at this point. If we did we obviously would look at that.

**Ms. McGovern:** *(Inaudible)*

**Mr. Jones:** Yes Ma'am.

**Ms. McGovern:** Thank you.

**Mr. Raasch:** Any other comments? I know we swore in several people anyone else want to talk? Mr. Perry if you want to come back up you can.

**Mr. Perry:** It is not my intention to intimidate anybody my hope is to come before you guys where somebody will have some common sense and see that the definition of church doesn't apply to all churches and there are all kinds of groups from all kinds of religion that might want to come to Clay County and that definition doesn't apply to them at all, an intentional community is a church, if it is a church based intentional community. That's what the book of Acts started as, that's what we feel like we are, there's always been groups through history like the Shakers or Quakers, the Hutterites, even the Amish and Mennonites that have lived in community, here they have their own farms or

whatever but a lot of times through history they lived in communities and there are a lot reasons to do that, that is an important part of what we believe and what we have been living for the last dozen or so years. This intimidation that is being referred to is simply the reality that if you all as a group don't adjust the code then we have to appeal to Clay County Court. That is the next step in the appeal process. The next step after that is to go to Federal Court as a human rights violation, a violation of RLUIPA Federal Law, it just is. I am not trying to threaten I would rather it just be settled now then be settled later with lawyer fees and other costs to parties involved. I believe that I have shown that the code is being interpreted as a list of the only things you can do instead of a general description of what a church might look like. If you want to divide mega and standard by how many cars are parked there that is fine but if you are going to make a list of the things churches can and can't do this isn't it. This is not anywhere near complete and for example I mention the retreat center is nowhere to be found even though it's in the descriptions. So something is wrong with the code and I am hoping that the Board of Zoning Adjustment can adjust it for it to make some sense. Churches are in an unique position and I expect that other churches need to abide by whatever Clay County zoning says but there are all kinds of churches coming that may not fit the normal pattern of church that you defined for them and that is a Constitutional problem. The church doesn't have to abide by the same zoning rules as a farm or a residential house or whatever, churches are constitutionally different. This may not be the place to argue a constitutional issue but I am hoping you will look at the definition of a church and look at your own church where you go and see if there are things that you are doing that aren't inside that code that would be in violation of the Clay County Code. Anyway thank you appreciate your consideration.

**Mr. Raasch:** Thank you for your comments, at this time, there is only one variance correct?

**Mr. Jones:** You have three choices, this one isn't a variance, it is a...

**Ms. Niemeier:** I have one other thing to say do you want me to come back up?

**Mr. Raasch:** Would you like to come up and say something else, sure.

**Ms. Niemeier:** I would like to just add that Mr. Perry's correct in what he just got up here and said and it's very possible that other unique churches and groups are going to want to come to this area and your vote tonight will set precedent in that and I think you would want to consider that while you are voting, thank you.

**Mr. Jones:** Chairman I might add one more thing that maybe should have been part of the staff report, part of Mr. Perry's question that I made a response to, several of those items are listed in the Land Development Code such as homeless shelter as in transitional housing that is a use that could happen on that property but it would be a Conditional Use Permit, congregate living is mentioned in group homes and there are accessory apartments, guest houses and dwelling units that can be used possibly on that property if the property owner goes through a Conditional Use Permit which goes through the Planning and Zoning Commission and the County Commission. So there are some residential uses or some of the things that were mentioned in the request that are possible for that property so I just wanted you to know that as well.

**Mr. Morris:** This is for Mr. Perry, did I hear you correctly you said that churches are not subject to zoning rules at all?

**Mr. Jones:** Mr. Perry can you come up to the microphone please.

**Mr. Perry:** No, churches are absolutely subject to zoning rules, but zoning has often been used as a club to restrict religious movements in one source or another, either because they don't want them in a strip mall because they want the tax revenue or because they don't want that group in the town at all, I am concerned about Ms. Niemeier's comment that you are setting precedent that some of those groups might want to move to Clay County and we might have a Buddhist Temple or I am not sure how I feel about that comment that you should restrict churches so that weird ones won't come to Clay County. Anyway, yes we have to abide by Building Codes, yes we have to be connected to sewer or DNR or all of those things are part of the presentation of what is going to be built there. The thing is nobody, the church doesn't have the same zoning restrictions as a house or a farm or something else, the code goes through here's what apartment complexes have to deal with, here's what farms have to deal with, churches have their own unique section in the code at how zoning applies to them, okay so a residential home like Ms. Neimeier's is not restricted by whether they can have a gymnasium or a fellowship hall or whatever that they have their own set of setbacks and all of those kinds of things. My point is that the section of the code that relates to churches is fundamentally broken, is too limited and doesn't allow for free expression of religion and that is a constitutional problem. Because churches do have to be handled carefully constitutional the courts have.....that is the whole point of RLUIPA, I've got the text of RLUIPA in there and the summary of what it says, the highest court in the land and the Congress has said that the Government needs to show why you are burdening a religion by restricting them and just like Mr. Rowe and his comments that he is of course paid to argue that is the law, that is what RLUIPA says, that is what a court will say and I am hoping you can see that before we have to go through all of that, thank you.

**Mr. Raasch:** Any other comments from the Board Members? Any other comments from the public? Come forward sir.

**Mr. Roffman:** Have you been sworn in?

**Mr. Jones:** Were you part of the initial swearing in?

**Mr. Eales:** No.

**Mr. Raasch:** Raise your right hand, do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

**Mr. Eales:** I do, sir. Brad Eales, the Mayor of Excelsior Springs, just have one because I am not going to address the whole issue with infrastructure and everything else sewers, water that we have been through with him again, this is a question of amending a code. When somebody comes to me and wants to amend a code we request that we have a planned development to show what that code is going to cover, we just don't change a code to fit a blanket policy across the world to try and make it fit for whatever we want to do. The only thing I am asking is you reference that we have no plan for this property and you don't amend codes before you address what's going to be there. That would be like asking for a rezoning of the property for whatever I wanted to do from residential to commercial, commercial to residential, for multifamily uses without knowing the planned development before you amend it and then next week I come back to you and ask you to be rezoned or another ordinance to be changed to fit my project because I changed my mind on the project, you have not planned development on your table, thank you sir.

**Mr. Raasch:** Any other comments? Anything from staff?

**Mr. Jones:** That is it for staff.

**Mr. Roffman:** I'll clarify to the Commission what your role is in this because it is a little bit different from some of the other codes we've done, the codes clear that Kipp's decision is given a presumption of correctness the appellant has the burden to show that it was incorrect and also the code, the appeal is only sustained if you determine that the Administrative Official erred. So you sustain the appeal if you believe that he erred, you deny the appeal if you do not believe that he erred, that is the only question, there really is not a question of changing codes or finding anything constitutional finding tonight. Was his interpretation correct or was it incorrect?

**Mr. Raasch:** I think we are ready to entertain a motion.

**Mr. Whitton:** Chairman Raasch, I move to deny the appeal.

**Mr. Raasch:** Do we have a second?

**Ms. Fleshman:** I second.

**Mr. Kramer:** Can we hang on a second; is that the correct wording to say?

**Mr. Jones:** We will have to go through Legal Counsel, do you want..

**Mr. Roffman:** You can say, if whoever made the motion to amend it to say that you reject the decision, you affirm the decision or you modify the decision so if you want to deny the appeal then what you will be saying is that you want to affirm the Manager's decision as to the written interpretation.

**Mr. Jones:** So Mr. Whitton needs to restate...

**Mr. Roffman:** There are suggested wording on page two for the three options that you guys have to make, at the bottom there the three choices.

**Mr. Jones:** So just to restate, if you say affirm you are agreeing with the Manager's decision, if you say reject you are disagreeing with the Manager's decision...

**Mr. Roffman:** And the third option is to modify some of the terms in the decision.

**Mr. Whitton:** I change my motion; I move to affirm the Manager's Administrative Decision as to the Written Interpretation.

**Ms. Fleshman:** Second.

**Mr. Raasch:** At this time we have a motion and a second; I think it is time to have a vote.

**Mr. Jones:** Randall Morris?

**Mr. Morris:** Approve.

**Mr. Jones:** Larry Whitton?

**Mr. Whitton:** Approve.

**Mr. Jones:** Kristi Soligo Fleshman?

**Ms. Fleshman:** Approve.

**Mr. Jones:** Zachary Kramer?

**Mr. Kramer:** Approve.

**Mr. Jones:** Chairman Buddy Raasch?

**Mr. Raasch:** Affirm.

**Final Vote 5/0/0 Approved Case 17-103BZA  
Affirm the Manager's Administrative Decision as to the  
Written Interpretation**

**Mr. Raasch:** That concludes the..

**Mr. Jones:** I do have one thing for the Board Members we do have an application for next month so we will have at least one case possibly two for next month so please plan on attending and I want to say welcome to Mr. Morris, this is his first meeting so thank you for being here.

**Mr. Raasch:** I would like to say welcome to the new Board Members and at this time I would like entertain a motion to a dismissible.

**Mr. Whitton:** I move to dismiss.

**Mr. Raasch:** Do I have a second?

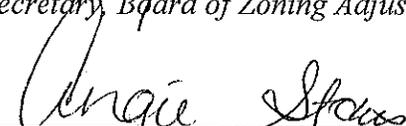
**Mr. Kramer:** Second.

**Mr. Raasch:** I'll right meeting is over.

**Meeting Adjourned**

  
\_\_\_\_\_  
Chairman, Board of Zoning Adjustment

  
\_\_\_\_\_  
Secretary, Board of Zoning Adjustment

  
\_\_\_\_\_  
Recording Secretary