

BOARD OF ZONING ADJUSTMENT MINUTES

May 24, 2016

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

Call to Order

@ 5:30 pm: Brian Klopfenstein, Chairman

Roll Call: Kipp Jones, Manager

Members Present: Buddy Raasch, Brian Klopfenstein and Larry Whitton

Members Absent:

Staff Present:

Kipp Jones, Manager
Debbie Viviano, Planner
Kevin Graham, County Counselor
Andy Roffman, Assistant County Counselor
Angie Stokes, Secretary

Mr. Klopfenstein: My name is Brian Klopfenstein, I am one of the Board Members for the Planning and Zoning, welcome to Clay County we have one issue on the table so the first thing I would like to do is call roll.

Mr. Jones: Buddy Raasch?

Mr. Raasch: Present.

Mr. Jones: Brian Klopfenstein?

Mr. Klopfenstein: Present.

Mr. Jones: Larry Whitton?

Mr. Whitton: Here.

Mr. Jones: David Fulton?

Mr. Fulton: Absent.

Mr. Jones: Vernon Reed?

Mr. Reed: Absent.

Mr. Klopfenstein: So three out of five I assume that means we've got a quorum?

Mr. Jones: That is a quorum, yes.

Mr. Klopfenstein: Alright, I think the next order of business we've got to follow before we start with our request for approval or the appeal is we have got to select a, at least on a temporary basis, a Chairman to run the proceedings tonight and then when we hit five at our next meeting, whenever that is, we can make a permanent selection. So anybody have any thoughts?

Mr. Whitton: I move to nominate Brian Klopfenstein.

Mr. Raasch: I second.

Mr. Klopfenstein: There is a motion and a second all those in favor indicate by saying aye when calling the roll.

Mr. Jones: Buddy Raasch?

Mr. Raasch: Aye.

Mr. Jones: Larry Whitton?

Mr. Whitton: Aye.

Mr. Jones: Brian Klopfenstein?

Mr. Klopfenstein: Aye.

Final Vote **4/0/0** **Brian Klopfenstein Temporary Chairman**

Mr. Klopfenstein: So at least under temporary basis I am going to chair this meeting as I understand that we have a couple of minutes to approve from April 28, 2015 board meeting and also a May 19, 2015 board meeting. I was not at the meetings so I cannot make any motion about approving it, but is there a motion on either set of minutes?

Mr. Whitton: I make a motion that we approve both of them; I was here for both of them.

Mr. Raasch: Second.

Mr. Klopfenstein: All of those in favor of approving the board minutes for April 28, 2015 and May 19, 2015 indicate by saying aye.

All: Aye.

Mr. Klopfenstein: All of those opposed the aye's have it. Alright the next topic that we've got is case number 16-101BZA, a request for an Appeal of an Administrative Decision pursuant to Section 151-3.15 of the Clay County Land Development Code pertaining to the two (2) written interpretations given on March 30, 2016, regarding to 1). Whether or not College or University as used in the Code and permitted by right in C-3 zoning includes dorms or residence halls; 2). And whether or not under Religious Assembly, Mega etc., in the definition includes any kind of residential option like homeless shelter, staff housing, parsonage, or other use typical of many churches, synagogues, mosques, and monasteries. I understand that the applicant this evening is Doug Perry from The Church of Liberty, representing Millin Co. What I would like to do first is staff presenting or have a staff report and I ask if we could over that staff report first.

Mr. Jones: I would like to attach the staff report as part of the official record.

Mr. Klopfenstein: So moved and we will include it in the record.

Mr. Jones: Summarized the staff report 16-101BZA dated May 13, 2016.

Mr. Klopfenstein: Does anybody have any questions? Alright having received the report from the staff I assume there are folks and I assume Mr. Perry you may have something you would like to address to the board prior to the vote. Procedurally as I understand the burden is yours so let me open the floor and offer you any testimony or any exhibits you wish us to receive. I would be happy to do that, come up and since we are recording, if you would we ask that you take an oath or swearing in.

Mr. Perry: I can affirm.

Mr. Klopfenstein: You soundly affirm that the testimony you provide will be the truth, the whole truth and nothing but the truth.

Mr. Perry: Yes sir.

Mr. Klopfenstein: Thank you, your name for the record is Doug Perry.

Mr. Perry: That's correct.

Mr. Klopfenstein: The floor is yours.

Mr. Perry: Thank you, I am the pastor of The Church of Liberty and various ministries associated with that, including Liberty Disaster Relief and The Liberty Farm, which we have been working on for a year on that property. Millin Company is the owners and they have been owner financing that property for us until such time as we refinance through the bank. We have for a year been going around and around with zoning as to the definition of church, and my contention all along has been that the zoning code is flawed fundamentally and is establishing religion and violating the Constitution by saying how a church has to manifest. This is not a small thing, you have defined church in such a way that it limits our deeply held religious belief that we should be living together, worshiping together and working together and that is why we bought that piece of property. As many groups through history the Shakers, the Moravians and the early church in the Book Acts they lived together, there are over 55 intentional communities in just the State of Missouri where Christians are living together and working together and sharing their lives together, that's not the normal Sunday and Wednesday night model and yet the zoning code places an overlay on church that in that piece of land we could build Pleasant Valley Baptist Church we have more acreage on that piece of land than Pleasant Valley Baptist Church has. We could have a zillion parking spots we could have a massive sanctuary where we could do all things but we can't spend the night there and we can't have a parsonage, we can't have... the intention was never to have a homeless shelter there and yet there are examples of churches in the back of your document here that you received from staff a letter from me which I hope you read ahead of time, going through we are talking about RLUIPA the Religious Land Use and Institutionalized Persons Act and that Congress has clearly stated that the burden is on you to explain why you need to limit a church and put limitations on the expression of their faith, whether it's... see there is nothing in the code for monastery or convent or any other church manifesting in a residential way. You are the Board of Zoning Adjustment so I assume you have the authority to adjust the zoning, I have talked to Kipp and Debbie previously about and they have said yeah the next time we go through this whole thing we will put monastery and convent and stuff in there, okay well then that means it's an oversight now that needs to be corrected later but it's doing harm right this minute. I linked for you three cases there of various churches who had to sue under RLUIPA for the right to occupy their property each one of them won they also because it was a federal civil rights case they won damages and they got all their lawyer's fees paid in a case like that. I think if you had a zoning rule that said you can have a hotel on this piece of property which we can on that piece of property and you said you can have a hotel but nobody can stay passed midnight, well than you fundamentally defined hotel in a way different than hotel's typically have been, you know to say you can have a college or university and I disagree with Kipp in that the group housing option it specifically talks about fraternities and sororities and other groups, like when William Jewel, I was here in the Lambda Ki house when we lived off campus and that would be group housing according to what the code says in C-2 zoning. My argument is that C-3 zoning would include college and university that means all the component pieces that normally would be a part of a college/university. We are a teaching farm, we have the right to ordain and license ministers, we have the right to train people, the whole point of the farm was to be missional agricultural to teach people innovative eco-friendly ways to be sustainable and to take that to other countries and help people learn how to grow rabbits and catfish and all the different things that we do or trying to do out there. So we tried and tried and tried

to go through the process with zoning we have encountered a ton of hostility for really unreasonable and illogical reasons, we've dealt with a lot of slander, we have dealt with a lot of mean things said to us which I am used to and I have a thick skin and yet they seem to be more intent on us not using the land than the land not being able to be used as it was zoned. It is zoned for a church, the whole argument is how does Clay County justify keeping a church from doing the things that, that church feels strongly they need to be able to do and that churches all over town do. About half of the Catholic Churches in Kansas City have staff either monks, priests or sisters living on site and that is part of church it is not zoned differently, they don't have a different residential little dotted line on the map around the staff quarters that is part of church. There's various Protestant congregations all over town that I mentioned in my letter that have either family shelters or parsonages or other staff living on site because that is part of what that church does. To describe church in such terms as you have you limit the free expression of religion and the burden is on you to justify why that's okay.

Mr. Klopfenstein: Can I ask you a question?

Mr. Perry: Yes sir.

Mr. Klopfenstein: If we accept the Manager's responses and a residential unit is not included in accessory use, does that prevent you from occupying the land as a church?

Mr. Perry: No we can have services there, we can meet on Sunday's and Wednesday nights and whatever and then everybody has to go home to somewhere else and spend the night.

Mr. Klopfenstein: You can conduct religious activities not just Sunday or Wednesday but throughout the entire...

Mr. Perry: We could, we could be a 24/7 prayer room like the IHOP in Grandview and be there all the time, and if people fall asleep then I guess they just fall asleep.

Mr. Klopfenstein: I am not trying...

Mr. Perry: But we've been trying to do this right without....

Mr. Klopfenstein: And I am not trying to whiffle but my concern is the appeal is whether or not a residential use is included in the accessory use for religious assembly.

Mr. Perry: No the appeal is why zoning believes that we can have a hotel, we can have a detention center in C-3 zoning, we can have congregate living which is basically a convalescent center, we can have a retirement home, we can have all kinds of other things that spend the night and stay there and live on site but church can't do that. So why does zoning, why did you have an overwhelming reason to limit church from being able to spend the night when you have allowed in C-3 zoning all these other things that do spend the night? Kipp is doing his job he's following what's written down, the question is what's written down doesn't make sense because you are defining church and you are telling us that our strongly held belief to live together in community isn't your kind of church and that's a violation of RLUIPA. The constitution and RLUIPA puts the burden on you to explain why you should burden us in that way not the other way around. And this isn't about building codes or getting around anything the whole argument all, along has been why does the County define church in such a way that you can't be a monastery, you can't be a convent, you can't be a whatever and be a church you are going to fall under something else you are going to be a group home, you are going to be a group living, you are going to be something other than that, but we can't have a pray and retreat center, we regularly have people come from all over the world to get prayer,

to spend a weekend, to stay for a conference, we can't house them on the property because it's a Sunday and Wednesday night model that's being imposed on us.

Mr. Jones: May I add something.

Mr. Klopfenstein: Yes.

Mr. Jones: I should have added in the report that on the agriculturally zoned land they are allowed to put a single family residence.

Mr. Perry: One.

Mr. Jones: Yes.

Mr. Klopfenstein: Alright, so do you have any other documents, exhibits? We've got your packet, that includes the documents that you provided us are there other documents or exhibits you wish us to consider into making our decision?

Mr. Perry: I tried my best to give you what was concise, there's certainly other case law but I tried to give you what was concise and tried to let you know that we've done everything we can to try and navigate, we applied to do a village of tiny homes and zoned off a piece of land and we've tried to discuss with staff over and over, I have shown them case law, so this seemed like the process to go next after this there's nothing probably left but to let the court decide who has the burden in this situation.

Mr. Klopfenstein: In Mr. Jones' comments he indicated, I think, that transitional housing can be allowed if the Conditional Use Permit is approved and you have attempted that?

Mr. Perry: No, the point was never to have a homeless shelter there, the point was these are examples of things that churches all over town have without a Conditional Use Permit, without any other zoning, without any...there's, I listed several on here that I checked on in the letter that have churches that have various, oh Forest Avenue Church and Family Shelter, the Lighthouse Homeless Shelter that Forest Avenue is just simply zoned church, but the whole property is zoned church there is no Conditional Use Permit. The other the Catholic Churches where people live are just zoned church there is no that isn't a typical, Providence Baptist Church near Kearney has a parsonage, it's been there a really really long time before the current zoning rules but it's just a part of church it's one lot, it's not a separate lot for the house or where the pastor use to live or does live I don't know what they do with it now, but it's clearly part of the church's property and part of what churches have historically done and the argument is that you are changing and limiting what churches can do and Constitutionally you're not supposed to do that and the burden is on you to explain why a church can't manifest it's faith as it sees fit and that's the whole purpose of the Religious Land Use and Institutionalized Persons Act.

Mr. Klopfenstein: Okay, any other arguments (*inaudible*)

Mr. Perry: I would like to reserve the right to rebut anything that comes up by other testimony.

Mr. Klopfenstein: You may.

Mr. Perry: Thank you.

Mr. Klopfenstein: Are there others that wish to testify? Your name for the record.

Mr. Roe: My name is John Roe, I am an attorney with the law firm Roe and Epstein and for the record our address is 920 Main Street, Kansas City, MO Suite 270.

Mr. Klopfenstein: Mr. Roe as the witness testifies would swear or affirm?

Mr. Roe: Swear

Mr. Klopfenstein: Do you solemnly swear the testimony provided will be the truth the whole truth and nothing but the truth?

Mr. Roe: I do.

Mr. Klopfenstein: Again you are John Roe?

Mr. Roe: Yes Mr. Chairman.

Mr. Klopfenstein: The floor is yours.

Mr. Roe: I represent four families who support the decision or interpretation that Clay County Planning and Zoning department on the Written Request of Mr. Perry on behalf of The Church of Liberty, my clients believe that, that interpretation should be affirmed by this Board of Zoning Adjustment and that the appeal be denied. Those families who I am here speaking for are David and Shannon Colvin, Richard and Shana Johnson, Jim and Gail Colvin and Elaina Niemeier. I think it is important to point out some of the provisions of the Land Development Code that I think are applicable here and I will state for the record that we do agree with the analogist that was provided by the staff report, I am going to try not to plow that ground again as they say and be repetitive, but I think there are some other things that I can point to that I think give additional support as to why Mr. Jones' interpretation on these two points was correct. Section 151-1.7 of the Land Development Code identifies the intent of the Land Development Code, I think this is important because the interpretation that the staff gave or the administrative interpretation is consistent with the intent of the code, that section says quote, this Land Development Code is adopted to promote the public health, safety and general welfare of residents and visitors to Clay County and then among the various intents of the regulation are to regulate the type and intensity of the development, to divide the unincorporated area of the County into zoning districts, regulating land use and intensity of development, to protect and maintain the County's unique and irreplaceable natural resources and agricultural land and to preserve and protect land, air, water and environmental resources and property. The interpretation of the Planning and Zoning Department on the requests that was made by the applicant are consistent with the purpose and intent of the Land Development Code, so that provides additional support for why the staff was correct. Section 151-1.10 sets out guidelines on word usage and construction of language, Part A says all provisions, terms phrases and expressions contained in this Land Development Code shall be construed according to the purpose and intent set out in 151-1.7, that's why I have said that, we have to construe the words in the code in light of the intent of the code. Then it says you can also go look at 151.15-1 and when you go that section you see that it's definitions and it says the following terms shall have meanings described, uses not specifically defined shall have their common ordinary meaning, in either case the Planning and Zoning Director shall have authority to interpret the definition of any word as it applies to enforcement of the Land Development Code, so interpretation authority rests with Mr. Jones appropriately and he's made the right interpretations. Any uncertainty, this is subsection L of that same section says should any uncertainty remain about the specific use of language or definitions found within this code the uncertainty shall be resolved by the Planning and Zoning Director. Now I think there is a key provision that I think is worth bringing to this body's attention it's 151-3.15(g)(2) I will quote it, "in acting on the appeal the Board of Zoning Adjustment shall grant to the administrative official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant", and based on what we heard from the appellant I think that's very very important because the appellant stood here and basically said he wants to shift the burden to you when your code says he has the burden of showing error. So we have to start with the presumption that what Mr. Jones told you is correct, it is

mandatory that you start that presumption the word shall is a mandatory word how do I know that because your code tells me that. Section 151-1.10(i) says quote, “the words shall, will, must and may not are mandatory”. So when your code says you shall give a presumption to the administrator official’s decision as to being correct that is mandatory on you, you start with the presumption. Mr. Jones doesn’t have to stand here and prove to you that he was right the burden is on Mr. Perry to prove to you that Mr. Jones was wrong and he’s failed in that burden. Section H says quote, “that an appeal shall be sustained only if the Board of Zoning Adjustment determines that the administrative official erred” closed quote. The administrative official did not make any error the interpretations were correct and the appeal should not be sustained the written interpretation should be affirmed. Here’s a couple of things that I think go to show why the interpretations were correct, Section 151-4.1 establishes the base zoning districts in the County, the C-3 District is the Community Services District, your code says that the predominant land use type in that district is Commercial and the applicant is asking about residential type uses. That is a high intensity district the interpretation is that dorms and residence halls are not permitted by right in the C-3 District that interpretation is consistent with the predominant type of commercial in this C-3 District. When you look at Section 151-4.13 Commercial Services District you see a description of this district, I will quote it to you, “the Commercial Services District (C-3) is intended to accommodate moderate to high intensity commercial uses”, dorms are not moderate to high intensity commercial uses. According to the zoning districts standards while colleges or universities are permitted use in the C-3 there is no indication that dorms and residence halls are permitted as a right in that district and Mr. Jones has explained to you how he arrived at that and we’ve agreed with that. You know when you look at Section 151-6 these are the use regulations, there’s a chart and then you look at the uses dorms and residence halls are not permitted by right in C-3 pretty simple. The applicant hasn’t met their burden of persuasion to show an error, what the applicant has done is give you a list in a letter, a list of other places around town where he thinks those types of uses are allowed, but here’s the big problem and he admits it, to his credit he admits and makes it admission against his interest these examples of St. John’s Catholic Church in Liberty, Little Sisters of the Lamb Convent all that whole list you know what starts out on that list “while not in rural Clay County, there are examples all over in the nearby area” we are talking about rural Clay County, we are talking about the interpretation of a land use code that was designed to protect and maintain the County’s unique and irreplaceable natural resources in agricultural land. Of course there is going to be differences in a zoning code for rural Clay County verses a zoning code for Kansas City because the two are not the same and I think the applicant by turning in this letter has made an admission against his interest and he says with respect to the question about colleges. He gives one example of William Jewel that’s the only one we have heard tonight, that’s in Liberty, that’s in a city limit not rural, not in a rural area so two big problems there and I think the last point I would like to touch on after these admissions against interest that we just talked about. This came up in the rezoning application process that Mr. Perry pursued, maybe it’s just me but I’ve been around this zoning stuff for going on 25 years and this is the first and only time that I’ve seen this attempt to obtain zoning and zoning approval by intimidation, I told the Planning Commission, I told the County Commission and I would like to tell you that I find that highly inappropriate, on behalf of our clients I find that highly inappropriate to stand here before this body and basically say “I am right and that

the County's wrong and if you don't agree with me I am going to sue you in Federal Court". That's an intimidation tactic and I would urge each of you to not succumb to that intimidation technique, because it's not appropriate and what's appropriate here is the interpretation of the entity charged with interpreting this, interpreting this code and they have reached the right conclusion. Lots of talk about the applicant about shifting the burden of persuasion, lots of talk about this Religious Land Institution Act, I just want to say that when you look at the Religious Land Institution Act it's very clear that that 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 other land users. That act does not preempt or replace the normal zoning code, but that's what the applicant and appellant here is trying to get you to do is to threaten you with this act and then get you to try and preempt or allow him to do something that's not allowed by the code, when all my clients and everyone else has asked him to do is just follow the same codes and ordinances that everybody else has to follow. So to get everything back to the issue that's on the table before you today it's pretty simple you've got a request for an interpretation by an applicant, you've got a written decision on that by the staff, you have an appeal to you by the appellant and your codes says you have to presume that Mr. Jones was correct and you have to place the burden of persuasion on the applicant to show they've made an error and he didn't meet that burden of persuasion and instead what he did was talk about you having to tell him why you're doing what you're doing and that's not what this whole process is about. So because he failed in his burden you are obligated to affirm the decision and we ask you respectfully to affirm the decision made by Mr. Jones and deny the appeal. Thank you very much.

Mr. Klopfenstein: Does anybody else wish to speak either in favor of or in opposition to the application of the appeal? Now would be the time. I see no other hands, you wish to come back up and address us?

Mr. Perry: Yes, please.

Mr. Klopfenstein: Okay, alright so you have agreed with the analysis that the Manager's decision enjoins a presumption of correctness.

Mr. Perry: That is clearly in your code.

Mr. Klopfenstein: What else would you like to tell us?

Mr. Perry: First of all I understand that Mr. Roe's job is to argue in favor of whatever his clients are paying him to argue in favor of I would question his expertise on the Religious Land Use and Institutionalized Persons Act when he can't quote the name of the act correctly and whether or not he is really someone to listen to. I have shown you case law; my argument is not that Kipp had interpreted it wrong; my argument is that the zoning code as its written limits churches and that is constitutionally wrong. Now I understand also that other zoning areas might decide differently, that Kansas City or Kearney or Liberty have other zoning codes and so that a church or something else might be handled differently in another zoning code and I understand that everything that I have been facing, now let me be clear, I have lived in Clay County since I was about three years old, I went to Excelsior Springs High School, I went to Oak Park High School, I went to William Jewel. Except for a year and a half in Washington DC which I hated tremendously, I've had businesses here raised family here I love Clay County I really do. There are five intentional communities up near Dancing Rabbit in Northern Missouri in a county where there's no codes, no inspector, there's no nothing, they can build houses

out of hay, they can do whatever they want and that's why they go there and God called me here so we are here despite how much fight it requires to be here. There are easier places to do what we are trying to do but we feel strongly that this is where we are supposed to be. Now he accuses me of intimidation and threats that's never been the point the point is this, is what we have been facing all along is a sort of (*inaudible*) mentality where people are concerned about what a mile away from them is or what the codes are right in their little thing. Okay Clay County writes those codes that doesn't make them gospel, that doesn't make them right they are amended all the time. They're changed for all kinds of reasons and sometimes because they are really wrong. There is no one in this room that is facing the same kind of codes that we are as a church; there is no one here that's trying to navigate this same thing that we are trying to navigate. Now other building codes sure absolutely but there's nobody here that can say they're in the same boat as we are with this circumstance. Now..

Mr. Klopfenstein: I don't mean to cut you short but I am getting the sense that we're plowing the same ground some more.

Mr. Perry: Okay just let me say this, I have tried every method I can to navigate the system and to try to show people that they are violating our civil rights that, the Clay County Code is not the supreme law of the land. The First Amendment of the Constitution clearly says that the Government has to show very clearly why they would restrict religion and that includes in how it is manifested and there is plenty of case law with groups exactly doing what we are trying to do where the city or the state has lost. I don't want, in a civil rights case the loser pays lawyer fees and damages it could add up to hundreds of thousands of dollars, I don't want Clay County to have to pay that, I am here tonight expecting you to side with him giving you one last chance to consider the Constitutional issues and whether you want to hold the Clay County Code above the First Amendment or not. I seriously, Buddy I am not trying to be smart with you, I am not trying to threaten, I believe strongly that you have limited how church can be manifest and that it's not okay.

Mr. Klopfenstein: I appreciate your arguments, I believe that you are advancing your arguments sincerely and honestly so I appreciate that as the Chairman of the hearing so anything else you withstand?

Mr. Perry: No I would just say that Mr. Roe, all of the points that he made that Kipp did right confirming the code I don't have any argument with.

Mr. Klopfenstein: Okay.

Mr. Perry: Kipp is following the letter of the code, that's not the argument; the argument is the code is broken and that it is prejudice against us and our situation.

Mr. Klopfenstein: Okay, alright thank you so much, anybody else with comments? Okay then I believe I am going to close the hearing we will not take any further testimony at this point and now we are open for discussion as the board. Does anyone wish to make a motion?

Mr. Whitton: I would like a question for him, what type of building do you want to build on this land and how many families, if you can house how many families?

Mr. Perry: Our vision has been a small chapel that would hold maybe 30-40 people, there's places in the cave or rooms that were set up from previous things that would do that, the engineer says that is okay. We have talked all along about small footprint housing but it all depends on what the codes will allow us to build and what accommodation with Kipp if it's more of a residence hall kind of a thing or if they are

individual small houses, we've wanted it to be a retreat center where people can come and get prayer and that means a certain amount of people where we would have guests housing for ten or fifteen people to be able to come and stay. I don't think that our occupancy on that land would exceed 100 to 150 people. The village that we designed previously was in that range if we rezone the entire property for single family homes there's enough room there for and still staying in the four houses per acre density there's enough room for lots and lots of single family and 300 to 400 people that could occupy that land and still be in the approved density of Clay County. Previously we just looked at the six acre plot to rezone but the engineers have given us permission to build above the cave and on the back of the property where it's agricultural there, so my intention, we certainly don't want to pack the land out we are not going to clear cut all the timber we're not going to roll sewage down the hills into the neighbor's the whole point is an eco-farm to teach people state of the art ecologically friendly sustainable care for the land kind of things. So a lot of the concerns that we've heard, I would stack what we want to build up against any property in Clay County as far as its ability to care for the environment as the neighbors. Ultimately we would see maybe 100 to 150 people on the property working the farms and some of them; people would be coming and going for conferences and things like that. Right now we have fifteen, tops that would be moving out on the property.

Mr. Whitton: I kind of feel like that it's not our place to do this to go against the County, I understand your plight I have been through it and I've ended up in Federal Court against my own city and that's sometimes what you have to do but I am not for this situation, I mean I am a religious man I hate to vote on anything against religion, I go to church quite a bit.

Mr. Perry: This is the path that the code lays out was to come to you guys.

Mr. Whitton: Right so this is what we have to do in order for you to move on to Federal Court that is all I got.

Mr. Klopfenstein: I still need a motion of some kind.

Mr. Whitton: I make a motion to approve?

Mr. Jones: Chairman, I think we want to vote on two decisions...

Mr. Klopfenstein: Separately, yeah.

Mr. Jones: Either affirm, reject or modify.

Mr. Klopfenstein: In other words, I think for a clean record all away around it seems to me that our motion's got to be that we affirm the manager's administrative decision, that we reject his administrative decision or that we in some way modify he's administrative decision. There are two separate questions so I think we need to have a vote on each of the two questions.

Mr. Whitton: I move to affirm his decision.

Mr. Klopfenstein: As to residential use is not included in accessory use in Religious Assembly which is interpretation of number one and then affirm the decision that dorms and residence halls are not permitted by C-3 zoning which is interpretation of number two. Yes?

Mr. Whitton: Yes.

Mr. Klopfenstein: Okay. There is a second motion, do you wish to offer any ..

Mr. Raasch: I will second the motion.

Mr. Klopfenstein: Okay the motions have been made and seconded, council do you have any...

Mr. Graham: I would like just some clarification to motion for, two separate motions one for each.

Mr. Klopfenstein: Actually it's two motions to affirm interpretation number one and to affirm interpretation number two, we can vote separately.

Mr. Graham: That's probably the best thing.

Mr. Klopfenstein: Alright, if there is no other discussion then as to motion to affirm the written interpretation of number one on the manager's decision, if you vote yes the vote is to affirm, so yes means to affirm no means to reject, alright let's call the roll.

Mr. Jones: Buddy Raasch?

Mr. Raasch: Affirm.

Mr. Jones: Larry Whitton?

Mr. Whitton: Yes.

Mr. Jones: Brian Klopfenstein?

Mr. Klopfenstein: Yes.

**Final Vote 3/0/0 Approved Case 16-101BZA
Written Interpretation Number One**

Mr. Klopfenstein: So as to the written interpretation number one I assume it passes by a three to zero margin.

Mr. Jones: Yes.

Mr. Klopfenstein: As to affirming the manager's administrative decision on interpretation number two about dorms and residences halls would you call the roll.

Mr. Jones: Buddy Raasch?

Mr. Raasch: Affirm.

Mr. Jones: Larry Whitton?

Mr. Whitton: Yes.

Mr. Jones: Brian Klopfenstein?

Mr. Klopfenstein: Yes.

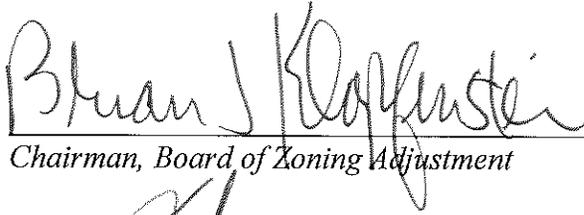
**Final Vote 3/0/0 Approved Case 16-101BZA
Written Interpretation Number Two**

Mr. Klopfenstein: That as well passes three to zero, correct?

Mr. Jones: Yes.

Mr. Klopfenstein: Alright is there any other business that we need to pick up in terms of (*inaudible*), I want to thank everyone for coming, I appreciate it, I wish everyone the best of luck, thank you so much and we adjourn the meeting.

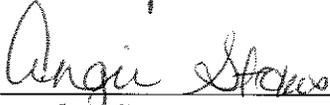
Meeting Adjourned



Chairman, Board of Zoning Adjustment



Secretary, Board of Zoning Adjustment



Recording Secretary