

BOARD OF ZONING APPEALS
MEETING MINUTES
July 14, 2020

Kris Schwickrath: Good evening, everyone. The July, 2020 meeting of the Board of Zoning Appeals is now called to order and we will start with roll call.

Adam Rude: Mr. Lewis - here, Mr. Lisher - here, Ms. Schwickrath - here, Mr. Clark - here, Mr. Cassidy - here.

Schwickrath: Prior to this month's meeting, we do not have minutes yet from Lisa Loveless so we wish her well in recovery and we look forward to those meetings or the minutes I mean as soon as possible. And we have no items under Old Business so we'll move to two items under New Business this evening and the first is Miss Karnes.

Rude: First item up tonight is BZA 2020-06. It is a development standards variance at 19 and 11 N. Miller Street. The petitioner/owner's name and petitioner's representative tonight is Gina Karnes. The subject property zoning classification is R1 single family residential. The comprehensive future land use is single family residential. The request tonight is approval of four development standards variances. All four variances are under the home occupation standards. Generally the request is to open a boutique style retail store in half of a duplex on the subject property. The Board of Zoning Appeals heard the first submission of this case on April 15th and it was denied. Miss Karnes has since revised the case and she was given, in the first 30 days you can submit notice that you're gonna be resubmitting the petition. She followed that procedure, resubmitted the petition and you're hearing the revised petition tonight. In the staff report, we laid out the or revised the staff report from April and page 7 outlines the updates we saw in the materials. And we also provided to you all the materials that Miss Karnes has provided to us for this petition.

Schwickrath: Okay, thank you. So Miss Karnes, if you'd please state your name for the record.

Gina Karnes: Gina Karnes.

Schwickrath: And though there are four parts to this, if you could just remind us of what your project is about and where how far you've come to this point to address some of the concerns we had back in April. Can you hear me okay?

Karnes: I have a little bit of trouble....(Inaudible)....

Schwickrath: Okay, you wanna.....

Karnes: You want me to restate what I am doing (?)? Okay.

Schwickrath: Yes, just briefly.

Karnes: Yeah. So what we're doing is trying to use the small side of our duplex as a boutique to open our small retail shop. We have, we're planning on improving the property even more than what we've done so far. We graveled the back of the property and paid for that. That was, Mr. Ledford had requested that. I met with them and we decided on where fencing should go and I agreed to pay for that.

Schwickrath: I'm going to stop you for just a moment. Is there any way to turn off that unit?

Rude: Yeah.

Schwickrath: It's....can anyone hear what any of us are saying? Thank you. Sorry to interrupt you. It's that one. If it's possible to turn it off.

Jim Lisher: For a certain period of time.

Schwickrath: Just for....yes, indeed. It's I don't know what else to say. Sorry.

Karnes: It's okay.

Schwickrath: Perhaps not. It's that one, isn't it? Yeah, okay. If we can't do it, I'm gonna ask you to speak up.

Karnes: Okay I can take it off if you want to.

Schwickrath: Yes.

Karnes: Okay.

Schwickrath: Since these are recorded.

Karnes: The fencing, they wanted fencing. I drew a little hand drawn map that showed the red areas because he said that he didn't, was not gonna request that I go north to south on the back of his property. So they wrote a letter stating that they were fine with the boutique opening. I also have another neighbor that's adjacent to the property and that is Megan Kennedy, I think is her last name now, and they were also are wanting a fence put up but they said they were fine with it as long as we had a fence up there. She said she thought it was a good idea. She herself is in the category that we are and thinks that there's a need for it in Shelbyville. We have several people that we've talked to that agree with that. That they feel like a plus size boutique would benefit Shelby County. Then I talked with the other neighbors which are here this evening, Chris and Lisa Bright, and they said they didn't know if they could agree to it, that

they were gonna discuss it. But I told them too that fencing is gonna be a part of the whole fencing in that back area and she had concerns about her driveway which they have a u-shaped driveway. And the large side of the property is where the renter is right now but looks like he, I don't, we're not sure if he's gonna stay there or not and if he does end up leaving, I don't know, we haven't decided if we're gonna rent it out or not. It depends on what happens tonight. But I told her that I would gladly put up a you know, no parking, don't block the driveway or some kind of sign there so that that isn't a problem. We've always told the renters that they're never to block that driveway, that it's not ours and there I think maybe a few times they have but they've you know if Lisa says something to 'em, usually it's someone coming to visit and they don't know. So once they're told, then that doesn't happen anymore. We had a new roof put on the property. We have a painter who's standing by. We're going to paint it. Depends on if it becomes a boutique, we're gonna paint it one color. If it's gonna not be a boutique, we're gonna paint it a different color. So we're just waiting for tonight to see what happens with that. So basically we're just waiting to see that's you know everything we've done so far.

Schwickrath: Okay, thank you.

Karnes: Uh huh.

Schwickrath: So we'll, at this point.....

Karnes: Oh, the parking now.

Schwickrath: Yes?

Karnes: In the back, because that was one of the issues was parking last time. We've graveled all of that and there is enough room back there. There's a tree line to the back of the property that needs cleaned up and trees cut back and may be even cut down. I'm not sure. And that should free up at least enough for six to seven spaces.

Schwickrath: It looks like you had six spaces on your hand drawn map.

Karnes: Uh huh, right. Well if the renter doesn't....it depends on what he does, if he stays or goes. Then we might even have eight spaces, but.....

Schwickrath: Okay. Okay, thank you.

Karnes: Uh huh.

Schwickrath: So at this point, we will take questions from the board and I know we're familiar with this, but to make sure that we look at each one of these, so there are four variances attached to this. The first one is business activities, so I'll start with Mr. Cassidy.

Cassidy: I have no questions.

Schwickrath: You should stay at the podium in case you.....there'll be time for the public to....

(?): Inaudible comment.

Schwickrath: Yes, absolutely. So no questions?

Cassidy: Not on this first one.

Schwickrath: Okay, alright. Mr. Clark?

Chris Clark: I don't have any questions.

Schwickrath: Okay, thank you. Mr. Lisher?

Lisher: Yes, just to clarify and it probably brings back the last time when you (?) before us. You're not living in this residence and don't intend to, correct?

Karnes: Not at this time. I'm not living in there. My daughter might end up living there. We're not sure.

Lisher: It's true that this was a single family dwelling.....

Karnes: When we purchased.....

Lisher: ... and it changed to two rentals, is that right?

Karnes: I'm sorry?

Lisher: You changed it to two rental properties?

Karnes: No. We bought it. It was a two rental property.

Lisher: So you bought it as two rental properties?

Karnes: Uh huh and it was zoned R2 at that time. I don't know what happened to the

Lisher: Okay. And you understand that ordinarily the business activity that's called for in the ordinance applies to owner/occupied single family residences?

Karnes: And that's why I needTom said that's why I need variances, to apply for those.

Lisher: That's all the questions I have, just to clarify it (?).

Schwickrath: Okay. No, that's fine. Thank you. Mr. Lewis?

Wade Lewis: No questions.

Schwickrath: Okay so I will close questions then from the board. I don't have anything further. And then anyone from the public who wishes to speak about the business use of this particular property.....you can sit now, yes.

Karnes: Okay.

Schwickrath: So we have to be specific to each part of the petition. Do you wish to speak now? I'm opening this up to public commentary. Please state your name for the record.

Lisa Bright: My name is Lisa Bright and this is my husband, Chris. We live at 404 W. Washington Street. I didn't get an opportunity to submit a letter because we had printer and computer issues so what I'd like to do is read my letter that I had written for submission if that's okay.

Schwickrath: Sure.

Bright: Okay. Our property sits directly south of the 9/11 Miller Street location. Our driveway is divides the two properties. We're lifelong residents of Shelby County and we bought our home 17 years ago primarily to the beauty and charm of the historic residential area. With which I feel this is in jeopardy if we open it up to businesses coming into our neighborhood. We've read all the posted documents and letters written by our fellow neighbors regarding the variance requests for opening a retail shop in our neighborhood. We do agree with the parking concerns. Our belief is though is that despite the efforts to divert the patron parking to the rear, this'll continue to be an issue due to the out of the way and hard to find location for parking as well as I feel like we'll still have the same issues with people who feel like they're just gonna run in for a minute so you know, they should be able to go ahead and park in our driveway. However our concerns go far beyond the parking issues. We have concerns regarding the effects that introducing retail business will have on the integrity and charm of our historical southside neighborhood. We do not feel that this business is ideal, appropriate nor needed for this area. We feel that this approval will leave our neighborhood open for more business to move in and we also believe that this will bring foot traffic to our neighborhood and will, additional foot traffic and will negatively impact the property value for the residential homes in our area. As we are a bit farther away from the main downtown shopping area, we believe that Shelbyville would be better served if this business occupied one of the many available retail spaces downtown. My husband recently retired. I work locally and am also looking toward retirement. We love our home and our neighborhood and we are hoping to remain in Shelbyville throughout our retirement years. However, if our homey residential neighborhood becomes a retail

neighborhood, we most likely will be forced to move. We believe approval for retail space will not improve our residential neighborhood and therefore we oppose the approval of these requested variances. Thank you for your time and consideration of our concerns.

Schwickrath: Thank you. Anyone else wish to speak about this particular petition and use?

No reply.

Schwickrath: And we are live on Facebook; do we have any comments?

Rude: Nothing about this petition, no.

Karnes: Could I say something else?

Schwickrath: Let me just finish with.....so nothing on Facebook?

Rude: No.

Schwickrath: Okay. Okay so then I'll close public commentary and yes, now you may approach the podium.

Karnes: I just know that the property is you know, three blocks from the downtown area. It is a quaint cottage feel structure and as a landlord, I believe that it would improve the property value of the neighbors versus what we've had as far as renting out to different individuals over the years with police being there and tearing up the property. I just feel like, and it would, it's not gonna be a full retail business. It's not gonna be Monday through Friday. It's gonna be weekends and a couple of nights during the week only during the summer months. If we see that we have ample business that it's becoming an issue, then we will look elsewhere for a different building. We're just trying this. We're seeing if it will be successful or not and I honestly I'm I own the property and in my opinion and I think Lisa has lived next door long enough to see that renters come and go and I was lucky enough to have her mother and her sister as my renter for almost 7 years and that was wonderful. But I have not had the same luck since then. So.....

Schwickrath: Thank you. Any further questions from the board?

Cassidy: Have you looked at other places besides your house down there?

Karnes: Yes I've looked at the building down by....

Schwickrath: Do you mind? You might as well stay at the podium.

Karnes: Well, okay.

Schwickrath: Thank you.

Karnes: I'm sorry. I looked at the building on East Washington that went up for sale, the gray building there across from the I don't know what was it SOS? What is that? It used to be the old Boys and Girls Club used to be there years ago. Across from there. It needs quite a bit of work and there's not much parking. There's only, I don't know, if you're driving yourself there, you maybe have a few more spots and then you have a couple of spots out front. But it just doesn't, it's just an empty shell. It needs plumbing. It needs a lot of work. More so than what my property needs and then I have to....I think they want \$89000 for it right now so that's just out of my range because I don't, that kind of overhead to start a small business is just not what I can afford right now. I did look into the grants that Shelby County use to have, the rental grants. They had it for one year but they've dissipated with those too. They don't have those anymore. So yes, I have looked. I did contact Christy that owns Elegant L. She had a building that she was going to rent next to Lemon Lane but she said no clothing could be sold in that building. So....any other questions?

Schwickrath: I have some questions. Have you launched yet your business online or....

Karnes: No, I'm waiting.

Schwickrath: You have not done any of this?

Karnes: No, I'm waiting. Uh huh.

Schwickrath: Okay. Okay so this is really a first-time venture and you want to see what's possible?

Karnes: Yes. Right, yeah.

Schwickrath: Okay. And it seems to me that you've addressed the physical improvements that we were concerned about back in April. Is there anything further as far as what any of the neighbors have asked for as far as fencing or

Karnes: Just that once the business gets started, which I told 'em, I've talked to my accountant and she said that because of the COVID 19 right now and because of the fact that inventory that's purchased and is not sold is considered a loss that she doesn't know exactly when she would recommend.....we've got a lot of work to do. We still have a lot of work to do in that little site and we have to go to the state and the state has to come down for safety inspection and then once they do that, I mean we can't even do anything until they approve and we might have some different things that we need to fix at that point. So but the neighbors said that they would like to have it look, you know to reevaluate it after six months to a year of the business being open to see if there are any problems.

Schwickrath: That would be something you would have to do yourself because this board actually is not set up to review, although we have done that.

Karnes: Uh huh.

Schwickrath: But we would not ask you to come back here and....

Karnes: Okay well I can let....

Schwickrath: I mean you would work through staff on that.

Karnes: Okay.

Schwickrath: I think that's a good plan. I just wanna re-cap too. So your idea is that you will only be open, did I hear you correctly, during the summer?

Karnes: Well I'll be open every weekend during the year.

Schwickrath: Okay that's it.

Karnes: Uh huh. And First Fridays. And then we're planning on during the summer, 'cause I'm a teacher and I'm off during the summer, to be open on a Tuesday and Thursday. And then we're gonna, once we get going, we're gonna establish hopefully a good online presence where we can and especially depending on how long this lasts, that might be a big part of our sales anyway.

Schwickrath: Okay. Okay that clarifies some things for me. Thank you. Any further questions that have arisen now?

Lisher: Yes. That brought up I guess a (?) question....(inaudible)...When you set up a retail establishment with the State of Indiana, I believe they require exit requirements, more than one. I believe they also may require some ADA compliance. I'm not positive. But I haven't heard anything where you've addressed the state requirements. It's a big jump going from a house, even a rental unit to retail space. There are certain requirements that the state has, as well as our local fire department.

Karnes: I contacted the state already and have been in conversation with him and have the application.

Lisher: Okay.

Karnes: And he said the ADA is not going to affect me and that as long as I have the exits and

they're labeled and the lighting and the fire extinguishers and smoke detectors and he went over a whole list of things. He said he would....

Lisher: So you've looked at(inaudible)....

Karnes: Yes. He said he would come down and as soon as I know something, we'll set up the appointment. I'll pay the fee. He'll come down. He'll go through the property and he'll give me a list of any improvements I need to make.

Lisher: That's all the area I wanted to touch on.

Schwickrath: Okay, thank you.

Clark: I have a statement I'd like to make.

Schwickrath: Please.

Clark: Concerning the Brights and Mrs. Bright's statements; I've been thinking about Shelbyville and its history quite a bit recently and precedent has been set way back as far as I can name several things that have been run out of business by things like Walmart. That would be Strickler's Market, The Sweet Shoppe on Montgomery Street, Wylie's Market on Noble Street and maybe a few others. I think that your mention of being a quaint and historic area, I think a shop would be very complimentary to that, so that's just a statement I'd like to make.

Karnes: We used to have Turner's grocery across from where I'm living now and we talk about that all the time.

Schwickrath: Well I'll continue your thought there because I've been thinking about it too and Shelbyville is Shelbyville. It's and you know, you're right about the history. And so what kind of feel do we want and then you know with I'm thinking Franklin, having gone through there. Some of those houses turned into shops. What does that mean for the people next door. I wanna look at this globally and I think we are so I it's really matter of is this the feel we want. Do we want to try this? And it's been done before but you're right, the pull to the east side of town, we're not quite used to this. It's been a long time. The part for me, I'll just tell you that in weighing this in my mind is that I just don't see that there's gonna be that much traffic. I think you're biggest problem will be the signage that states you need to go through the alley and park in the back. That's your problem.

Karnes: Uh huh.

Schwickrath: Especially given that whole property and that back space there is just wild. It's just so open and that's you know, that's we're just trying to work with that here. It's not anyone's fault. It's just the way it has....

Karnes: Well.....

Schwickrath:that that configuration of the land.

Karnes: Right and so with advertising, when we start our opening on grand opening, that kind of thing, I'm gonna make sure to have a map on there, the address. They can GPS it and hopefully and then if they come to the shop, it's like I said, my cousin has a shop and if people park in the wrong area, as soon as they come in, she's like you know, you can't park there. Please park in the back next time you come. So I'm hoping I have return customers that will become a regular thing.

Schwickrath: Any further, thank you, any further questions?

Clark:(inaudible)...would you be opposed to perhaps doing business by appointment only?

Karnes: Probably for awhile that's gonna be how it would have to be, uh huh. I mean taken you know the circumstances that we have right now if it doesn't change.

Clark: Okay, thank you.

Karnes: Uh huh.

Schwickrath: That's all I have. Any further questions from the board members?

No reply.

Schwickrath: Do we feel ready to move to a motion? That's the next step. And if we allow this then the other three make sense. If we don't, then the other three do not make sense.

Rude: I would just advise in the motion this is 2020-06A.

Schwickrath: Yes.

Rude: Inaudible comment.

Schwickrath: Thank you for that reminder.

Clark: I'd like to make a motion to approve the requested development standard variance from UDO 5.24A to allow for business activities to exceed 25% of the total home occupation sales in accordance with the plans provided to this board pursuant to the Findings of Fact presented in the planning staff's report.

Schwickrath: Okay there's a motion on the floor.

Cassidy(?): Second.

Schwickrath: Please cast your ballot for BZA 2020-6A.

Rude: This is for BZA 2020-06 first variance A: Mr. Lewis - no, Mr. Lisher - no, Mr. Cassidy - yes, Mr. Clark - yes, Ms. Schwickrath - yes. Motion carries 3 - 2.

Schwickrath: Motion carries.

Karnes: Thank you very much.

Schwickrath: Okay now we have three more to go through.

Karnes: Yeah. I appreciate that.

Rude: I can read.....do you need me to introduce them as well.

Schwickrath: Okay the next one is owner/operator. I don't think you need to.....(inaudible)...

Rude: No, theyyeah I mean I'll just briefly say all four of these

Schwickrath:(inaudible)...statement for the public though, yes.

Rude: Yeah. All four of these petitions fall under the home occupation standards. This one is from the owner/operator requirement that the person residing in the home must operate the business.

Schwickrath: Okay at this point, any questions from the board?

No reply.

Schwickrath: I'll close questions from the board and if anyone wishes to step forward from the public and ask a question or make a comment you're welcome to do so now.

No reply.

Schwickrath: Okay, seeing no movement, I close public commentary and we are now ready for a motion on 6B.

Clark: I'd like to make a motion to approve the requested development standard variance from UDO 5.24 to allow an owner/operator that does not reside at the residence in accordance with

the plans provided to this board pursuant to the Findings of Fact presented in the planning staff's report.

Schwickrath: Motion.

Cassidy: Second.

Schwickrath: Okay cast your ballots then for 2020-6B.

Rude: This is for BZA 2020-06B: Mr. Lewis - no, Mr. Lisher - no, Mr. Clark - yes, Mr. Cassidy - yes, Ms. Schwickrath - yes. Motion carries 3 - 2.

Schwickrath: Okay....(inaudible)....we for the next one which is C, just a reminder about employees, if you can do that.

Rude: Yes so the next petition is a variance from 5.24E which is employees and I'll just state what the ordinance states. The home occupation may not involve the onsite employment of any person other than those residing at the location of the home occupation. So that's what the variance is requesting.

Schwickrath: Okay any questions from the board?

Cassidy: Yeah. Is your daughter gonna work there?

Karnes: Um....

Cassidy: Inaudible comment.

Karnes: At this point she's in school and she already has another job so maybe pricing of things and helping set up stuff and stuff like that, but as far as being an employee, no.

Schwickrath: I was just looking at this too. The petitioner intends to own and operate the boutique but currently does not reside but that would refer to you and not to your daughter, so just a point of clarification. Anything, any other questions?

No reply.

Schwickrath: Okay so I now close questions from the board and again, if anyone from the public wishes to step forward and ask a question or make a comment about this particular petition, you are welcome to do so now.

No reply.

Schwickrath: Okay again, seeing no motion, we are I close public commentary and I'm assuming there's nothing on Facebook. We have to get used to this Facebook Live.

Rude: No.

Schwickrath: Alright just to verify that for everyone. So public commentary is now closed. We'll move to a motion for 6C.

Clark: I'd like to make a motion to approve the requested development standard variance from UDO 5.24E to allow for employees that do not reside at the residence and according with the plans provided to this board pursuant to the Findings of Fact presented in the planning staff's report.

Cassidy: Second.

Schwickrath: Okay, cast your ballot for 2020-6C.

Rude: Thank you. This is for BZA 2020-06 is that B?

Inaudible mumbling.

Rude: Mr. Lisher - no, Mr. Lewis - no, Mr. Clark - yes, Ms. Schwickrath - yes, Mr. Cassidy - yes. Motion carries 3 - 2.

Schwickrath: Last one this evening. Thank you.

Rude: The last of these four variances tonight also falls under home occupation. It is subsection G business area and it has to do with the percentage of the residential space that can be used for the business. She'd like to use approximately ½ the building for the business.

Lisher: I have a question that I'd like to ask the petitioner on that matter.

Schwickrath: Yeah, sure. That's fine.

Lisher: The ordinance refers to a structure, do you understand that, Ma'am? It says structure. It doesn't say unit.

Karnes: Yes.

Lisher: And the structure here is one of which originally was a single family home in which you or someone divided into two, correct?

Karnes: I purchased it that way.

Lisher: So the space for the boutique that you envision, does it cover more than 25% of the entire structure, including whatever you term as apartment one as well as I guess the single family or single unit which I think you in the past indicated was two? So my question to you is does the boutique store that you envision include more than 25% of the entire roof structure? There is one roof, is there not?

Karnes: Yeah, uh huh.

Lisher: Yes or no?

Karnes: Well I put in the plans that I submitted how many square foot it was for that side approximately. I think it was 600 and

Lisher: I'm looking at definitions in our ordinance and how they describe what a structure is and a structure is a building that would have one roof. If you divide that one roof building into two different (?) doesn't mean that this percentage only would apply to one half or one third or whatever the portion, in my opinion. Do you see any (??)?

Karnes: No because I thought 25% of the structure if I lived in it.....

Lisher: That's all the questions I have but that'll be the reason for my vote.

Schwickrath: Okay. Alright that's fine. Thank you.

Lisher: It doesn't comply with the definition of structure.

Schwickrath: Well and the difficult part here I think we all need to remember this because and this is the tricky thing about living where I do on West Hendricks Street is that I would say at least half of Shelbyville is filled with rental units and so you purchased it. Whatever your plan was at that point, I mean Mr. Lisher's making a point that he you know it would be great to go back to a single family unit, yes. But at this point, you're asking us to consider this as an option for and you explained yourself back in April. So this is a little tough here to balance all of the different threads but and I can see it from every angle but you did not put up a partition. You bought the building with two separate units.

Karnes: Yeah.

Schwickrath: One is smaller than the other one.

Karnes: Right.

Schwickrath: Yeah. Any further questions?

No reply.

Schwickrath: From the board?

No reply.

Schwickrath: Okay I'll close questions from the board and open this again up to the public. If anyone wishes to make a comment or ask a question about this particular petition. It's the last one for 2020-06.

No reply.

Schwickrath: Since there's no commentary, I close public comment and we'll move to a motion.

Clark: I'd like to make a motion to approve the requested development standard variance from UDO 5.24G to allow for an increase in business area in accordance with the plans provided to this board pursuant to the Findings of Fact presented in the planning staff's report.

Schwickrath: There's a motion.

Cassidy: Second.

Schwickrath: Cast your ballot for 2020-6D.

Rude: This is for BZA 2020-06D. Mr. Cassidy - yes, Mr. Lewis - no, Mr. Lisher - no, Mr. Clark - yes, Ms. Schwickrath - yes.

Schwickrath: Thank you.

Rude: Motion carries 3 - 2.

Schwickrath: So we're putting a lot of trust in you and....

Karnes: Thank you so much.

Schwickrath: Wait, wait....no, that's okay. And so I've had petitioners, we have had petitioners before look us in the eye, say one thing and do exactly the opposite so I think you know please review this is six months and we I mean I'm not expecting anything spectacular but I think you to continue being respectful. I mean you know I don't know where this will go but I think there's some possibilities here.

Karnes: Inaudible comment.

Schwickrath: The idea is to enhance things.

Karnes: Yes.

Schwickrath: And so that's just with that in mind, I think you will succeed.

Karnes: It's my neighborhood too. I live a block away....(inaudible)....

Schwickrath: And I don't think anyone heard that, so maybe say that in the microphone.

Karnes: I said it's my neighborhood too. I only live a block away and I definitely want to enhance things.

Schwickrath: Okay.

Karnes: Make things better.

Schwickrath: Okay so best wishes for the project and just keep talking to your neighbors.

Karnes: Yes, I will.

Lisher: Hopefully the Brights won't move.

Karnes: Yes, hopefully they won't move. I hope.

Schwickrath: Okay, thank you. We have one....

Karnes: Okay, thank you.

Schwickrath:more petition tonight too, an administrative appeal that we need to move on to so thank you.

Karnes: Thank you.

Schwickrath: Okay so at this time, each board meeting is rather different. We have an administrative appeal so I wanna establish just a few of the ground rules so we can proceed in an orderly fashion and everyone is listened to. Tonight with us we have our city attorney, Mrs. Meltzer and she will preside over this section, this time. And we haven't had too many of these so this is kind of new territory for us as well but I do want to allow for the petitioner to have ten minutes to state her case, up to fifteen and we will keep time tonight. Anyone who wishes to speak about this from the public, we'll give you three to five minutes. So a minimum of three. You can speak less than that. It's fine. You can simply say you're in support or not. So just be

aware of that. We will have to time this because we have people here but we want everyone to be heard. I think, let me just check my notes....and the focus tonight is on whether, can you say the wording for me please? The....it's not on re-writing the ordinance. I wanna be clear about that.

Jenny Meltzer: Yes the appeal is a question of whether or not the current activity is in violation of the ordinance or not.

Schwickrath: Yes, okay. You say that better than I do. Thank you. Okay is that, is everyone clear on that? We will allow up to 15 minutes, 10 just so you can state. Can you hear me?

(?): Not back there.

Schwickrath: Okay.

(?): Sorry.

Schwickrath: No, no. You don't have to be sorry. I am sorry about that. Okay so I can repeat that quickly. The petitioner, you'll have 10 minutes. We'll time it. Up to 15 to explain to the board. We'll then take questions from the board. And then the, what's our order here? Then the public has time to make comments. I would ask, we do have a clipboard, if you would please write your name. That would help us for our record keeping and then we'll take questions from the board after that and then we will move to a vote.

Meltzer: You skipped Adam, but that's okay.

Schwickrath: Oh, oops. I wrote it down. I apologize. So yes, Adam or Mr. Rude is after the first round of questions from the board. Thank you. So we'll start then. So you can come forward.

(?): Inaudible comment.

Schwickrath: Yeah and please state your name for the record. Sorry, Adam. Please forgive me on that.

Stephanie Bowers: Stephanie Bowers.

Jerry Bowers: My name's Jerry Bowers.

Inaudible mumbling by petitioners.

S. Bowers: I'm here to solely discuss the zoning ordinance's UDO 5.26K-01 Section B which states all farm animals shall be prohibited except chickens and rabbits and 90.01, keeping

animals, fowls or bees. Section B states it's a nuisance and shall be unlawful for any reason to keep any animal of the horse, cattle, goat, sheep or swine within 200 feet of the dwelling house of any person other than the keeper/owner of these animals. My potbelly pigs have been incorrectly identified as farm animals by the city of Shelbyville. The city's own definition of farm animals on Article 11, page 4 is animals commonly use for transportation, food, skins and other byproducts. As explained in the statement provided by the USDA, page 5 including in the literature I provided, my personal veterinarian which is page 16, also provided in your literature. My potbellied pigs are not used for transportation, food, skins or other byproducts. Per the USDA, potbelly pigs are not regulated as farm animals as they are not used for slaughter. My potbellied pigs are spayed, neutered, vaccinated and receive regular vet care the same as my other pets. In the event one of my potbellied pigs passes, they will be cremated the same as my past dogs. The definition of animal, common domestic Article 11, page 4, an animal that has been adopted by human beings to live and breathe in a tame condition. The definition of a domestic pet Article 11.....

J. Bowers(?): Do you need her to slow down any? Are you guys able to keep up? She's going kind of fast. Are you guys catching up?

Schwickrath: No, that's okay. Thank you.

J. Bowers: Okay.

S. Bowers: Article 11, page 11 of the city's own definitions, animals commonly used as household pets, protection, companions and for assistance of disabled persons. Domestic pets shall include animals that are cared for and treated in a manner acceptable for pet dogs, cats or birds. Domestic pets shall be included but not limited to dogs, cats, parakeets, parrots, finches, spiders, guinea pigs, hamsters, gerbils, rats, mice, rabbits, aquarium fish, potbelly pigs, ferrets and snakes if cared for in the manner described above. According to the city's own definitions and descriptions, my pet potbellied pigs are indeed not farm animals but on the contrary domestic pets and shall be recognized as such. Based on the facts I have presented today, it's blatantly clear that I am not in fact in violation of a city zoning ordinance as described in section 1.6 Rules and Procedures. The responsibility of the members of the BZA is to reach a decision solely based on Finding of Facts.

Schwickrath: Questions? Anyone wanna start?

Clark: I can.

Schwickrath: Go ahead, Mr. Clark.

Clark: Where did you read the instance that you saw that potbellied pigs are allowed?

J. Bowers: On your website.

S. Bowers: The definition of domestic pet is on Article 11, page 11 of the Definitions provided on the city of Shelbyville's website.

Clark: On page 11.

Lisher: And also(inaudible)....a definition of farm animals is indicated under UDO 5.26 ... (inaudible)....

J. Bowers: What'd he say?

S. Bowers: They're classified as swine or farm animals but in the city's own definitions, they are classified as pets, specifically stating potbellied pigs.

Lisher: I think in the city's definitions it says pigs.

S. Bowers: The city's definition of domestic pet, if you would go to Article 11, page 11....

Lisher: I've been there.

S. Bowers:says potbelly pigs.

Clark: Page 11....you say....

S. Bowers: It's of the city's definitions. It's Article 11.

Clark: Article 11.

S. Bowers: Domestic pet. I have it here if you would like to see it.

Schwickrath: No, that's fine. I've got the book here. I just need the page number.

J. Bowers: It's section 11, page 11.

Schwickrath: Okay, thank you. There it is.

Clark: There it is.

Schwickrath: Anyone wanna see? It's right at the end.

Clark: We seem to have a conflict of definitions.

S. Bowers: Yes.

Cassidy: This has been.....

(?): What was the Section 2.1.A?

J. Bowers: Section 2.1-A, the BZA has a duty to (?) documents and materials. The burden of maintaining accurate documents is your responsibility.

S. Bowers: If you don't agree with the definition (?) that is your job as the BZA to make sure that those definitions are correct. So I would like to request that this zoning violation be removed and vacated and I be allowed to leave and I would like to also request a refund for all of my fees associated with this.

Schwickrath: Okay wait, one thing at a time.

S. Bowers: Uh huh.

Schwickrath: The staff also gets to say something.

S. Bowers: Sure.

Lisher: What if I have another question.

Schwickrath: Did you want to see this?

Cassidy: I do.

Lisher: Inaudible comment.

Schwickrath: Well, we'll get there.

Cassidy: In a lot of your paperwork it says mini pigs and then potbellied pigs....(inaudible)...I'm not a pig guy.....(inaudible)...

S. Bowers: The term is used interchangeably. Mini pigs and potbellied pigs are basically a smaller pig of different breeds. American mini pigs, which I've given some information in the binder as well, they're also classified as potbellies 'cause there's not really a true breed mini or potbelly pig.

Cassidy: Okay. That's why I was getting confused 'cause you'd say potbellied and mini.

S. Bowers: Yeah they're kind of used inter.....they're used interchangeably in the pig community.

Cassidy: Okay.

Schwickrath: Well the other thing that I notice is they can range in poundage from 50 to 150. I read all your stuff.

S. Bowers: Yes, yes.

Schwickrath: Okay.

S. Bowers: They can range, but a mini or potbelly pig, my largest pig is no more than knee high. They're smaller than a german shepherd dog. And my smallest one, she's only about this tall. Yeah they're stout kind of like an english bulldog where they they're a little heavier than what they look like.

Schwickrath: Did it cross your mind when you purchased them three years ago that there might be a problem or did you already consult the ordinances or did it just kind of evolve to this point?

S. Bowers: No. Honestly because they're pets, I never considered that there would be a problem.

J. Bowers: And anything if we did, we would've read that definition and thought we're good.

Schwickrath: Right, sure, yeah.

Clark: It does bring up another question.

Schwickrath: Go ahead, Mr. Clark and then Mr. Lisher.

Clark: Where did you get your pigs?

S. Bowers: One, our first pig, we purchased from a breeder in Peru because I was poorly educated. I do not condone breeding of any type of animal. Our second pig we rescued as a companion pig. Pigs do better as a couple. We rescued as a companion from a lady that he was in a home where he wasn't doing very well. He was underfed, malnourished. And then our third pig which we had no intention of getting, she was actually being sold at Me and My Sister's Flea Market. She was only three weeks old. She was severely emaciated, taken away from her mother. You could see every bone in her body and infested with mites.

J. Bowers: We had to take her and feed her goat's milk and nurse her back to health.

S. Bowers: We had to feed her goat's milk until she was about twelve weeks old. We had her treated. We had her spayed which all of my animals are spayed and neutered. Our intention

was to find her a home. But we grew very attached and it is very difficult to find a home for a potbelly pig. They are so popular now that the rescues are overflowing. I myself and my husband, we rescued 11 potbellied piglets from southern Indiana and we drove them to Tennessee to a rescue 'cause it's the only one we could find to take them. But we did that last summer. We went and caught the pigs. I brought feed and I continue to donate to that rescue.

Schwickrath: Thank you.

S. Bowers: Uh huh.

Schwickrath: Mr. Lisher, you had a question?

Lisher: Yes, thank you. Whenever you were confronted by the city and I'll just say the city to include....

S. Bowers: Uh huh.

Lisher:plan commission or whatever it was that you were referring to, did you point out to 'em the Section 11, page 11 definition?

S. Bowers: We actually I consulted with a friend that's an attorney and he helped me review the definitions. So we actually just found this here in the last week to strengthen our case.

Lisher: So it's fair to say the city hasn't been able to review your change of status that you're requesting....

J. Bowers: Not necessarily.

S. Bowers: It's public information. The city had ample opportunity to access it.

J. Bowers: It's posted on your website and we have had no advantage over you guys. You have had the same access to this information as we have.

Lisher: I'm trying (?) sir, we're an appellate board. So the rules of appeal, I'm somewhat familiar with. It's usually you're appealing a decision made after the pertinent facts have been presented to whatever the governmental agency it was that made the decision. Sometimes the appellate board could send back for consideration of new information that's brought to its attention. That's kind of where I'm trying to understand where we're really at.

J. Bowers: This is the first time....

Lisher: If the city knew the information and still denied the request, that's different.

S. Bowers: Uh huh, yeah.

Lisher: And if the city didn't know, this ordinance number that you mentioned then that (inaudible)....

S. Bowers: And I did consult with.....

Lisher:as to whether it should be sent back for reconsideration.

S. Bowers: I did consult with Mr. Conrady and also Mr. Willis who is the ward of the second ward who is over my area. Mr. Conrady, when I met with him, I provided him the statement from the USDA explaining that potbelly pigs are not farm animals and he did take that to the planning director and also the city attorney who also denied the request stating that they were swine. So I feel the city had more than enough time to research the definitions.

Lisher: That was just one point I wanted to have some clarification.

S. Bowers: Sure.

J. Bowers: Yes, yes and we appreciate that. In our view, the city makes these rules, they should be aware of what these rules are and to be honest with you, it's kind of embarrassing that they did not.

Schwickrath: Well these mistakes occur. I think we need to leave some latitude and be fair with that because there's so much verbiage in here.

J. Bowers: Uh huh.

Schwickrath: And yes, you know this could have been avoided perhaps.

S. Bowers: Uh huh.

J. Bowers: For sure.

Schwickrath: And Mr. Rude's going to be able to speak to that. So and the other point that I think really is important, when I read through your material I was struck by the idea that we really need to talk about this.

S. Bowers: Uh huh.

Schwickrath: The plight of these animals.

S. Bowers: Yes.

Schwickrath: Alright we're so focused on dogs and cats mostly and I don't wanna go down that avenue right now,

S. Bowers: Sure.

Schwickrath:but just the point though is that there is a lot of undereducation going on here.

J. Bowers: Yes.

S. Bowers: Yes.

Schwickrath: So we would not necessarily be on their radar, a potbelly pig or a mini pig.....

S. Bowers: Correct.

Schwickrath:because that's not in.....So now we're starting to split hairs here with definitions.

S. Bowers: Yes.

Schwickrath: So I think we need a little bit of forgiveness here.

S. Bowers: And I would love, absolutely love to partner with the city and help educate.....

Schwickrath: Yes.

S. Bowers:the public. I am extremely passionate about this.

Schwickrath: That's the next step of course, but so right now just to bring this back here.....

J. Bowers: I don't mean to seem harsh when I'm speaking to you guys. I've watched her cry every day and every night since she's got this letter. The night before last, I thought I was gonna have to take her to the ER 'cause I honestly to God thought she gonna have a heart attack.

Schwickrath: Yeah this is emotional.

J. Bowers: Yes, very.

Schwickrath: I understand that.

J. Bowers: These are our family.

Schwickrath: Yeah.

J. Bowers: And we feel this needs to be....

Schwickrath: And you're clearly taking care of them.

J. Bowers: Yes.

Schwickrath: Right it's not like they're thrown in the back yard....

Lisher: Inaudible comment.

S. Bowers: No, it wasn't an official complaint. Someone actually saw our pig. We were putting him into the car to take him to the vet actually and she saw him but we actually went around to our neighbors.....

Schwickrath: I saw that.

S. Bowers:and those signed statements, not one of them, even our direct next door neighbor even knew we had them.

J. Bowers: And it's not because we were hiding them. Some of them have even pet them at one point or another but there's no significance in it.

Schwickrath: Sure.

S. Bowers: Yes they're very well maintained and taken....they're spoiled brats.

Clark: My other question that I had was have they ever gotten out?

S. Bowers: No.

J. Bowers: They are double fenced. We have a six foot that is 10' x 30' run that is chain link. We also have a 6' privacy fence around the entire perimeter of our back yard.

S. Bowers: And they go outside to use the restroom just like a dog and for some outside time but they do they are indoor pets.

Clark: Thank you.

Lisher: Some of the ordinance deals with even on the farm animals that are allowed they talk about acreage and pasture so part of that goes to (?) what area they have to exercise just as a person would walk at least a dog. I'm not sure you can walk cats but I didn't know if you folks did those things.

S. Bowers: I do not walk my pigs because there are quite a few dogs that run the neighborhood and pigs do not have a lot of defenses. I am a small person. Somebody comes up to even my smallest pig that weighs 50 pounds, I can't pick her up and run. Pigs are often very susceptible to dog attacks.

J. Bowers: And they are prey animals. Their first instinct is to run.

Schwickrath: Okay, thank you. Mr. Lewis, I'm sorry do you have any questions?

Lewis: I don't think so.

Lisher: My only other point was having to do with the new swine flu you know.

Schwickrath: Well and you addressed that.

Lisher: Found in china. And I'm not saying the potbellied pig's swine flu, but...

S. Bowers: Pardon? I didn't....

J. Bowers: Swine flu.

Lisher:it just creates a apprehension shall we say.

S. Bowers: Sure, sure. And I did provide that information from the CDC.

Lisher: 'Cause your material involved here was a different H1(?) whatever.

Schwickrath: Yes.

S. Bowers: I don't know, there's a different one all the time, so....

Lisher: Just wanted to bring that up.

Schwickrath: Any further questions? Okay. I think questions from the board, we don't seem to have any more at this point, if I'm correct, then I'll close questions from the board and open this up to the public.

Lisher: Well Adam.

Schwickrath: Oh Adam is next.

Lisher: At some point in time the city gets.....

Schwickrath: I'm sorry yes, please have a seat. It's now Mr. Rude's turn. I'm sorry, Adam. Again, I(inaudible)....I'll get this down. Your turn.

Rude: This podium's almost not big enough. Sorry about that. Tonight, just very briefly I'm gonna run through. Our staff report is structured to kind of explain the timeline that led up to the issuance of the violation and then led up to this meeting. And it also explains our rationale in our interpretation of the ordinance and the dangers we see in interpreting the ordinance differently. And then I'm going to, I tried to capture some of the comments made and some of the questions. I'll try to address those at the end. So on page (?) of our staff report we ran a timeline just explain how this case became. On May 6th our office received a complaint about multiple pigs living at the subject property. We then looked into the complaint. Found that it seemed or that it was valid. On May 27th we eventually sent the notice of violation to the subject property owner. Ms. Bowers then reached out to our office on June 2nd after receiving the complaint and asked in regard to appealing the complaint and then Ms. Bowers then submitted the appeal that's before you guys and we are here tonight. So the subject property itself is 523 Fifth Street here in Shelbyville. It's approximately .16 acres according to the county's records so you know under a quarter of an acre, under a fifth of an acre even and it's got road frontage both on Fifth Street and Evans Street so it sits in between those two streets. The property is currently zoned R1 single family residential. We provided a copy of the official zoning map adopted by City Council showing that zoning classification but it is zoned R1 single family as you know as is the rest of the neighborhood that it sits within. The ordinance itself, I'll run through quickly. The ordinance is structured and it's premised in trying to maintain and promote public health and safety and promoting the general welfare. That's the premise that zoning and planning law is structured in and that is the rationale behind the standards that are set in place for this R1 district. In this ordinance section of our staff report, we do explain that the keeping of pigs is not outright prohibited in the city. That is keeping of farm animals in general is reserved for lower intensity zoning districts where that's more reasonable, has a lower impact on surrounding property owners and is better opportunities for pasture areas, grazing areas, for the welfare of those animals. So that's the rationale behind it. The R1 single family district is not that district. It's a much higher density district as you can tell from just looking at an aerial of the neighborhood. The in the areas where farm animals are permitted in the AG and AG/residential areas, there are still reasonable regulations on those areas and they require a minimum of 5 acres of total lot area, a minimum of 2 acres of pasture area for the animals. Again, to make sure that there's proper separation from neighbors, from other property owners and to make sure that the farm animals have adequate space to graze and to be raised. Neither of those, if this property were even zoned correctly, which it's not, neither of those requirements could be met anyways. So it doesn't check the box in a number of areas. I'll jump into Section IV of our staff report kind of lays out the very specific rationale of our interpretation.

So in looking at the official zoning map of the city of Shelbyville which again, is adopted by ordinance by the City Council. It's a policy made by or a decision made by the legislative body of the city. This property is zoned R1. Pigs are clearly listed under the definition of farm animals. Ms. Bowers had started to read the definitions or the definition of farm animals and had stopped short of where it's outlined, sorry,.....

Lisher: Inaudible comment.

Rude: Yeah, I'm trying to find the Exhibit number for you guys. I have it's Exhibit 5. I think it's the third page of Exhibit 5. So farm animals....the second half of that definition specifically lays out the animals that classify as farm animals. It's a fairly lengthy list. I won't read the entire thing, but pigs are listed under that as well as horses, cattle, sheep, goats, mules, etc. So pigs are clearly defined as farm animals and I think we have to keep in mind that the subjects or the zoning provisions that we're talking about, the keeping of animal standards for single family residential specifically use the term farm animals. There's a lot of terms used throughout the ordinance and there's hundreds of terms defined in the ordinance, but farm animals is the term that is chosen for this specific provision so that's the definition that we look at. So a pig, while other sections of the ordinance might call it a domestic pet or something else, it's also falls under farm animal which leads to the next section of our interpretation. UDO 5.26D strictly prohibits all farm animals with the exception of only chickens and rabbits and it has again, some restrictions on those. Sorry about that. And again, 4.3 in our staff report, the official zoning map of the city of Shelbyville classifies this as an R1 single family zoned property so it does fall under this section of the ordinance. And the property owner has provided evidence and we've shown evidence that there are pigs on the property. That is what led to our interpretation of the ordinance. So we are recommending and asking that the order be affirmed. We think it's a that the Council and the legislative body of the city has made a very clear and concise policy and we've interpreted it exactly as it's been written so we ask that the our order be upheld. And I'm gonna try to jump into some of the questions here. A few other just notes that I had written down. I wanted to and we already have read through the definition of farm animals just to show that it did in fact include pigs in that definition. Another section of the ordinance that was cited was Article 1 so I wanna point our attention to 1.08. It is page 1 - 3 if you have your ordinance in front of you. 1.08B conflict or inconsistency, I'll read it to you. Unless otherwise specifically stated within this Unified Development Ordinance, if two or more provisions of this ordinance are in conflict or are inconsistent with one another, then the more restrictive provision shall apply. So that is just stating if there is any conflict, it shall always be that the more restrictive of a number of provisions shall apply. So even if there is some confusion which I don't think in this section of the ordinance there is, that shall prevail. Again in 5.26 which is keeping of animal standards, the term domestic pets was not used in that section and it's not what is being cited in the zoning violation in question. And I guess I'll just end my piece just by stating again that planning and zoning law is kind of grounded in the protection of you know public, health, safety and the general welfare of our community. While we might have different opinions on this specific case, I think making an interpretation to use a different definition is setting a very bad precedent moving forward and it's not the interpretation that I think City Council had when they

very clearly defined the terms that they used in this section of the ordinance. So with that, I'll take any questions.

Schwickrath: Yes, questions from the board?

Lisher: I have a few....(inaudible)....

Schwickrath: You can start.

Lisher: Okay well(inaudible)....

Schwickrath: Alright, Mr. Lisher has a burning question. Okay.

Lisher: It seems to be in my area really. But in (?) to your last statement....(inaudible)....statute. There's general law says that the more specific control is over the general.

Schwickrath: The more restrictive.

Lisher: And the more specific definitions I see here deal with domestic pets and so my quandary is with or my concern is number one, they didn't present it, is it fair to say the Bowers' did not present to you as a reasoning for their alleged violation that they were relying upon it these being domestic pets as defined under Article 11, page 11 of the city ordinances. Is that fair to say they didn't present that to you or not?

Rude: It was not presented in their appeal. But it again is also not the term being used in Article 5.

Lisher: And that's that gets to my quandary that I had with them that we're supposed to be an appellate board and so but I gather what you're telling me is even if we send this back for reconsideration, there's a strong likelihood that the city would still believe that the Bowers' are in violation of Article 5?

Rude: Yes, yep.

Lisher: And you understand, Mr. Rude, that ordinances bear with them the presumption that the City Council knew what they were doing when they passed ordinances and that we should apply each and every ordinance with equal weight but then I just mentioned more specific which overrides the general. That's general rules, well I'm familiar with (?) so that's my dilemma here.

Rude: Uh huh. And I guess....

Lisher: My concern is thought that they didn't present it to you and even though she could almost be a paralegal, Ms. Bowers, some they did an excellent job on their presentation. Just

kind of forgot that one. And I assume they forgot that 'cause it was just recently learned of it. But I don't know. That's the end of my questions.

Schwickrath: Sure.

Lisher: So what I wanted to bring to light was what I just mentioned.

Rude: And I guess if I can address that point and you had stated it previously, the term again being used is farm animal so in my mind and in our eyes, Council, the City Council specifically used a term for a reason. We have to make that assumption that they used specific terms that are defined in the ordinance for a specific reason. Which is why we also used that specific definition.

Lisher: But this definition domestic pets specifically says potbellied pigs. It doesn't say general term pigs. It says specifically the term are allowed.

Meltzer: Mr. Lisher?

Lisher: Yeah?

Meltzer: If I may point your attention to 5.26, if you'll look at the ordinance that says what pets are allowed and what pets are not allowed, it specifically uses the terms indoor pets and outdoor pets. Those are also defined and are defined in a more specific way than farm animals is defined if you would like to consider it to be specific.

Lisher: So why would we have.....

Meltzer: And it specifically points out that potbelly pigs are not pets. And so we look at 5.26....

Lisher: Well they're included in your definitions, Ma'am under what they just pointed out.

Meltzer: Correct, but domestic.....

Lisher: Article 11, page 11 - 11.

Meltzer: So....

Lisher: So there's a conflict.

Meltzer: And if there's a conflict, your own ordinances say that the more restrictive provision applies.

Lisher: And my point is in my view, the more restrictive is 11-11 (?).

Schwickrath: What was the....

Meltzer: So if you look at 5.26 it explains the indoor pets and gives that a maximum number of three dogs plus three of any ...(inaudible)...indoor pet species plus any number of fish and outdoor pets. It explains that outdoor pets are permitted as follows. Indoor pets and outdoor pets are also defined in the definitions. Pets outdoor, it says domestic pets maintained within the confines of a lot and it specifically excludes farm animals - rabbits, mice, snakes, ferrets, birds and then it also explicitly in pets for household. Domestic pets maintained within the contents of the dwelling and under that one, it specifically exempts out potbelly pigs.

Lisher: You have another section of the ordinance that specifically mentions potbelly pigs other than this Article 11, page 11.

Meltzer: Under pets, households.....

Lisher: Yes?

Meltzer:the definition domestic pets maintained within the confines of the dwelling unit, household pets....

Schwickrath: Where is that?

Meltzer: It's on page, it's 11-24.

Lisher: Inaudible comment.

Rude: That's alright.

Lisher: I wish this had been brought up originally so that we would really be appealing.

J. Bowers: If we would've known it when we filed the appeal, we would've brought it up sooner. Just because we filed the appeal doesn't mean we stopped....(inaudible)...

Schwickrath: Pets outdoor, here it is.

Meltzer: So there's a pets outdoor. There is also a pets household which takes you back to the domestic pets maintained within the confines of the dwelling unit. Household pets include ...(inaudible)...domestic animals as long as ...(inaudible)...so on and so forth. And then it explicitly exempts out potbelly pigs in the second to last line.

Lisher: Somebody did a poor (?) job it would seem....(inaudible)...Article 11-24 versus Article 11.

Meltzer: And so when you look at the words that are used in 5.26 and their definitions, it is clear that potbelly pigs are considered farm animals for the purposes of 5.26. They may be considered domesticated pets for the purposes of kennels, which is the other place where you'll find that actual term used, but they are not considered domestic pets for the purposes of 5.26 and the zoning ordinance for R1. They are considered farm animals because they are specifically exempted out of your indoor and outdoor pets, your household pets and your outdoor pets.

Lisher: So in the future when they draft the ordinance, maybe Article 5 oughta be referenced in 11 and making things a little more clear.....(inaudible)....or do away with your 11-11 definition of pets.

Meltzer: There is definitely room for the ordinance to become more clear but I think that is the case with most statutory schemes(?) and until something gets appealed....

Lisher:(inaudible)....That's all the questions I have.

Schwickrath: Okay, thank you. Mr. Clark or Mr. Cassidy? I know this is a lot (?) to take in.

Meltzer: You have quite a few comments on Facebook.

Schwickrath: Yes, I figured we would. Thank you. We'll go to that when we open up public commentary. I'm not quite sure that we're finished. We have all our numbers. Really this puts us in a difficult spot because it's....I don't have a tool to work with here. I understand where everyone's coming from.

Meltzer: So under Section and under Article 9, 9.04, the board is able to affirm....

Schwickrath: Modify or reverse.

Meltzer:modify or reverse.

Schwickrath: Correct.

Meltzer: And so if the board affirms, because when the appeal was filed, the order was stayed, they would then have 14 days. It was 14 days would simply start over is probably the cleanest way to do this to remove the pigs from the residence and have them relocated to a more proper place. So either they will move with the pigs or the pigs move out and go to the sanctuary she discussed or somewhere else. They're also able to appeal this to the trial court if they wish if you affirm. If you modify, you could extend that time period. You could, that's the only modification I can think of but I'm sure you guys could think of others. And then obviously you

could also just simply reverse it which would then give the city the option to appeal to a trial court.

Lisher: Well by modify, I assume we can even modify the number of or not?

Schwickrath: It seems like three's a magical number.

Lisher: Three is what they have.

Meltzer: If you'd like to open it....

Schwickrath: No, but I meant....(inaudible)...

Meltzer: It is for dogs. You're correct.

Schwickrath: Yeah.

S. Bowers: Inaudible comment.

Meltzer: 9.04 neither does 9.04 and neither does your Section 16 of your procedures go into any detail about how something could be modified. So I cannot give you any further advice as far as what that modification could look like.

Clark: Could we modify it in a way that they could come before the board for this particular instance as a variance? And in that case, that would give some counsel and others, whoever would be responsible the opportunity to clarify these conflicts within these ordinances?

Lisher: The quandary I seem to be having here is the petitioner's put forth an appeal and set forth their grounds rather eloquently in their table (?) and then the city has given their response to us, also well done. And yet we're hearing tonight two different things. We're hearing now about 11-11 and now also about 11-24?

Schwickrath: Correct.

Lisher: So I feel like we're not, it's a brand new appeal so to speak, new matters that we're are trying to rule on or to concern ourselves with tonight. That's just(inaudible)....

Schwickrath: I'm in agreement with you just because I think it's a lot to take in and to be fair to everyone.

Lisher: Could we ask....(inaudible)....and a modified response?

Schwickrath: I think that's the best way.....(inaudible)....

Lisher: Well a modified appeal of(inaudible)....11-11. Modified response(inaudible)....11-24, is that the right number.

Meltzer: With all due respect, (?) modify it, the definitions(inaudible).....

Schwickrath: We're still on his time right now. Hold on. I will let you talk, but just one.....it's the board right now.

Meltzer: You are able to add conditions.

Lisher: Inaudible comment.

Schwickrath: Go ahead.

Meltzer: You are able to add conditions to any decision when warranted.

Schwickrath: Yeah I think we need to approach this in such a way. I'm in the same dilemma as Mr. Lisher. I don't know about the other board members. I just think that this language to bring up, there's no cross referencing so who would've thought that in the first place necessarily? It's the pets, the farm animals, the pigs, they you know it's just we're caught here in the middle of something that I just don't think the way that this to go forward is to make a vote on this as it stands now. I need a little bit more time(inaudible)....or to modify some.....I think we need to modify.....(inaudible).....

Meltzer:(inaudible).....take it under advisement.

Schwickrath: I guess we can do that. This, for me, I feel that if I were to make a decision right now that it's going to go to court regardless so I want to just slow the train down. I think we really need to look at this a little more thoroughly. But go ahead.

Meltzer: Oh I'm just, I think that's an option that you could take it under advisement until the next meeting and if you're looking for additional information from either party, you can certainly ask for that.

Schwickrath: What do you think?

Inaudible talking among board members; no one is clearly audible.

Schwickrath: Yeah I think we need to slow this down.

Lisher: What's the, do you have any clue what social media.....(inaudible)....

Schwickrath: Well wait. Have we finished from the board? Then I can open it up to the public. Are we finished?

No audible reply.

Schwickrath: Okay. And Mr. Rude, I think your time is up.

Rude: Thank you, guys.

Schwickrath: Okay and ours too. So now we'll open this up to public commentary with a limit of 3 - 5 minutes. Yes, you, please state your name for the record. There should be a clipboard there. If you would please also write down your name.

LeeAnn Smith: My name is Dr. LeeAnn Smith. I am a veterinarian at Shelton Veterinary Care. I do not work on swine. I am a dog and cat veterinarian, but I also live on a farm. I've also raised swine and I've also owned two potbellied pigs. And as somebody that has raised farm animals, those are production animals. Those are animals that do provide an income for me and those were my swine. My potbellied pigs, however, were my pets. I do not feel that because they have the same hooves, they are not the same size. They do not have the same necessary emotional requirements and there are dogs that are way larger than potbelly pigs are. So it is my opinion that they are pets.

Schwickrath: Thank you. Anyone else wish to step forward to the podium? Thank you.

No reply.

Schwickrath: We can start with what's online.

Meltzer: Ashley Quick states "praying for the piggies". Allen K. Harris states "hope all goes well for the piggies. Wonderful babies and amazing owners". Harry Fuller(?) "best wishes to you and Jerry, Stephanie. Also to your piggies. You take care of those babies well." Deanna L. Cheshire "I have a question concerning the pigs. If approved to have pigs, do you intend to continue to rescue pigs and have more?"

S. Bowers: No.

J. Bowers: We are at our.....

Schwickrath: Can you come to the podium please and answer that?

J. Bowers: According to your code and ordinance, 3 dogs, 3 of any (?), we are at our limit. We have no expectations of increasing the amount.

S. Bowers: I would help facilitate rescues monetarily or by transporting, but I would not house any additional pigs at my residence.

Schwickrath: Thank you. You might as well stay up here.

Meltzer: Pam Bishop “did you listen to her? No, she doesn’t.” Terry Kuhn “It’s black and white on the web page they are in the wrong.” Jessica (?) “He keeps referring to them as farm animals. The city stated they are not farm animals making his statement inaccurate.” Terry (?) “That’s what I was thinking also.” Ashley Quick “These babies are pets. They are not farm animals”. Terry Kuhn “If they get turned down, I see them going to court.” Jessica Lee “Watch your verbiage. Not farm animals according to the city”. Jessica Lee “He’s conflicting himself. Does that count?”. I believe that that popped up when Mr. Rude was explaining what 1.08 was saying with regards to if something conflicts itself, it’s the more restrictive interpretation that applies and it was simply a counter argument if the board thought that there was a conflict. Replying to Terry, Ellen K. Harris “and they should. Those are their pets. They’re not bothering anyone else as statements have said including a statement from me.” Andrea Water “Why is the city of Shelbyville intimidating and harassing this family? This family is not in violation of any of these ordinance.” It has a question mark, but I think that’s the question for you guys.

Schwickrath: Sure.

Meltzer: Terry Fuller “They are their pets and they keep them clean.” Terry Kuhn “The use of word swine or pigs typically refers to meat animals when referring to livestock. Potbellied pigs are not meat animals therefore shouldn’t be classified in the same livestock category. They provide nothing but companionship. USDA does not regulate potbellied pigs as they’re not used as a food source.” Andrea (?) “with all the problems in the world today, again why is the city of Shelbyville allowing for people to harass, intimidate and attack this innocent family? Who’s breaking the law here?” Replying to Andrea, Ellen K. Harris “I agree.” Jessica Lee “It’s not their fault the city didn’t get their rules straightened out. Where does the city get their information from as how to classify these animals?” Terry Kuhn “Let them keep the pigs ‘til you figure it out”. Jessica Lee “There are families and neighbors that get constant police calls on them and we can’t do a thing. Here, we have a family with no complaints. This house and it’s all”.....Sorry, “no complaints against” there was a typo “this house and it’s all the way to this?” Jessica Lee “my great danes are much bigger than their pigs and no one says a word about them.” Andrea (?) “Let’s hope that the city of Shelbyville moves forward and leaves this innocent family in peace.” Terry Kuhn “They did not open up for comments”. We’re doing that now. Ashley Quick “How are chickens allowed? Who which are very noisy yet these pet pigs who have bothered no one are very well taken care of are not allowed?” Deanna L. (?) “Yeah I still want to know if she intends to bring in more pigs or pets? I’m a concerned neighbor.” That’s been answered. Terry Kuhn “She said no more”. Ashley Quick “She does not plan on getting more. She stated that.” Allen K. Harris “Why so concerned about it if she gets more or not? They’re not bothering anyone. No one even knew she had pigs until she went around

asking for support.” Judy Bolls Griffith “What if everyone in the city wants pet pigs?” Replying to Judy, Allen K. Harris “Why would it be a problem?” (?) “I agree with LeeAnn Smith.” Alex (?) “With everything going on with COVID, why spend time trying to remove the pigs that only make these people happy?” And that is the last comment as of one minute ago, but it does take a minute or so for these to sort out, so....

Schwickrath: Okay. Sure. We can leave, we’ve been leaving a minute for more responses. That’s fine.

Lisher: I would move to continue for one month.

Schwickrath: That’s your thinking? ‘Cause we can’t do it quite yet. I wanna give another 60 seconds or so....

Lisher: Oh.....

Schwickrath: That’s alright. For anyone who wants to make a comment.

Meltzer: Justus(?) Bowers states “They are not swine or farm animals. They are pets. 11-11!

J. Bowers: That’s my son.

S. Bowers: That’s our son.

Schwickrath: Okay.

S. Bowers: He’s home taking care of them.

Schwickrath: I’m watching the minute hand....(inaudible)....

Meltzer: Andrea (?) “Our focus should be to help and protect this family”. Allen K. Harris “I’ve watched these pigs for them while they go on vacation. They are indeed well trained and very well cared for. They keep it very clean inside and outside as well.”

Schwickrath: Any further activity?

Inaudible reply.

Schwickrath: Okay then we will close public commentary and I’ll move to a motion.

Lisher: Madam chairwoman, I ask this matter be continued for 30 days or to the next scheduled meeting in July because I think most parties wanna have a quick resolution of this matter.

Schwickrath: Or August?

Lisher: And I think we should limit it to getting their supplement their responses by getting both parties to or response to Section 11 -11 as well as I think the city's position with 11 - 24.... (inaudible)....whatever those numbers are and give us you know like I guess you're (?) to 11 - 11 and theirs probably should deal with (?) 11 - 24.

Schwickrath: Wait, the motion is simply to continue this.

Lisher: I'm sorry.

Schwickrath: That's alright.

Lisher: To move to July....(inaudible)....

Schwickrath: August, August.

Lisher: Or is it August? I'm sorry, we're in July. Thank you.

Schwickrath: It's a time warp. Okay.

Lisher: Yeah....(inaudible)....to August.

Schwickrath: So to move to August.

Lisher: Limit the scope so that they don't have to work hard.

Schwickrath: Yes.Okay.

Lisher: Just those areas I think.

Schwickrath: We'll continue this.

Lisher: We don't need additional (?).

Clark: I'll second.

Schwickrath: Okay then please cast your ballots for BZA 2020-10.

Clark: This is for continuance.

Schwickrath: This is for continuance.

Meltzer: Doug Cassidy - yes, Mr. Lisher - yes, Mr. Lewis - yes, Mr. Clark - yes and Ms. Schwickrath - yes.

Schwickrath: Okay so we have a month.

Meltzer: Motion carries.

J. Bowers: May I ask a question?

Schwickrath: Yes.

J. Bowers: One question. You say you are making a motion to modify. What is the definition of that?

Schwickrath: The modification ended up meaning that we are continuing this.

J. Bowers: Okay but we're not modifying ordinances?

Schwickrath: No.

J. Bowers: As to what they currently are?

Schwickrath: No, no.

S. Bowers: No, just the zoning violation.

Schwickrath: Yeah we can't do that anyway.

J. Bowers: Okay. And do we get a rebuttal even though we're having a continuance to what was brought.....

Schwickrath: Yes. I mean this is a public it'll be a normal public meeting.

Lisher: Inaudible comment.

S. Bowers: Okay.

Schwickrath: Right.

J. Bowers: And I get one then too?

Lisher: Inaudible comment.

Schwickrath: Well at this point, the I mean you can make a comment but the, pretty much the motion has been carried and so it's time now to move to preparation for the next meeting.

J. Bowers: Okay. We will be ready.

Schwickrath: Okay.

S. Bowers: Thank you.

Schwickrath: Thank you.

Inaudible mumbling among board members; no one is clearly audible.

Schwickrath: Is there anything further for Discussion before we adjourn? Wait, wait, let's just stayed focused.....

Rude: No we don't have anything else on the agenda.

Schwickrath: Nothing else at this point?

Rude: And no (?) staff.

Schwickrath: Yeah we're ready to adjourn.

Cassidy: Motion to adjourn.

Schwickrath: Okay, thank you.

Meeting adjourned.