

## Frederick County Board of Zoning Appeals

# Meeting Minutes

## March 24, 2022

Chairman Farrell called to order the regular hearing of the Frederick County Board of Zoning Appeals on Thursday, March 24, 2022, at 7:00 pm. This was a virtual meeting using WebEx and Public input via telephone. Board members present: Mr. Andrew Brown, Mr. John Greenwell, Mr. Dan Lawton, and Mr. Shannon Bohrer.

The county staff members present were Ms. Kathy Mitchell, Senior Assistant County Attorney, Mr. Tom Sinton, Assistant County Attorney, Mr. Tolson DeSa, Zoning Administrator, Mr. Justin Horman, Zoning Planner, II and Mr. Michael Paone, Zoning Planner I.

First item of business was the approval of the January 27, 2022 Minutes. There were three sets to be approved, regular meeting minutes by County Staff, closed meeting summary, and confidential closed meeting minutes. Motion by Mr. Bohrer to approve the minutes. Second by Mr. Lawton. Mr. Bohrer – yes to all three sets, Mr. Brown abstained – all three sets, Mr. Lawton yes to all three sets, Mr. Greenwell yes for the regular meeting minutes and abstained from both closed meeting minutes, and Mr. Farrell yes to all three sets. The regular meeting minutes were approved unanimously 4-0-1. The closed meeting summary minutes were approved 3-0-2. The confidential closed meeting minutes were approved 3-0-2.

Official minutes of the Board of Appeals meetings are kept on file in the Frederick County Planning and Permitting Division, 30 North Market Street, Frederick, Maryland 21701.

## Cases

**B-22-06**

## Miles and Stockbridge (B267866)

Requesting approval from the Board of Appeals for the special exception use, to allow an RV storage facility with approximately 225-spaces, pursuant to Zoning Ordinance §§ 1-19-3.210 & 1-19- 8.344.

The property is described as 11214 Angleberger Road, Thurmont, Maryland, on the east side of US Route 15, Map 32, Lot 29, Tax ID# 20392770, Zoning Agricultural (A), Size 25.84 Acres. The Applicant's attorney asked for a continuance.

Chairman Farrell issued the witness oath to Noel Manolo, Attorney, McNees Wallace & Nurick, LLC, 5283 Corporate Drive, Frederick, MD 21703.

Mr. Manolo noted that his clients have requested a continuance to the next available meeting date due to responses they have received from adjacent property owners, and a desire to meet with the neighbors to discuss their concerns.

There were no questions from Board Members. Mr. Greenwell made a motion In Case B-22-06 to propose a continuance to the April 28, 2022 meeting. Second by Mr. Brown. Approved 5-0-0.

**B-22-10**

**Frank Chiaramonte (B267917)**

Requesting an Appeal of a Lot of Record Determination<sup>1</sup> by the Zoning Administrator in accordance with Section 1-19-2.140 and Section 1-19-2.150 of the Frederick County Zoning Ordinance. Specifically, this application appealed the December 18, 2018 Zoning Administrator's determination ("Determination") that the property was created by deed on December 26, 1976 and is not eligible to be subdivided.

The property is described as the north side of Gravel Hill Road, Tax Map 60, Parcel 0030, Tax ID # 11281176 Zoned Agricultural (A), Size 32.29 Acres.

Chairman Farrell issued the witness oath to Frank Chiaramonte, 210025 Massa Road, Walkersville, MD.

Mr. Chiaramonte is requesting a continuance due to his attorney changing firms. He now has a new attorney Mr. John Sica, and believes the continuance will allow them to more properly prepare for the Appeal.

Motion by Mr. Lawton to continue case B-22-10 to the April 28, 2022 meeting. Second by Mr. Greenwell. Mr. Brown recused himself from the case. Approved 4-0-1.

**B-22-05**

**Brendan Mullaney (B267842)**

Requesting an Appeal of the November 17, 2021 Zoning Administrator's Determination that in accordance with Section 1-19-2.140 and Section 1-19-2.150 of the Frederick County Zoning Ordinance. Specifically, this application appealed the November 17, 2021 Zoning Administrator's determination ("Determination") that the "Solar Facility, Community Energy Generating System" known generally as Persistence Solar ("Project") is not permitted as an accessory use on the property.

The property is described as 12301 Catoctin Furnace Road, Frederick, Maryland (Tax Map 32, Parcels 19, 70, and 125), Tax ID# 15326034, Zoning Agricultural (A), Size 136.86 Acres.

Mr. Greenwell stated that this is a very complex case and he hasn't had enough time to review the material. He recommended that the Board request the opinion of the county attorney about the Board's role and the current status of requirements set forth by the County Executive regarding solar arrays.

Ms. Mitchell noted that the Applicant is asking for a community energy generating solar system which is currently a pilot program in the state and that the County Code says that these systems are accessory uses in all zoning districts. A zoning certificate must be obtained prior to construction or installation of this facility. The issue in this case is whether it is a valid accessory use for an agriculturally zoned property that is used primarily to grow hay. Ms. Mitchell noted that she was advising the board tonight, and that Mr. Sinton is representing the zoning administrator. Chairman Farrell asked if they should continue this matter to the April 28, 2022 meeting for the Board to review it more thoroughly.

Mr. Farrell asked for a motion for continuance. Mr. Greenwell made a motion in Case B-22-05 that the appeal of the Zoning Administrator's determination of denial of a proposed community scale solar project be continued until the next month's meeting to better understand the rules and requirements of granting this determination. Chairman Farrell seconded the motion. Motion passed 4-1-0. The case was continued until the April 28, 2022 meeting.

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<sup>1</sup>This was actually a subdivision potential determination but the Applicant titled the appeal incorrectly.

Mr. Mullaney, the attorney on behalf of the Applicant asked to make a few words for housekeeping purposes. Chairman Farrell issued the witness oath to Brendan Mullaney, Attorney, McAllister Detar Showalter & Walker, 100 N. West Street, Easton, MD 21601. Mr. Mullaney noted his concern about the signs being missing and will make sure that they are reposted.

**B-22-07**

**Go Baby Go Daycare (B267939)**

Requesting a Special Exception to allow a Child Care Center/Nursery School in the Agricultural (A) zoning district in accordance with Section 1-19-3.210 Special Exceptions, Section 1-19-8.323. Childcare Center/Nursery School in the (A) zoning District and Section 1-19-11.100 Definitions.

The property is described as 6328 Yeagertown Road, New Market, Parcel 97, Tax ID # 07-200102, Zoning Agricultural (A), Size 5.5 Acres.

The Applicant requested the Board's approval for a Special Exception to allow an expansion of Go Baby Go Daycare. The owners are requesting approval to increase the capacity of the facility from 8 to 12 children. In order to increase capacity, the existing in-home daycare must transition to a daycare center.

Chairman Farrell issued the witness oath to Ms. Rachel Litten, Applicant, 6328 Yeagertown Road, New Market, MD 21774.

Ms. Litten presented to the Board the reason for the special exception to increase the count from 8 to 12 children which is required for a day care facility. They currently have four families in the day care and two of the families are expecting, and they would like to be able to provide a space for these children, so that they do not have to go to more one facility for their children's daycare. Go Baby Go Daycare is a certified facility and have all of the certificates required for operation. Ms. Litten also noted that there will be no change in the traffic pattern since the new children will come from the same families.

Chairman Farrell closed the record and asked if there was any further discussion and if anyone wanted to make a motion.

Mr. Bohrer made a motion to approve Case B-22-07 to allow the expansion of the Go Baby Go Daycare from 8 children to 12 children. Seconded by Andrew Brown. The motion was approved unanimously 5-0-0.

**B-22-08**

**Myron and Kristen Custer B267728**

Requesting a Variance of 10 feet from the 50-foot front yard setback and 20 feet from the 50 foot rear yard setback requirement to construct a single-family dwelling as per Ordinance Section 1-19-3.220. The same variance was requested, and approved by the Board, in 2016 (Case No. B-16-16), but expired before the proposed home could be built.

The property is described as 4969 Old Swimming Pool Road, Map 76, Parcel 411, Tax ID #24466329, Zoning Agricultural (A), Size 2.74 acres, Zoned Resource Conservation (RC).

Chairman Farrell issued the witness oath to Ms. Kristen Custer, 3804 Bedford Drive, Jefferson, MD. And also Kathy Custer, 4945 Old Swimming Pool Road, Jefferson, MD.

Ms. Kathy Custer stated that they are requesting a variance of 10 feet from the 50-foot front yard setback and 20 feet from the 50-foot rear yard setback requirements. The reason for the request is because of the narrowness of the lot and the existing Forest Conservation easement.

Chairman Farrell closed the record and asked if there was any further discussion and if anyone wanted to make a motion. After discussion, Mr. Brown made a motion for approval of the variances in case B-22-08. Seconded by Chairman Farrell. Motion approved 4-1-0.

**B-22-09**

**Phillip Keller (B267830)**

The Applicant is requesting approval of a Special Exception in accordance with the Frederick County Zoning Ordinance, Section 1-19-3.210 and Section 1-19-8.321, to permit the construction of an Accessory Dwelling Unit (ADU) greater than 1000 square feet and located within an existing structure. The Applicant is proposing a 1,085 sq. ft. ADU which is already existing and was built in 2005. It is part of a private horse riding facility on the property.

The property is described as 12770 Barnett Road, Mt. Airy, MD 21771, Tax Map 80, Parcel 0170, Tax ID #18388677, Zoned Agricultural (A), Size 28.91 Acres.

Chairman Farrell issued the witness oath to Ron Thompson, Van Mar Associates, 310 South Main Street, Mt. Airy, MD.

Mr. Thompson noted that he is the engineer that assisted Mr. Keller in putting together the plan. The ADU was built in 2005 and they have been living on the property since 2014. It was discovered recently that the ADU was not properly permitted. So they are starting the process of getting it permitted. Because of the size of the property it does not cause any distractions for any neighbors and meets all conditions of parking. They have also been working with health department to properly permit the septic system.

Chairman Farrell closed the record and asked if there was any further discussion and if anyone wanted to make a motion.

Mr. Lawton stated that he is familiar with the case B-22-09 at 12770 Barnett Road, Mt. Airy, MD and believes this ADU request is in keeping with the purpose and intent of the Comprehensive Development Plan and moved that the Board approve the special exception under Sections 1-19-3.210 and 1-19-8.321. Mr. Greenwell seconded the motion. The motion was passed 5-0-0.

**B-22-11 (B-19-13)**

Double M, LLC

Review of revised Findings & Decisions as required by the Maryland Court of Special Appeals in its Unreported Opinion dated October 7, 2021, and by Order of the Frederick County Circuit Court dated October 14, 2021.

Chairman Farrell asked if the Board should take public input. Ms. Mitchell said they could if they wanted to.

Ms. Mitchell stated that the issue here is very narrow. Ms. Mitchell reviewed the procedural history. She stated that the Court of Special Appeals remanded the case to the Board of Appeals for a revised written decision setting forth dispositive findings and conclusions reflecting the views of the members who voted to deny the site plan. The Court of Special Appeals also stated that the new written decision must identify material facts and apply the law to the facts. Staff reviewed the record and the documents. The issue now, is does this reflect the views of the Boards of Appeal members who voted against the site plan based on the evidence that was in front of the Board as of June 27<sup>th</sup>, 2019. The only current BOA member who was there that night was Mr. Brown. Ms. Mitchell also noted that there is a pretty good chance that this will be appealed again and will go to the Circuit Court again. This decision as written is consistent with the Court of Special Appeals' decision and is based on the recommendation of the June 27, 2019 public hearing decision.

Mr. Lawton indicated that he would like more time to review the prior minutes and the video of the June 27, 2019 meeting. Mr. Lawton made a Motion to Continue this matter until the April 28, 2022 meeting. There was no second. Mr. Bohrer made a motion to find that these Revised Findings and Decision are: (1) consistent with the opinion of the Court of Special Appeals and the order of the Frederick County Circuit Court and (2) based on the record of the Board's June 27, 2019 public hearing and decision. Mr. Brown seconded the motion. Mr. Greenwell recused himself. Chairman Farrell indicated that he would abstain to prevent a potential tie vote. The Motion passed 2-1-2, with Mr. Brown and Mr. Bohrer voting in favor of the motion and Mr. Lawton voting no.

Next month's meeting will be in person and all applicants must be present. The meeting will be April 28, 2022 at 7:00 pm.

**Adjournment**

There being no additional business before the Board, the meeting was adjourned by Chairman Farrell at 8:37 pm.

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Respectfully Submitted  
Mary Dolan, Administrative Specialist II