

Frederick County Board of Zoning Appeals

Meeting Minutes

April 28, 2022

Members Present: Mr. Kenneth Farrell, Mr. Shannon Bohrer, Mr. Andrew Brown, Mr. John Greenwell, Mr. Dan Lawton

Members Absent: None

Staff Present: Mr. Tolson DeSa, Zoning Administrator, Mr. Justin Horman, Zoning Planner II, Mr. Mike Paone, Zoning Planner I, Mr. Craig Terry, Principal Planner I, Ms. Kathy Mitchell, Senior Assistant County Attorney, Mr. Tom Sinton, Assistant County Attorney

The meeting was called to order at 6:59 pm.

1. Introductions – Chairman Farrell welcomed everyone. Stated he had a signup sheet for testimony which guests had been asked to sign before they entered. Asked for visitors with signs, to please keep them low in order to not block the cameras.
2. Approval of Minutes – Chairman Farrell asked for a motion to approve the March 24, 2022, minutes. Mr. Greenwell made a motion to approve the March 24, 2022, minutes. Mr. Brown seconded the motion. The regular meeting minutes were approved unanimously.

<u>VOTE</u>	5-0-0-0
FOR:	5
AGAINST:	0
ABSTAIN:	0
ABSENT:	0

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.

Chairman Farrell asked if all board members had visited the sites of tonight's cases. All BOA members had visited the sites. Chairman Farrell read the procedures for the meeting. He swore in all applicants, council and visitors who would be testifying.

Cases

B-22-10 **Frank Chiaramonte (B267917)**

Requesting an Appeal of a Subdivision Potential determination by the County Staff in accordance with Section 1-19-2.140 and Section 1-19-2.150 of the Frederick County Zoning Ordinance. Specifically, this application appeals the December 18, 2018 Staff determination ;etter (“Determination”) that the property 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 Mr. Frank Chiaramonte, 210025 Massa Road, Walkersville, MD and Mr. John Sica, Attorney, Frederick, MD.

Mr. Sica asked if they could schedule a meeting with staff to find a solution for this case that is in alliance with the County requirements.

Chairman Farrell asked for a motion. Mr. Lawton made a motion that we continue case B-22-10 to the next regularly scheduled meeting on May 26, 2022. Mr. Bohrer seconded the motion. It was passed unanimously by the Board members present.

VOTE **4-0-0-1**

FOR: 4

AGAINST: 0

ABSTAIN: 0

ABSENT: 1 (Andrew Brown – Absent at Time of Vote)

B269068 (B-22-14)

Carl Vickers

Requesting a Special Exception Approval for a Limited Agricultural Activity in the Residential Districts in accordance with Section 1-19-3.210 and Section 1-19-8.325 of the Frederick County Zoning Ordinance to allow up to 10 chickens with no roosters, on their residentially zoned property.

The Property is described as 7845 Ridge Road, Frederick, MD 21702, Tax Map 56, Parcel 512, Tax ID #24458326, Zoning Low Density Residential (R1), Size 1.7 Acres.

The Applicant has asked for a continuance to the next meeting in May due to illness and not being able to be present in person.

Chairman Farrell asked for a motion. Mr. Greenwell made a motion to grant a continuance to the next regularly scheduled meeting in May. Mr. Brown seconded the motion. Motion passed unanimously.

VOTE **5-0-0-0**

FOR: 5

AGAINST: 0

ABSTAIN: 0

ABSENT: 0

B267842 (B-22-05)

Brendan Mullaney

Requesting an Appeal of the November 17, 2021 Zoning Administrator's Determination ("Determination") in accordance with Section 1-19-2.140 and Section 1-19-2.150 of the Frederick County Zoning Ordinance 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 located at 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. Paone turned agency comments over to Mr. Sinton, Assistant County Attorney. Chairman Farrell noted that this is a different kind of case because it is an appeal of a decision made by County Staff.

Mr. Sinton noted that this is an appeal charging administrative error. He noted that the BOA had received the staff report and the various exhibits attached to them. Dates and definitions are extremely important in this case. The key question here is whether, at the time the decision was made and based on what the applicant submitted, the zoning administrator made the correct decision. Whether or not this is an accessory use is also important. An accessory use or structure by definition is a subordinate use which must take place on property with the principal use or building that serves a purpose that is customarily incidental to the principal use or building. Mr. Sinton argued that there is no proof that the proposed Community Energy Generating System ("CEGS") facility would be incidental to the current use of the property, which is growing hay on a part-time basis. The amount of land used for hay is 81 acres, which is 58.7 percent of the total land. The Zoning Administrator had no information from the applicant as to how the CEG facility would be incidental to the use of the property at the time that the determination was made. Also, there was and is no evidence showing anything on the property that uses electricity.

Mr. Sinton noted that the land is zoned agricultural. But he questioned if it is a bona fide agricultural use, as is required by the County Code. With the solar array, the applicant would lose about 20-25% of the land that was used for hay. Mr. Sinton stated that the evidence before Mr. DeSa when he made his decision was not sufficient to find that the CEGS was an accessory use. Therefore the Zoning Administrator did not commit administrative error.

Mr. Sinton asked the Board to find that the Zoning Administrator's decision was correct based upon the information he had at the time he made the decision.

The appellant's attorney, Ryan Showalter, had handouts for the Board. Mr. Showalter argued that the principal use on the property in this case was the subscribers to the electricity generated by the facility. He referenced the Public Utilities Article of the Maryland Code and the pilot program for CEGS facilities. He talked about subscribers and the State's scheme to create smaller providers throughout Maryland to provide power at a fixed rate.

Mr. Showalter noted that there is a conflict in the County Code when looking at the term accessory uses. The general definition is a subordinate use that is located on the same property as the principal use that provides power to the principal use. He defined subordinate as lesser than. An accessory use serves a purpose that is customarily secondary to the principal use. He reviewed how CEGS provide energy to subscribers and reviewed the County Code in detail as to accessory uses on parcels and adjoining parcels.

Ms. Mitchell brought up the issue that the Board had not received the material that was handed out by Mr. Showalter at the beginning of his case on time. The appellant's documentation was due 21 days before the hearing and neither the Board nor the staff had time to review the material. Mr. Showalter withdrew the written material he had handed out at the beginning of his case and asked them to refer to his presentation. Therefore, this document is not part of the official record in this case.

Mr. Brown noted that the principal user in Mr. Showalter's handout was the first time he had heard principal use referred to in this case. Mr. Sinton asked for a 30-day continuance for the Board to review the appellant's material and comment. Ms. Mitchell commented that the issue is that the staff has not had a chance to react to any of this. All they received before was an approval letter that stated one thing and an appeal that said another thing. Chairman Farrell asked the appellant specifically what the project

is about, what is the status with the State accepting this facility in the pilot program, and what is the status with the power company giving Persistence Solar the greenlight.

Jesse Kateo was representing Persistence Solar, LLC. He stated that this program has been allocated by Potomac Edison in year four of the pilot program and has been accepted as viable to be connected to the grid. The company has a conditional approval letter.

Chairman Farrell asked if the company had any subscribers yet. Mr. Kateo said that would come after the program is fully approved. The Chairman also asked what their intentions were if they were approved under the pilot program. Mr. Kateo stated that they would be authorized to operate for 25 years.

Mr. Bohrer asked if the 136.8-acre property, if all parcels were all under the same deed and if they were encumbered at all. Mr. Kateo stated that they were all under the same deed and were not encumbered.

Chairman Farrell asked if there were any witnesses that wanted to give testimony in favor of or opposed to the appeal. There was one caller on Public Input who didn't respond when asked to speak.

Chairman Farrell moved to rebuttal from the County and the Appellant. Mr. Greenwell asked Ms. Mitchell if the Board should consider and base its decision based on the application presented to Mr. DeSa and not consider any other factual evidence presented tonight. Ms. Mitchell answered yes. Mr. Lawton stated that he would like to see this case go forward. Chairman Farrell asked for a motion for a continuance or not. There was no motion for a continuance.

Mr. Sinton noted that there are two other solar facilities in this County that are CEGS facilities. Mr. DeSa stated that there is one off of Urbana Pike and one off of Legore Road, both farms with numerous structures, agricultural land and farm animals. He noted that for the Persistence Solar property, there are no existing structures, so it cannot be classified as an accessory use. It isn't about the merits of providing solar power to residents. The issue is that there must be an established use on the property in order for there to be an accessory use. Mr. DeSa stated that this property has no established principal use.

Mr. Showalter had a few brief responses. He referenced exhibit 1, an email to Mr. DeSa. He noted that his argument has been strictly what has been presented to the County all along. He referenced the specific language of the Section 1-19-8.205.5 which states the specific use and that the facility may be located on a different parcel from the subscribers. He believes that the County definition is not a logical use.

Chairman Farrell closed the record and asked for a motion. Mr. Lawton made a motion that in the case of B-22-05 that we uphold the decision of the Zoning Administrator based on the discussion held this evening and County Code Section 1-19-3.230, 1-19-5.220, 1-19-7.300, 1-19-8.2 30 and 1-19-8.205.5. Seconded by Mr. Greenwell. Motion was approved unanimously.

<u>VOTE</u>	<u>5-0-0-0</u>
FOR:	5
AGAINST:	0
ABSTAIN:	0
ABSENT:	0

The board recessed for a break at 8:06 pm and reconvened at 8:15 pm.

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 Section 1-19-3.210 & Section 1-19-8.344.

The property is located at 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.

Mr. Paone read the staff report and noted that the applicant was going to propose a higher number of RV parking spaces than stated in their application. He also noted that this request will have to go through the standard Site Plan approval process.

Chairman Farrell issued the oath to Noel Manalo, Esquire, Bill Brennan, B&R Design, and Kelly Shanholzer and Craig Beckley with Beck Prospect, LLC, the landowners and owners of Beckley's RVs. Mr. Manalo summarized what the applicant was requesting. He said it is a county business that is part of a booming industry. Per Section 1-19-8.344 of the County Zoning Ordinance, a recreational vehicle storage facility shall be permitted in the agricultural zoning district where certain provisions are met and shall be located only on a parcel that is adjacent to or adjoining a parcel on which a conforming recreational vehicle sales and service business located. Mr. Manalo stated that this is a parcel that meets all of the required criteria, and that the board has previously approved a similar request in February 2014 on Angleberger Road. This facility is across the street from the existing RV storage facility, and access is directly from the existing site. There will be no customers driving on-to this RV storage facility and no new water service is being requested.

Mr. Brennan of B&R Design presented the plan for the RV storage facility. He noted that the site is adjacent to the existing Beckley sales and service center, and that the storage site will occupy approximately 9 acres with no structures proposed on site. The site also meets all of the required setbacks and the applicant is providing a 50-foot buffer area adjacent to all residential uses. He reiterated that the public will not be accessing the vehicles or the storage facility, only the Beckley employees.

Mr. Beckley discussed the business. He stated that it is a family-owned business started in 1980 that employs a lot of local residents. Their main goal is families. He said that community is extremely important to our company, our management team, and employees. Mr. Shanholzer and Mr. Beckley are deeply committed to giving back to our community. He said that over the last 20 plus years we have donated to all sorts of charities, supported local teams and families in need. He testified that Beckley's cares about its neighbors and how it impacts them.

Mr. Manalo noted that his client held a meeting at Lewistown Fire Hall with the neighbors. There was a lot of support and a lot of opposition. The residents to the north of the site had concerns regarding lighting and screening. He noted that they have a long road ahead as it concerns the Site Plan process.

Mr. Greenwell asked what the current use was of the farm. Mr. Manalo noted that it is rented out for residential. They have livestock and fields and a residence on the site. Mr. Brown asked Mr. Brennan to confirm the acreage and use of the site. The facility would be about 9 acres. Chairman Farrell asked about

the cul-de-sac that comes onto the Beckley property. Mr. Brennan confirmed that it is in an easement. Mr. Lawton asked if the site will ever be used in the future to store vehicles and if there would be a program for owners to rent out their RVs. Mr. Beckley noted that that would not be done. Mr. Lawton also asked if any Beckley's vehicles were being stored at the Lewistown Fire Department and Mr. Beckley confirmed that there were. Mr. Brown asked about APFO and FRO requirements. Mr. Manalo stated that they were in compliance. Mr. Brennan also stated that they are under the threshold on daily trips. They will need a traffic engineering evaluation and analysis for site plan approval.

The Board took a recess at 8:50 and reconvened at 9:00 pm.

Chairman Farrell outlined the procedures for the public speakers.

Chairman Farrell gave the oath to the first speaker who was using an interpreter to speak to the board and asked if he had any cross examination for the applicant which he did not and he stated that he is opposed to the storage facility. His concern was that his view would be changed and that the new proposed storage facility will affect his property value.

Chairman Farrell asked for anyone who wanted to ask specific questions of the applicant to form a line to the podium for cross examination of the applicant. There were five members of the public who had questions for the applicant and they returned to the table for cross examination.

Chairman Farrell asked for people in favor of the applicant to come to the microphone to express their support. There were seven members of the public who spoke in favor of Beckley's.

Chairman Farrell asked for people not in favor of the applicant to come the microphone to and state they were opposed. There were a total of 13 members of the public who spoke against Beckley's. There concerns were the screening not being maintained, the light intrusion, how dangerous the roads had become due to the increased traffic and losing their views. Mr. Brown, who took over as Chair when Chairman Farrell needed to leave the room, asked if there were any more members of the public who wished to speak and there were not.

Mr. Brown stated that the Board was going to move on to the callers on the line. Each caller was sworn in before they spoke. There was only one caller who spoke against the application.

Chairman Farrell asked the applicant to come back up for rebuttal.

Mr. Manalo stated that they want to address the concerns of the neighbors. They are operating under site plan enforcement agreements, permits and zoning enforcement and to date have had no violations as to the vehicle movements of the existing operations. There is no new water proposed to be used for this property. Most of the concerns regarding the screening and lighting were from residents at the cul-de-sac. The difficulty with screening up closer to the cul-de-sac is the existing storm water management facility and the Code of Maryland Regulations (COMAR). He stated that if 13 to 15 spaces were removed that would give the applicant the opportunity to provide additional buffering and screening. He did clarify for the record that the general criteria for special exceptions in Sections 1-19-3.210(B)(1) and (B)(2) require that "the nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the

appropriate and orderly development of the neighborhood in which it is located.” He noted that the neighborhood is the existing Beckley’s RV site and that the other criteria state that “operations in connection with the special exception at the proposed location shall not have an adverse effect such as noise, fumes, vibration or other characteristics on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district.” The condition is that this needs to be adjoining an existing RV facility which it is.

Mr. Greenwell asked if they were amending their application by reducing their footprint by 17 spaces. Mr. Manalo said their submission would be amended if it were approved and they would proffer to address the screening conditions. Ms. Mitchell asked for the exact number of spaces. The original application was for 270 spaces and they would reduce that by 15 spaces. Mr. Brown asked staff about the sketch and if there was approval that they could do this, do they have the ability to move this around during the site plan process. Mr. DeSa stated that it had to match the record that was submitted. Mr. Lawton asked about the current water usage and if it is on a well. Mr. Beckley stated that it is on a well. They have a retainment water system where they reuse their water in the wash space. Mr. Lawton asked if it was their general policy to wash RVs coming in. Mr. Beckley stated that they wash new and used RVs for sale, and they will wash customer’s RVs by request only through a service that they provide.

Chairman Farrell closed the record. They entered Board discussion. Chairman Farrell noted that he had missed some testimony stepping out of the meeting, so he was not going to vote. He asked for a motion.

Mr. Lawton made a motion in the case of B267866 the property known as Beckley’s and located on the east side of Route 15 and Angleberger Road to deny the special exception because the application fails to fully meet the requirements of Section 1-19-3.210(B), numbers (1)-(5). Mr. Bohrer seconded the motion. The vote was tied. Since it was a tie vote, the special exception was not approved.

<u>VOTE</u>	<u>2-2-1-0</u>
FOR:	2 Bohrer, Lawton
AGAINST:	2 Brown, Greenwell
ABSTAIN:	1 Farrell
ABSENT:	0

Mr. Brown made a motion to approve Case B267866. Mr. Lawton seconded the motion. The motion to approve was denied on a tie vote.

<u>VOTE</u>	<u>2-2-1-0</u>
FOR:	2 Brown, Greenwell
AGAINST:	2 Bohrer, Lawton
ABSTAIN:	1 Farrell
ABSENT:	0

Adjournment

There being no additional business before the Board, the meeting was adjourned by Chairman Farrell at 11:00 pm.

Respectfully Submitted
Mary Dolan, Administrative Specialist II