

Frederick County Board of Zoning Appeals

Minutes from July 27, 2023

Members Present: Shannon Bohrer, Acting Chair; John Greenwell; Dan Lawton (Virtual); Gerald Ziembra.

Members Absent: Andrew Brown, Chair; Jack Felton, Alternate Member (Absent due to family medical emergency)

Staff Present: Tolson DeSa, Zoning Administrator; Michael Paone, Zoning Planner I; Jamie Martin, Administrative Specialist II; Thomas Sinton, Assistant County Attorney; Kathy Mitchell, Senior Assistant County Attorney.

The meeting was called to order at 7:00PM. Acting Chair Bohrer read evacuation instructions, announced the rules and procedures as well as swore in all persons wishing to testify for any cases for the evening.

First order of business was to call roll and for board members to state if they visited the sites for each case on the evening's roster. Mr. Bohrer then announced that the board will be rearranging the agenda and starting with case B-23-10.

B-23-10 Kenny Gardner

Requesting approval for a Special Exception to construct an Accessory Dwelling Unit (ADU) in excess of 1,000 Sq.Ft. in accordance with Sections 1-19-3.210 and 1-19-8.321 of the Frederick County Zoning Ordinance. The ADU is to be located within an existing pole building. The primary dwelling (main home) is 5798 Sq.Ft. with a footprint of 3239 Sq.Ft. The pole building in which the ADU is part of, is 3081 SqFt. The ADU size is 1470 SqFt. This is a one story ADU and the Footprint for the ADU is also 1470 SqFt. The Property is located at and further described as: 14416 Stottlemyer, Smithburg, MD 21783.

Motion to approve the special exception request made by Mr. Lawton, seconded by Mr. Ziembra. Motion passed 3-0-1-1. Mr. Bohrer abstained to avoid encountering any tied voting.

Member Name	Aye	Nay	Abstain	Absent
Shannon Bohrer			X	
Dan Lawton	X			
John Greenwell	X			
Gerald Ziembra	X			
Andrew Brown				X

B-23-12 B&R Design Group (Contractor)

Requesting approval by the Board of Appeals to grant a variance in accordance with Section 1-19-4.220 of the Frederick County Code, Nonconforming Structures. Section 1-19-4.220(C) states that the Board of Appeals may grant a variance to expand a nonconforming portion of an existing nonconforming structure only if the proposed expansion does not:(1) Increase the original footprint of the nonconforming portion of the structure; (2) Extend farther into the required setback(s) than the existing nonconforming portion(s) of the nonconforming structure; or (3) Include the construction of a nonconforming porch, enclosure of an existing nonconforming porch, or the addition of stories on top of a nonconforming porch. The property is located at and further described as 5901 Quinn Road, Frederick MD 21701.

Motion to pass the requested variance made by Mr. Greenwell and seconded by Mr. Ziemba. Motion passed 3-0-1-1.

Member Name	Aye	Nay	Abstain	Absent
Shannon Bohrer			X	
Dan Lawton	X			
John Greenwell	X			
Gerald Ziemba	X			
Andrew Brown				X

A short recess was offered due to additional documentation submitted late to Mr. Lawton via email. However, Mr. Lawton declined the need for a recess and wished to proceed without it.

B-23-04 Telcon Services (Q-Loop)

Requesting approval of a Special Exception to allow Activity within a Floodplain under Section 1-19-9.110 Activities within Floodplain District and Section 1-19-9.120 Procedures for Activities Within the FEMA Floodplain. The applicant is seeking approval from the Frederick County Board of Appeals for activities within 3 areas designated as Floodplain Districts, wetlands, or flooding soils under the Frederick County Code Section 1-19-9.110. The applicant has already obtained all required MDE and USACE approvals as required under Section 1-19.9.110(A)(1) of the Frederick County Code.

One member of the public stepped forth and provided testimony in favor of the application. There were two recorded messages from the public speaking in opposition of the application, one of which did not provide their address. Thirteen members of the public stepped forward to speak in opposition of the application, one of the members spoke on behalf of an approved organization/group named The Fellowship of Scientists and Engineers which granted them 10 minutes of speaking time. Mr. Black with Sugarloaf alliance wished to speak on behalf of Sugarloaf Alliance, however Mrs. Mitchell reminded him as well as other members of the group that if he chose to be the speaker of the group, that other members of the group could not speak as well. Mrs. Mitchell reminded everyone in attendance that a recognized organization/group is granted 10 minutes for the group, individuals are granted 4 minutes.

Mr. Black chose to speak on his own behalf so that other members from Sugarloaf Alliance who were present could share their opinions as well. Mr. Black was then granted 4 minutes to speak as an individual.

Acting Chair Mr. Bohrer called for a 10 minute break after public testimony and will resume the meeting with the applicant's rebuttal upon return from the short recess.

After the applicant's rebuttal, the case was then up to the Board for discussion. Mr. Greenwell spoke on a few differences between the applicant's application for the special exception and their previous applications for other permits with other agencies. Mr. Greenwell made clear that if the special exception request was granted, The Board of Appeals had the authority to revoke the approval if the applicant should fail to follow the appropriate guidelines and code restrictions.

Mr. Lawton made a motion to deny the application on the basis that in his opinion, the applicant inadequately met the requirements of 1-19-9.110 as well as 1-19-9.120. He further clarified that the applicant did not meet the requirements of 1-19-9.120 numbers 1 & 4. The motion was not seconded.

Mr. Greenwell made a motion to approve the application. There was no immediate second made by any Board members, therefore Mr. Ziemba was directly asked if he had a motion due to only 3 members voting. Mr. Ziemba stated that he wished to abstain. Since Mr. Ziemba abstained from making a motion and voting, Acting Chair Bohrer seconded Mr. Greenwell's motion to approve the application. It was clarified again by Mrs. Mitchell that Mr. Ziemba wished to abstain from voting. Motion passed 2-1-1-1.

Member Name	Aye	Nay	Abstain	Absent
Shannon Bohrer	X			
Dan Lawton		X		
John Greenwell	X			
Gerald Ziemba			X	
Andrew Brown				X

The meeting adjourned at 9:19PM.