

# Frederick County Board of Zoning Appeals

## August 24, 2023, Meeting Minutes

Members Present: Andrew Brown; Chairman, Shannon Bohrer; Vice Chair, Dan Lawton; Secretary, John Greenwell, Gerald Ziemba.

Staff Present: Tolson DeSa; Zoning Administrator, Tom Sinton; Assistant County Attorney, Justin Horman; Zoning Planner II, Mike Paone; Zoning Planner I, Jamie Martin; Administrative Specialist II.

The meeting was called to order at 7:00PM. Chair Brown reminded all everyone present that cell phones needed to be turned off or on airplane mode to avoid disruption to the broadcast/microphone systems, announced the rules and procedures of the meeting as well as swore in all persons who wished to provide testimony for the evening.

First order of business was to approve the minutes from the June 22, 2023, and the July 27, 2023, meetings. Mr. Bohrer made a motion to approve the minutes and the motion was seconded by Mr. Greenwell. The motion passed unanimously. 5-0-0-0.

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

Next on the agenda was Board Member Elections. Mr. Bohrer made a motion to re-elect Mr. Brown as Chairman of the Board. The motion was seconded by Mr. Ziemba. Motion passed 4-0-1-0, Chair Brown abstained from voting.

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

Then, Mr. Greenwell made a motion to re-elect Mr. Bohrer as Vice Chairman. The motion was seconded by Chair Brown and the motion passed 4-0-1-0, Mr. Bohrer abstained from voting.

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

Lastly, Chair Brown made a motion to re-elect Mr. Lawton as the Board's secretary and the motion was seconded by Mr. Greenwell. The motion passed 4-0-1-0.

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

The next item to discuss was the request for reconsideration of the Board's approval of a special exception in case B-23-04 Telcon Services (QLoop) to allow activity within a floodplain. The request for reconsideration was sent via email to staff on August 15, 2023, and by certified mail to all parties of record on August 14, 2023. Noel Manalo, Esquire, submitted a formal opposition to the request for reconsideration on behalf of Telconservices (QLoop) via email to staff on August 22, 2023.

Chair Brown opened the conversation by stating that he had spoken to the County attorney and confirmed that there was no requirement for public comment in regard to a request for reconsideration, that this was a matter to be discussed amongst the Board only. Mr. Greenwell volunteered to start the Board discussion. Mr. Greenwell stated that at the initial hearing of the case, he asked the county attorney if information about the stewardship of the applicant's work/history in other jurisdictions should be considered in making the decision for the application in question. Mr. Greenwell asked counsel again the same question. Mr. Sinton then responded that it was a two-fold position for the Board to determine what was relevant to the matter in front of the Board and whether or not what happened in other locations/jurisdictions is relevant to the application. Mr. Greenwell went on to discuss that Envision Frederick's request for reconsideration was premised on an inspection in another jurisdiction that was not favorable and felt that if that information was presented at the time of the initial hearing, that it could have been considered by the Board.

Mr. Greenwell then circled to what counsel had advised at the initial hearing as well as the reiteration that Mr. Sinton had just provided. Mr. Greenwell ended by saying that he felt that the Board should sustain their position. Mr. Bohrer also wanted to add that it is common practice for the Board chair (or acting chair) to recuse themselves from the voting to keep the votes at an odd number. Mr. Bohrer also added that his reason for supporting the approval of the application was due to the applicant testifying that if other routes for the project were taken, that it would cause substantially more harm than the route outlined in the application in question. Mr. Lawton then spoke up to say that he disagreed with the Board's decision and felt that a reconsideration should be made.

Mr. Lawton made a motion to grant the request for reconsideration for case number B-23-04 Telcon Services (Q-Loop) on the basis of 1-19-3.210 that the hardship evidence was not present and needs to be explored as well as the confusion in voting, and confusion in instructions from the attorney. Mr. Ziemba seconded the motion. Motion did not pass. 2-3-0-0.

| Board Member | Aye | Nay | Abstain | Absent |
|--------------|-----|-----|---------|--------|
|--------------|-----|-----|---------|--------|

|                |   |   |  |  |
|----------------|---|---|--|--|
| Andrew Brown   |   | X |  |  |
| Shannon Bohrer |   | X |  |  |
| Dan Lawton     | X |   |  |  |
| John Greenwell |   | X |  |  |
| Gerald Ziemba  | X |   |  |  |

Mr. Greenwell made a motion to deny the request for reconsideration in case B-23-04. Mr. Bohrer seconded the motion. Motion passed 4-1-0-0.

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

Chair Brown announced the first case to be heard was case B-23-13 and asked for Board Member roll call and for each member to state if they had visited the sites. Mr. Bohrer stated that he had visited the sites, however the road to the Veterinary Clinic was closed at the time of his site visit. Mr. Bohrer also stated that there was no visible sign when he visited the Fry Rd site. (B-23-16) Mr. Lawton also stated that he did not observe a sign at the Veterinary Clinic (Park Mills Rd), however it was confirmed by Mr. Greenwell that the sign was at a different entrance. All Members stated that they had visited each site.

#### **Case B-23-13 B273724 Jeff Holtzinger Veterinarian Clinic**

Requesting approval of a Special Exception to allow a Veterinarian Clinic in accordance with Section 1-19-8.338 of the Frederick County Code - Kennels, Animal Hospitals or Veterinary Clinics in the (A) and (VC) Districts. The existing residence on the site will be retained and utilized as the proposed veterinary clinic. The site will also include an indoor pet staging structure, proposed pavilion, and proposed parking areas. The property is located at 2653 Park Mills Road, Adamstown, MD 21710.

After the applicant's testimony, Mr. Paone wanted to make it clear to the Board that the application before them was solely for the Veterinary Clinic and not a boarding facility. Mr. Paone explained to the applicant that if they wish to operate a boarding facility in the future, a separate Special Exception application would need to be filed for that purpose.

No members of the public came forward to speak in favor of the application. One member of the public came forward to speak in opposition of the application.

Mr. Lawton made a motion to approve the application. Motion was seconded by Mr. Greenwell. Motion passed 5-0-0-0.

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

**Case 23-14      B275431      Morgan Moore**

Requesting approval of a Special Exception for Limited Agricultural Activity in the Residential Districts in accordance with Section 1-19-8.325 of the Frederick County Code to allow up to 4 chickens, with no roosters, on a residentially zoned property. The Property is located at 7096 Shale Ct, Middletown, MD 21769.

The applicant amended their application by testimony to have up to 6 chickens. No members of the public came forward in favor or opposition of the application.

Mr. Greenwell made a motion to approve the application. The motion was seconded by Mr. Lawton. Motion passed unanimously. 5-0-0-0.

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

**Case    B-23-15      B267831      Thomas O'Connor**

Requesting approval of a Special Exception to permit an Accessory Dwelling Unit (ADU) Greater than 1,000 sq. ft. in accordance with Section 1-19-3.210 and Section 1-19-8.321 of the Frederick County Code. The ADU is 1920 sq. ft., and the property size is 28 acres. The Property is located at 3603 Fry Road, Jefferson MD 21755.

Mr. Lawton and Mr. Greenwell both had concerns that the property owners had not posted the signs. The property owners verified that the signs had been posted in the required timeframe, however they did have to re-post them a few times during the required timeframe due to wind.

No members of the public came forward to speak in favor or opposition of the application. Mr. Greenwell made a motion to approve the application, his motion was seconded by Mr. Ziemba. Motion passed unanimously. 5-0-0-0.

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

**Case    B23-16      B267978      Luis Beteta/Miles and Stockbridge**

Requesting approval of a Special Exception to permit an Accessory Dwelling Unit (ADU) Greater than 1,000 sq. ft. in accordance with Section 1-19-3.210 and Section 119-8.321 of the Frederick County Code. The ADU is 1,921 sq. ft. and the property size is 4.8 acres. The Property is located at 8904 Opossumtown Pike, Frederick MD 21702.

No members of the public came forward in favor of the application. One member of the public came forward in opposition of the application.

Mr. Lawton made a motion to approve the application, the motion was seconded by Mr. Greenwell. Motion was passed unanimously. 5-0-0-0.

| <b>Board Member</b> | <b>Aye</b> | <b>Nay</b> | <b>Abstain</b> | <b>Absent</b> |
|---------------------|------------|------------|----------------|---------------|
| Andrew Brown        | X          |            |                |               |
| Shannon Bohrer      | X          |            |                |               |
| Dan Lawton          | X          |            |                |               |
| John Greenwell      | X          |            |                |               |
| Gerald Ziemba       | X          |            |                |               |

Meeting adjourned at 8:37pm.