

FREDERICK COUNTY BOARD OF APPEALS MEETING MINUTES FOR THURSDAY, JULY 26, 2007

Billy Shreve, Chairman, called to order a meeting of the Frederick County Board of Appeals ("Board") for Thursday July 26, 2007, at 7:00 p.m. Present were Bernard Bordenick, Vice Chairman, Robert Lawrence, Lara Roholt Westdorp and Ron Peppe, Sr. Also present were Michael Chomel, Senior Assistant County Attorney, and Planning Division staff Larry Smith, Zoning Administrator, Rick Brace, Principal Planner II, and Erica Cooke, Recording Secretary.

Official Minutes of the Board of Appeals' meetings are kept on file in the Planning Division.

Annual Election of Officers

Mr. Shreve turned the meeting over to Mr. Brace to conduct the annual election of officers in accordance with the Board's bylaws. Mr. Brace called for nominations for Chairman. Mr. Bordenick nominated Mr. Shreve as Chairman and hearing no others, the call for nominations was closed. By acclamation, Mr. Shreve was reappointed Chairman. The meeting was turned back over to Mr. Shreve. Mr. Shreve called for nominations for Vice Chairman. Mr. Shreve nominated Mr. Bordenick as Vice Chairman and hearing no others, the call for nominations was closed. By acclamation, Mr. Bordenick was reappointed Vice Chairman.

Approval of Minutes

Ms. Westdorp made a motion to amend the previously approved portion of the Thursday, April 26, 2007 minutes, clarifying the Board's intent as, "The Board unanimously adopted an amended set of bylaws on a motion by Mr. Lawrence and seconded by Ms. Westdorp." Ms. Westdorp further moved to approve the full April minutes as amendment with the inclusion of a discussion of cases B-07-03 and B-07-12. Mr. Lawrence seconded the motion that passed unanimously (Yeas 5, Nays 0). Mr. Lawrence moved to approve the Thursday, June 28, 2007 minutes as written. Mr. Peppe seconded the motion that passed unanimously.

CASES

Mr. Shreve swore in all persons who expected to testify at the meeting.

Case B-07-19 Palmer Professional Properties LLC c/o Scott Miller, Esquire

An application was filed requesting a special exception to expand a previously approved veterinary clinic (Case B-01-32) located on the north side of MD Route 40, approximately 800 feet west of Harmony Road (Tax Map 46, Parcel 470, Lot 1), zoned Agricultural. Mr. Miller represented the applicant, Dr. Palmer and presented the case.

The Board indicated that the proposed expansion was not adequately delineated on the site for the field site visit nor on the submitted, revised plans. Mr. Miller agreed to include more information on the plans in preparation for the next hearing. Mr. Lawrence moved to continue this case until Thursday, August 23, 2007. Mr. Peppe seconded the motion that passed unanimously.

Case B-07-03 Leonard C. Martin c/o Rand Weinberg, Esquire

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An application was filed for Reconsideration of Claim of Administrative Error in Planning Commission Decision of December 13, 2006 that denied a subdivision plat due to a failure to pass the APFO Schools test. The property was located on the north west side of Mill Bottom Road and was accessed from Highboro Court [S-791, Hansen 4400] (Tax Map 90, Parcel 166), zoned R-1 Residential. Mr. Weinberg represented the applicant and presented the case.

The Board and the applicant agreed that the purpose of this meeting was to clarify the procedures for the reconsideration. Ms. Westdorp moved to schedule the reconsideration for Thursday, August 23, 2007 with the following conditions; Oral testimony from the Appellant and Appellee would be heard but limited to the merits of the case and only new oral and/or written testimony would be accepted; The time and procedures for the reconsideration would be the same as that for the administrative appeals as established in the Board of Appeals Bylaws, Section V (E); Kathy Mitchell, Assistant County Attorney, would provide written material to staff no later than Friday, August 3, 2007 and Mr. Weinberg would provide written material to staff no later than 4:00 p.m., Friday, August 10, 2007. Mr. Bordenick seconded the motion that passed unanimously.

Case B-07-05 Paul and Linda Humerick c/o Lynn Board, Esquire

An application was filed requesting a 25 foot variance from the 75 foot required front setback from the centerline and 26 feet from the 50 foot required side yard setback in order to retain a carport, located on the east side of Hornets Nest Road, approximately 1,800 feet north of Riffle Road (Tax Map 3, Parcel 71), zoned Resource Conservation. This case was continued from the Thursday, May 24, 2007 meeting. Ms. Board represented the applicant and presented the case.

The Board discussed conditions of the property, location of the carport, justification for adding the roof, and health conditions of the applicants and family members in order to determine if the applicant had met the requirements of uniqueness and unreasonable hardship for a variance. Mr. Bordenick moved to grant the request with the condition that the applicant be bound by testimony and the exhibits as presented. Mr. Peppe seconded the motion that was successful (Yeas 4, Nays 1-Westdorp).

Case B-07-11 Jeanne Yost

An application was filed requesting a 24 foot variance from the 40 foot required front building restriction line in order to erect a garage, located on the east side of Arlington Mill Road, 350 feet +/- north of Fordham Court (Tax Map 60, Parcel 88, Lot 18), zoned R-1 Residential. This case was continued from the Thursday, May 24, 2007 meeting. Ms. Yost presented her case.

The Board noted that this case shared some similarities with the previous case but found this case failed to establish uniqueness as there were other properties in the neighborhood with the same triangular shape and building restriction lines. Mr. Lawrence moved to deny the application for variance for the reasons:

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1. The Applicant had not met the unreasonable hardship requirement under Section 1-19-47(A);
2. Referencing Section 1-19-47 (C) that the existing special conditions and circumstance were the result of actions of the applicant; and
3. The Applicant had several other options that could be undertaken and noting that a portion of the Applicant's testimony was that she could build without the need for a variance.

Mr. Peppe seconded the motion. Ms. Westdorp moved to amend the motion to add that the case also failed to establish uniqueness both in the shape and panhandle issues as other neighboring properties, particularly lots 7, 8, 10, 15, 17, and 19 were of similar in shape. Mr. Peppe seconded the motion to amend that passed unanimously. The amended motion passed unanimously.

Discussion of Board of Appeals Bylaws

Ms. Westdorp stated that the cases the Board considered in April, May and June raised the issue of whether or not Section V (E) Procedures of the bylaws should be amended. Ms. Westdorp made a motion to add the phrase "and reconsideration" in Section V (E) of the Bylaws to read "*The hearing of special exception, variance, and reconsideration cases shall be conducted in the following manner:*" This change would formally set the procedure for hearing reconsiderations within the bylaws.

Mr. Chomel stated that the motion seemed to be contrary to the procedures the Board had determined to follow earlier in the meeting for a reconsideration of a case (Case B-07-03). Ms. Westdorp followed that the motion would amend the bylaws for future requests for reconsideration in an attempt to establish consistency for future reconsiderations. As there was no second to the motion, it was removed from the table.

ADJOURN

Being no further business, the meeting was adjourned at 9:13 pm.

Respectfully submitted,

Erica Cooke
Recording Secretary

Bill Shreve, Chair