

## **FREDERICK COUNTY BOARD OF APPEALS MEETING MINUTES FOR THURSDAY, JANUARY 28, 2010.**

Lara Roholt Westdorp, Chair, called to order a meeting of the Frederick County Board of Appeals ("Board") for Thursday, January 28, 2010 at 7:00 p.m. Present were Ronald Peppe, Sr., John Clapp, Sean Michalski and Alan Duke. 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.*

Ms. Roholt Westdorp stated the rules and procedures for the evening.

### **Approval of Minutes**

On a motion from Mr. Peppe, Sr., seconded by Mr. Duke, the Board approved the minutes from December 17, 2009. (4:0:1, Abstain- Michalski).

### **Cases**

#### **B-09-16 Global Mission Church c/o Severn, O'Connor & Kresslein, P.A.**

This case was continued from the January 20, 2010 hearing. An application was filed claiming Administrative Error by the Frederick County Planning Commission in denial of the Applicant's Site Development Plan (SP-92-37) on October 14, 2009 for a Place of Worship, property located on the northwest corner of the intersection of MD Rt. 109 (Old Hundred Road) and Interstate 270 and adjoined on the north by a parcel fronting onto Dr. Perry Road (Tax Map 105, Parcels 109 and 114, Lot 4 and Tax Map 111, Parcel 36). The portion of the property located in Frederick County is zoned Agricultural and Resource Conservation and lies within the Urbana Planning Region.

Mr. Michalski made a motion to, on the basis of the record of all the meetings before the Planning Commission meetings and the Board of Appeals, to affirm the decision of the Planning Commission and deny the appeal on the basis that no error had been proven, seconded by Mr. Duke for the purpose of discussion.

Mr. Michalski amended the motion to split the motion, separating the issue of the Religious Land Use and Institutionalized Persons Act (RLUIPA) from the remaining part of the motion, seconded by Mr. Duke.

The Board approved the amendment to the motion. (3:2:0, Nay-Westdorp, Clapp)

On the portion of Mr. Michalski's motion to affirm the decision of the Planning Commission and deny the application based on key issues, excluding the issue of RLUIPA, the Board denied this portion of the amended motion (2:3: 0, Nays-Clapp, Peppe, Westdorp)

Mr. Duke withdrew his second to the RLUIPA portion of the motion, thus Mr. Michalski's motion stating that insufficient evidence has been brought to show that the denial is not the least restrictive means to enforce zoning regulations, failed for lack of a second.

Mr. Michalski made a motion that the application of RLUIPA is unconstitutional with respect to Frederick County zoning on the basis that it violates the Equal Protection Clause of the 14<sup>th</sup> Amendment that no state shall deny to any person within its jurisdiction the equal protections of the laws, on the basis that it in effect is forcing the Board of Appeals to apply a different standard of review to a religious institution than to a non-religious institution, and sets up a suspect class which is non-religious persons who are then discriminated against on the basis that their institution or institutionalized uses are subject to different zoning laws in an otherwise religion neutral zoning ordinance. The motion failed for lack of a second.

Mr. Clapp made a motion that the Board of Appeals remand the matter back to the Planning Commission for further proceedings and with the instruction that, in the course of further consideration of the Applicants site plan, the Planning Commission suggest to the Health Department and its staff to consider two public documents: An Environmental Protection Agency Document dated February 2002 -the *On-sight Wastewater Treatment System Manual* and Maryland Department of the Environment Document- the *Wastewater Capacity Management Plan*, dated 2006.

Following discussion amongst the Board and legal counsel, Mr. Clapp withdrew the motion.

Mr. Clapp made a motion to vacate the decision of the Frederick County Planning Commission and remand the matter back to the Planning Commission to revisit the issue of the adequacy of the septic with the assistance of the Health Department and that they do that analysis with the proviso that the Planning Commission consider its recommendations and position with regards to the site plan giving due consideration to all current and applicable Federal, State, and local laws, rules, regulations and guidelines, seconded by Mr. Peppe, Sr.

Mr. Michalski made a motion to lay Mr. Clapp's motion on the table, which failed for lack of a second.

Mr. Clapp amended his motion to include that in the remand, that the Planning Commission must address any outstanding issue including necessity and adequacy of the secondary emergency access, seconded by Mr. Peppe, Sr.

The Board remanded the case back to the Planning Commission on the amended motion from Mr. Clapp, seconded by Mr. Peppe, Sr. (3:1:1- Nay-Michalski, Abstain-Duke)

*The Chair announced a break at 9:10 p.m. The hearing resumed at 9:27 p.m.*

**B-09-15 T-Mobile, Inc. c/o Erin Maheridis, Esq.**

This case was continued from the December 17, 2009 hearing. An application was filed requesting a special exception to erect a 150 ft. high unipole telecommunications tower and a 25 ft. by 40 ft. equipment compound at its base, located on the east side of South Mountain Road approximately 1,000 ft. north of Ash Drive (Tax Map 91, Parcel 9). Zoned Agricultural [Ag]

The Board closed the record following application presentation, cross examination, public comment and rebuttal (except for a second appraisal report that had been referenced in the letter from Mr. Six, the appraiser, as requested by the Board), and agreed to continue the case to the Monday, February 1, 2010 hearing for consideration and decision by the Board.

The Chair, after discussions with both applicants, announced that cases B-09-17 and B-09-18 would also be continued to the Monday, February 1, 2010 hearing.

Being no further business for the evening, the meeting was adjourned at 11:52 p.m.

Respectfully Submitted,

Erica Cooke  
Recording Secretary

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Lara Roholt Westdorp, Chair