

FREDERICK COUNTY BOARD OF APPEALS MEETING MINUTES FOR MONDAY, FEBRUARY 1, 2010.

Lara Roholt Westdorp, Chair, called to order a meeting of the Frederick County Board of Appeals ("Board") for Monday, February 1, 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 and swore in all persons who expected to testify and participate in the cross examination process during the meeting.

Cases

B-09-15 T-Mobile USA, Inc. c/o Erin Maheridis, Esq. and Gregory Rapasarda, Esq.

This case was continued from the January 28, 2010 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 received into the record, the second appraisal report that had been referenced in the letter from Mr. Six, an appraiser, of which was requested by the Board at the January 28, 2010 hearing.

Mr. Duke made a motion to continue the case to the February 25, 2010 meeting to allow the Applicant opportunity to justify and clarify its position to the appropriateness of the location of its facility versus other locations, seconded by Mr. Peppe, Sr.

The Applicant also requested the continuance.

Based on the Board's vote, the motion failed. (2:3:0-Nays-Westdorp, Clapp, Michalski)

Mr. Michalski made a motion to deny the application on the basis of its inconsistency with Sections 1-19-8.420 (O) and 1-19-8.420 (G), that the Applicant failed to fully comply with 1-19-8.420.2 (E)(1) specifically the applicants explanation did not include the reasons why the subject property was in fact best; and under Section 1-19-3.210, that the Board find that the proposed use is not consistent with the purpose and intent of the Comprehensive plan in terms of its disproportionate adverse impact on an area that the Comprehensive plan makes clear is an area to be preserved for its rural quality and the historic nature of the area, specifically Civil War and Historic sites within a mile of the proposed monopole.

Due to concerns about the specifics of the motion raised by Board members, Mr. Michalski amended his motion, offering to split the motion with the first portion solely referencing Section 1-19-8.420.2 (E)(1) as basis for denial. The motion and amended motion failed for lack of a second.

Mr. Clapp made a motion to deny the application due to insufficient evidence to satisfy the requirements of the Frederick County Code, Sections 1-19-8.332 (B) (2) and 1-19-8.420.2 (E)(1), seconded by Mr. Michalski (3:2:0 Nays- Duke, Peppe)

B-09-17 Joe MacInnes d/b/a Chris' Classic Restorations

Requesting a special exception to establish an auto repair shop in a limited industrial zoning district, located on the west side of Winchester Blvd., approx. 600 ft. north of Cap Stine Rd. (Tax Map 94, Parcel 96, Lot 54 -Stanford Industrial Park - 4987 Winchester Blvd. Units 1 and 2) Zoned Limited Industrial [LI]

On a motion from Mr. Duke, seconded by Mr. Michalski, the Board unanimously granted the Applicants request for a special exception having met all of the requirements in Sections 1-19-3.210 and 1-19-8.325 of the zoning ordinance.

The Chair announced a break at 8:34 p.m., the meeting resumed at 8:47 p.m.

B-09-18 Smartpole, Inc. d/b/a Milestone Inc. c/o Scott Miller, Esq.

Requesting a special exception to establish a 150 ft. high monopole [and light pole, replacing an existing 90 ft. high light pole], located on the west side of Ballenger Creek Pike at Tuscarora High School (Tax Map 86, Parcel 254) Zoned Agricultural [Ag]

On a motion from Mr. Peppe, Sr., seconded by Mr. Duke, the Board unanimously granted the Applicant's request for special exception having met the specific criteria in Sections 1-19-332 and 1-19-8.420.2 of the Zoning Ordinance, with the added condition that the Applicant and tenants provide contact information to the Zoning Administrator on an annual basis.

Miscellaneous Issue- Process of Cross Examination

By consensus, the Board decided to raise the issue at the February 25, 2010 hearing and compose suggestions related to amendments to the bylaws.

Being no further business, the meeting was adjourned at 9:33 p.m.

Respectfully Submitted,

Erica Cooke
Recording Secretary

Lara Roholt Westdorp, Chair