

FREDERICK COUNTY BOARD OF APPEALS MEETING MINUTES FOR

Thursday, December 20, 2012.

Alan Duke, Chair, called to order the regular meeting of the Frederick County Board of Appeals ("Board") for Thursday, December 20, 2012 at 7:00 p.m. in the 1st Floor Hearing Room in Winchester Hall. Present were Carole Jaar Sepe, Brad Dyjak, Mike Bowersox and Robert Fenimore. Also present were Michael Chomel, Senior Assistant County Attorney, and Community Development Division staff Larry Smith, Zoning Administrator, and Craig Terry, Planner.

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

Introductions

The Chair stated the rules and procedures for the hearing.

Approval of Minutes

On a motion from Mr. Dyjak, seconded by Mr. Bowersox, the Board approved the minutes of October 25, 2012 (Yea 5, Nay 0)

Approval of 2013 Board of Appeal Schedule of Deadlines, Site Visits and Hearing Dates

On a motion from Mr. Bowersox, seconded by Mr. Fenimore, the Board approved the Board of Appeals Schedule for 2013 (Yea 5, Nay 0)

Cases

The Chair swore in all persons who expected to testify at the meeting.

B-11-02 – Liberty Towers, LLC.

A request for reconsideration was filed of the Board's denial of a special exception request during its reexamination of a five year plan and site plan drawings as ordered by the Circuit Court Opinion dated April 20, 2012 and Circuit Court Remand Order dated June 11, 2012. The reconsideration request was to establish a 195 ft communications tower/monopole with a 4ft lightning rod and 100'x100' leased areas with a 70'x80' fenced in equipment compound.

Mr. Bowersox made a motion to reconsider the case. In absence of a second to the motion, the reconsideration request failed.

B-12-12 – Friends of Frederick County c/o Law Offices of Knopf & Brown.

A Claim of Administrative Error was filed relative to the October 4, 2012 decision of the Board of County Commissioners in the approval of Case No. DRRA-12-01, the Development Rights and Responsibilities Agreement for Landsdale PUD.

The Chair discussed the question of standing as requested by the opponents. The Chair noted that Maryland case law states that the standard for being a party in an administrative hearing is minimal, and therefore anyone who identifies themselves as a party will be considered a party to this case by the Board.

The request for continuance was withdrawn by the Applicant.

Time limit for parties was discussed as requested by the Applicant. The Applicant then requested that a decision on Case B-12-13 be made prior to discussion of Case B-12-12.

B-12-13 – Friends of Frederick County c/o Law Offices of Knopf & Brown.

A Claim of Administrative Error was filed relative to the October 4, 2012 decision of the Board of County Commissioners in the approval of Ordinance for Landsdale PUD. The Applicant requested a ruling on the authority of the Board of Appeals in that case.

Mr. Bowersox made a motion seconded by Mr. Dyjak that the Board of appeals does not have jurisdiction on a legislative action by the Board of County Commissioners. (Yea 5, Nay 0)

B-12-12 – Friends of Frederick County c/o Law Offices of Knopf & Brown.

The Chair resumed Case B-12-12 and clarified that the time limit will be 20 minutes as per the Board of Appeals general rules.

Mr. Bowersox made a motion to deny the Claim of Administrative Error seconded and amended by Mr. Dyjak to add that the APFO was not entered as part of the basis of the denial, that the process under Section 1-25-4 and 1-25-9 was followed and that the BOCC has discretion to enter into terms greater than five years in the DRRA. Mr. Fenimore added an amendment to the amended motion that the Board of Appeals confirms approval of the BOCC approval of the DRRA. Mr. Chomel recommended the language be amended to include that the Board was not persuaded that an administrative error was committed.

Mrs. Sepe restated the motion from Mr. Bowersox, seconded by Mr. Dyjak and further amended by board members. The motion is to:

- Deny the appeal of Administrative Error,
- Approve the approval of the DRRA as the board was not persuaded that there were any Administrative Error by the BOCC and, that
- The Board of Zoning Appeals did not include the APFO in its consideration of the Appeal.

(Yea 5 – No 0)

Closing

The Chair announced that the next meeting will be held on January 24, 2013.

Being no further business, the meeting adjourned at 11:38 p.m.

Respectfully submitted,

Carole Jaar Sepe, Vice Chair
Recording Secretary



Alan Duke, Chair