

**FREDERICK COUNTY BOARD OF APPEALS MEETING MINUTES FOR**  
**Thursday, November 21, 2013**

Mr. Alan Duke, Chair, called to order the regular hearing of the Frederick County Board of Appeals ("Board") for Thursday, November 21, 2013 ("Hearing") at 7:00 p.m. in the 1st Floor Hearing Room in Winchester Hall, Frederick, MD. In addition to the Chair, present were Board members Robert Fenimore, John Capoccia, Wayne Robinson and John Greenwell. Also present were Mr. Michael Chomel, Assistant County Attorney, and for the Community Development Division ("Staff") Mr. Larry Smith, Zoning Administrator, and Mr. Craig Terry, Planner.

Site visits for the Cases listed below were made on Wednesday, November 13, 2013. Board members Alan Duke, Robert Fenimore, Wayne Robinson and John Greenwell attended. Mr. Terry also attended the Site visits for Staff. Mr. John Capoccia visited the sites separately on November 21, 2013.

*Official Minutes of the Board of Appeals' meetings are kept on file in the Community Development Division.*

**Introductions**

The Chair welcomed attendees and requested that all cell phones be turned off.

**Approval of Minutes**

On a motion from Mr. Capoccia, seconded by Mr. Robinson, the Board approved the minutes of the October 24, 2013 Hearing (Yea 4, Nay 0, Abstain 1 (Mr. Greenwell)).

**Rules and Procedures**

The Chair stated the rules and procedures for the hearing and swore in all persons who expected to testify at the meeting.

**CASES**

**B-13-16      Russell and Melody Hurd – Special Exception Request to Establish an Accessory Apartment Greater Than 800 SF**

The Applicants, Russell V. and Melody M. Hurd, Middletown, MD 21769, filed a request for a Special Exception approval to establish an Accessory Apartment greater than 800 square feet in a detached garage. The location is on the west side of Hawbottom Road (8935 Hawbottom Road, Tax ID # 03-150402, Tax Map 56, Parcel 210). The Planning Region is Middletown and the Zoning District is Resource Conservation (RC).

Applicable Zoning Ordinances are:

- Section 1-19-3.210, Special Exceptions
- Section 1-19-5.310, Use Table
- Section 1-19-8.321, Accessory Apartments greater than 800 square feet to be located in an Accessory Structure

Based upon the evidence and testimony presented at the Hearing, the Board discussed and found that the Applicant met the requirements of Sections 1-19-3.210(B) (General Criteria) and 1-19-8.321 (Specific Criteria).

Therefore, the Board approved Applicant's request for a Special Exception approval to establish an Accessory Apartment greater than 800 square feet in a detached garage. Motion by Mr. Fenimore, second by Mr. Capoccia, vote: Yea 5, Nay 0.

**B-13-17**

**Ferdinand J. Mack and Marguerite D. Kline - Special Exception Request to Establish a Dog Breeding Kennel**

The Applicants, Ferdinand J. Mack and Marguerite D. Kline, Frederick, MD 21703, filed a request for a Special Exception approval to establish a dog breeding kennel. The location is on the southeast side of Cap Stine Road (4649 Cap Stine Road, Tax ID # 23-441470, Tax Map 85, Parcel 55, Remainder Lot). The Planning Region is Adamstown and the Zoning District is Agricultural (AG).

Applicable Zoning Ordinances are:

- Section 1-19-3.210, Special Exceptions
- Section 1-19-5.310, Use Table
- Section 1-19-8.338, Kennels, Animal Hospitals or Veterinary Clinics in the A and VC Districts

Based upon the evidence and testimony presented at the Hearing, the Board discussed and found that the Applicant met the requirements of Sections 1-19-3.210(B) (General Criteria) and 1-19-8.338 (Specific Criteria).

Therefore, the Board approved Applicant's request for a Special Exception approval to establish a dog breeding kennel. Motion by Mr. Robinson, second by Mr. Fenimore, vote: Yea 5, Nay 0.

**B-13-18        Barbara J. Maghan - Variance Request for Lot Width for Subdivision of One Lot**

The Applicant, Barbara J. Maghan, represented by Byron R. Maghan, Frederick, MD 21702, filed a request for a Variance approval of 65 feet from the required 300 foot minimum yard width for the subdivision of one lot in the RC zone. The location is on the west side of Ridge Road (7402 Ridge Road, Tax ID # 24-448606, Tax Map 66, Parcel 383). The Planning Region is Middletown and the Zoning District is Resource Conservation (RC).

Applicable Zoning Ordinances are:

- Section 1-19-3.220, Variances
- Section 1-19-6.100, Design Requirements
- Section 1-19-11.100, Definitions

Based upon the evidence and testimony presented at the Hearing, the Board discussed and found that the Applicant met the requirements of Section 1-19-3.220(C) (General Criteria). In making this finding, the Board found, in accordance with Section 1-19-3.220(C)(1), that special conditions and circumstances exist which are unique to the land involved and which are not applicable to other lands in the same district. The special conditions and circumstances include topography and panhandle shape of the lot, and rezoning changes made by Frederick County since the Applicant purchased the lot in 1988 and built a house in 1992. The latest rezoning occurred in 2010 (to RC) which imposed more restrictive design requirements, impacting Applicant's ability to subdivide one lot.

Therefore, the Board approved Applicant's request for a Variance approval of 65 feet from the required 300 foot minimum yard width for the subdivision of one lot in the RC zone. Motion by Mr. Robinson, second by Mr. Greenwell, vote: Yea 5, Nay 0.

**Other Business**

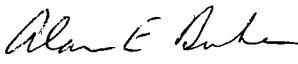
At Mr. Smith's request, the Staff, the Board and Mr. Chomel discussed the timing of Board signatures on Findings and Decisions from the prior month's Hearing (F&D's), specifically when a Board member who attended the prior month's Hearing is not in attendance at the current month's Hearing to sign the F&D's. The concern is that delays in obtaining all signatures on F&D's should not unduly impact getting final decisions to the Applicant(s).

Mr. Chomel summarized for Staff and the Board the procedure in the Board's By-Laws, Section V.I., Decision, which states, in part, "The decision does not become official and final until signed by all members of the Board who heard the case or their authorized designee [emphasis added], usually at the regularly scheduled meeting the month following the hearing(s)." It was agreed in this discussion that Mr. Smith would notify a Board member(s) who was not present at the current Hearing to request approval to have the Chair (or Vice Chair in Chair's absence) sign the F&D's on behalf of the absent Board member. It was agreed that email notices were acceptable.

**Closing**

The next Board meeting is scheduled for December 19, 2013. Being no further business, the meeting adjourned at 8:20 p.m.

Respectfully submitted,  
Robert Fenimore  
Recording Secretary

  
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Alan E. Duke  
Chair