

FREDERICK COUNTY BOARD OF APPEALS MEETING MINUTES FOR
Thursday, January 23, 2014

Mr. Alan Duke, Chair, called to order the regular hearing of the Frederick County Board of Appeals ("Board") for Thursday, January 23, 2014 ("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 Mike Bowersox, 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.

The Site visits for the Cases listed below were made on Wednesday, January 15, 2014. Board members Alan Duke, Mike Bowersox, John Capoccia, Wayne Robinson and John Greenwell attended. Mr. Smith and Mr. Terry also attended the Site visits for Staff. Mr. Duke maintained and presented a Site Visit Log at the Hearing.

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. Bowersox, seconded by Mr. Robinson, the Board approved the minutes of the December 19, 2013 Hearing (Yea 3, Nay 0, Abstain 2: Mr. Capoccia, 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-14-01 Town of Emmitsburg (Standard Solar Inc.)

The Applicant, Standard Solar Inc., represented by Deborah McCrossin (1355 Piccard Drive, Suite 300, Rockville, MD 20850) filed a Request for Special Exception approval to establish a Non-Governmental Utility Solar Farm, per the applicable Zoning Ordinances below. The location is the east side of Creamery Road (16707 Creamery Road, Tax Map 9, Parcel 146), Planning Region is Thurmont, Zoning District is Agricultural (AG), and Comp. Plan Designation is Institutional and Natural Resource.

Applicable Zoning Ordinances are:

- Section 1-19-3.210, Special Exceptions
- Section 1-19-5.310, Use Table
- Section 1-19-8.339, Non-Governmental Utility

Based upon the evidence and testimony presented at the Hearing, the Board discussed and found that the Applicant meets the General Criteria for a Special Exception, per Section 1-19-3.210, and the Specific Criteria for a Non-Governmental Utility in AG, per Section 1-19-8.339.

Therefore, the Board approved Applicant's Request for Special Exception approval to establish a Non-Governmental Utility Solar Farm at the location described above.

Motion by Mr. Bowersox, second by Mr. Robinson, vote: Yea 5, Nay 0.

B-14-02

RALE, Inc., et al c/o Law Office of Michele Rosenfeld LLC

The Appellants, Residents Against Lansdale Expansion (RALE), Inc., et al, as represented by Michele Rosenfeld, LLC (11913 Ambleside Drive, Potomac, MD 20854), are claiming an Appeal of Administrative Error in the decision of the Zoning Administrator as per letter dated October 24, 2013, indicating a lack of standing for determination request. Location is proposed Monrovia Town Center properties, Monrovia Town Center Rezoning Application (#R-12-02) to rezone 457 +/- acres from Agricultural (AG) to Planned Unit Development (PUD), located east of Ed McClain Road and west and east of Green Valley Road, north of the intersection with Fingerboard Road near Monrovia (Tax Map 88, Parcels 28, 127, 146). Planning Region is New Market, Zoning District is Agricultural (AG) and General Commercial (GC), and Comp. Plan Designation is Low Density Residential and General Commercial.

Applicable Zoning Ordinance is:

- Section 1-19-3.230, Appeals

Based upon the evidence and testimony presented at the Hearing, the Board discussed and found that the Zoning Administrator did not make an Administrative Error in his decision indicating that Appellants lacked the standing to seek an interpretation on the properties subject to a rezoning application (R-12-02). Therefore, the Board disapproved Appellants' Claim of Administrative Error in the decision of the Zoning Administrator for Case B-14-02.

Motion by Mr. Bowersox, second by Mr. Capoccia, vote: Yea 5, Nay 0.

B-14-03

Robin M. Trout & Peggy Trout

The Appellants, Robin M. and Peggy S. Trout , are claiming an Appeal of Administrative Error in the decision of the Zoning Administrator relative to the denial of Permit # 112268 for a storage building expansion, to join two existing structures, as per the applicable Zoning Ordinances below. Location is the west side of Green Valley Road (10708 Green Valley Road, Union Bridge, MD 20854, Tax Map 43, Parcel 106), Planning Region is Walkersville, Zoning District is Residential-1 (R1), and Comp. Plan Designation is Rural Community.

Applicable Zoning Ordinances are:

- Section 1-19-3.230, Appeals
- Section 1-19-8.240(B), Accessory Uses on Residential Property

Based upon the evidence and testimony presented at the Hearing, the Board discussed and found that the Zoning Administrator did not make an Administrative Error in his decision relative to the denial of Permit # 112268 for a storage building expansion to join two existing structures.

However, in an effort to allow the Appellants the opportunity to revise their building plans in an effort to make their plans compliant with the applicable Zoning Ordinances, the Board did approve a one-month continuance of Case B-14-03, until the next Board Hearing on February 27, 2014. At that time, Appellants must show forward progress towards making their building plans compliant. Failing that, the Board may deny their Building Permit.

Motion by Mr. Bowersox, second by Mr. Robinson, vote: Yea 5, Nay 0.

B-14-04

Mark & Carol Sheffler c/o Lancaster Craftsmen Builders

The Appellants, Mark and Carol Sheffler, as represented by Charles Jenkins and Lancaster Builders, are claiming an Appeal of Administrative Error in the decision of the Zoning Administrator relative to the denial of Permit # 114241 for consideration of whether or not a proposed addition is considered to be a separate dwelling unit, per the applicable Zoning Ordinances below. Location is the north side of Bidle Road (3262 Bidle Road, Middletown, MD 21769, Tax Map 65, Parcel 175), Planning Region is Middletown, Zoning District is Residential-1 (R1), and Comp. Plan Designation is Rural Residential.

Applicable Zoning Ordinances are:

- Section 1-19-3.230, Appeals
- Section 1-19-11.100, Definitions

Section 1-19-11.100 defines "Dwelling Unit" as "A room or group of rooms forming a single residential unit with facilities for living, sleeping and cooking purposes which are exclusively used for the family living therein." The evidence and testimony at the Hearing focused on what defines "facilities for cooking purposes" or a "kitchen". The Appellants planned to build a wet bar with countertop and a refrigerator, and testified that since they would not have a major cooking appliance, it was not a kitchen. The definition of a "major cooking appliance" was described in Appellants' testimony as a 'built-in' or "slide-in" cooking appliance such as a range, oven or cooktop, but not a counter-top appliance such as microwave oven, toaster oven or convection oven. Limiting the linear feet of countertop to four feet was also discussed.

Mr. Robinson made a motion to find that, based on Section 1-19-11.100 which defines a Dwelling Unit, the Zoning Administrator's decision to deny Permit # 114241 because the proposed addition meets the definition of a separate dwelling unit, was accurate and correct, and that an Administrative Error was not made.

Motion # 1 by Mr. Robinson, second by Mr. Duke, vote: Yea 2, Nay 3 (Mr. Capoccia, Mr. Bowersox, Mr. Greenwell).

Following this motion and vote, Mr. Chomel advised the Board that this negative vote did not constitute a determination that the Zoning Administrator made an Administrative Error relative to the denial of Permit # 114241. Rather, an affirmative motion was required. The Chair noted that one of the three Board members who voted nay would need to make an affirmative motion.

Mr. Bowersox, with guidance from Mr. Chomel, made a motion to find that the Zoning Administrator's determination in Case B-14-04 was consistent with his past practices and interpretations. However, the Board finds that the Appellants' proposed addition does not constitute the definition of a Dwelling Unit, in accordance with Section 1-19-11.100, as the addition does not contain facilities for cooking purposes, since the addition does not contain a major cooking appliance.

Therefore, the Board upheld the Appellants' claim of Administrative Error in the decision of the Zoning Administrator relative to the denial of Permit # 114241, and thus the Board found that the proposed addition is not considered to be a separate dwelling unit. By making such finding, the Board determined that a Dwelling Unit must contain a major cooking appliance for it to have facilities for cooking purposes.

Motion # 2 by Mr. Bowersox, second by Mr. Greenwell, vote: Yea 4, Nay 1 (Mr. Duke).

B-14-05 Cristina Brittian

The Applicant, Christina Brittian, filed a Request for Special Exception to establish a Limited Agricultural Activity in the Residential zoning district to allow farm animals (chickens and goats) in a residential property less than 3 acres, per the applicable Zoning Ordinances below. Location is north side of Knoxville Road (260 Knoxville Road, Tax Map 91, Parcel 163), Planning Region is Brunswick, Zoning District is Residential-1 (R1), and Comp. Plan Designation is Rural Community.

Applicable Zoning Ordinances are:

- Section 1-19-3.210, Special Exceptions
- Section 1-19-8.325, Limited Agricultural Activity in the Residential Districts
- Section 1-19-11.100, Definitions

Based upon the evidence and testimony presented at the Hearing, the Board discussed and found that the Applicant meets the General Criteria for a Special Exception per Section 1-19-3.210, and the Specific Criteria for Limited Agricultural Activity in the Residential Districts, per Section 1-19-8.325. However, based in part on concerns expressed by neighbors of the Applicant that roosters kept by the Applicant were making unreasonable

noise which can be detected at or beyond the property line (a violation of Section 1-19-8.335(C)), the Board agreed to add a condition to this decision.

The condition stipulates that once construction of a new planned chicken coop is completed, Applicant is to submit documentation to the Zoning Administrator stating that appropriate noise reduction techniques have been put in place so the requirements of Section 1-19-8.325(C) are met.

Therefore, the Board approved Applicant's Request for a Special Exception to establish a Limited Agricultural Activity in the Residential zoning district to allow farm animals (chickens and goats) in a residential property less than 3 acres, subject to the condition described above.

Motion by Mr. Bowersox, second by Mr. Robinson, vote: Yea 5, Nay 0.

Closing

The next Board meeting is scheduled for February 27, 2014. Being no further business, the meeting adjourned at 11:30 p.m.

Respectfully submitted,

Robert Fenimore

Recording Secretary

*Robert Fenimore, as Designee for
Mr. Alan Duke*

Alan E. Duke

Chair