

FREDERICK COUNTY BOARD OF APPEALS MEETING MINUTES FOR

Thursday, March 27, 2014

Mr. Mike Bowersox, Vice-Chair, called to order the regular hearing of the Frederick County Board of Appeals ("Board") for Thursday, March 27, 2014 ("Hearing") at 7:00 p.m. in the 1st Floor Hearing Room in Winchester Hall, Frederick, MD. In addition to the Vice-Chair, present were Board members John Capoccia, Robert Fenimore, Wayne Robinson and alternate member 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 Chair, Mr. Alan Duke, could not attend the Hearing.

The Site visits for the Cases listed below were made on Wednesday, March 19, 2014. Board members Mike Bowersox, John Capoccia, Wayne Robinson and John Greenwell attended. Mr. Smith and Mr. Terry also attended the Site visits for Staff. Mr. Fenimore visited the sites separately on March 26 and 27, 2014. Site visit observations were shared during the discussion for each case.

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

Introductions

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

Approval of Minutes

On a motion by Mr. Capoccia, seconded by Mr. Robinson, the Board approved the minutes of the February 27, 2014 hearing (Yea 4, Nay 0, Abstain 1 (Mr. Bowersox)). The Findings and Decisions from the February 27th Hearing were signed by the Board members who attended that meeting.

Rules and Procedures

The Vice-Chair, Mr. Greenwell and Mr. Robinson stated the rules and procedures for the hearing and swore in all persons who expected to testify at the meeting. Swearing-in occurred as required during the meeting as additional attendees arrived.

CASES

B-12-03 Monocacy Montessori Communities, Inc. (Request for Renewal of Special Exception)

The Applicant, Monocacy Montessori Communities, Inc., requested a renewal of one (1) year for a previously granted Temporary Special Exception to continue an established public charter elementary school. Location is the corner of Corporate Court and Crestwood Boulevard (7215 Corporate Court, Frederick, MD, Tax Map 86, Parcel 215, Lot 17). Planning Region is Frederick, Zoning District is Office/Research Industrial (ORI), and Comp. Plan Designation is Office/Research Industrial.

Applicable Zoning Ordinances are:

- Section 1-19-3.210, Special Exceptions (General Criteria)
- Section 1-19-5.310, Use Table
- Section 1-19-8.300, Temporary Structures and Uses Requiring Special Exception Approval

Based upon the evidence and testimony presented at the Hearing, the Board discussed and found that the Applicant continues to meet the General Criteria for a Special Exception in Section 1-19-3.210.

Therefore, the Board voted to approve a renewal of one (1) year for a previously granted Temporary Special Exception to continue an established public charter elementary school. Motion by Mr. Fenimore, second by Mr. Capoccia, vote: Yea 5, Nay 0.

B-14-09 Ian Twentey, c/o Gary Castle & Associates (Request for Variance)

The Applicant, Ian Twentey (6717 Balmoral Overlook, New Market, MD 21774), represented by Tom McIntire of Gary Castle & Associates, requested a 16 foot variance from the 25 foot Floodplain boundary setback. Location is on the east side of Balmoral Overlook (6719 Balmoral Overlook, Tax ID #27-525180, Tax Map 69, Parcel 106, Lot 66). Planning Region is New Market, Zoning District is Planned Unit Development (PUD), and Comp. Plan Designation is Low Density Residential.

Applicable Zoning Ordinances are:

- Section 1-19-3.220, Variances (General Criteria)
- Section 1-19-9.110(B)(3), Floodplain and Stream Setbacks

Based upon the evidence and testimony presented at the Hearing, the Board discussed and found that the Applicant meets the criteria in Section 1-19-3.220, Variances. In determining the finding, the Board first found that special conditions and circumstances exist, in accordance with Section 1-19-3.220(C)(1), as follows:

- Steep slope and topography exist on both sides of the road
- Original plat was recorded in 1971, with no defined building restriction lines (BRL)
- FEMA was not formed until 1979; therefore, no floodplain existed when the plat was recorded
- Current floodplain elevation was not established until 2007
- Several adjoining lots encroach into the 25 ft floodplain BRL, which was enacted by zoning ordinance circa 1992.

It was also found by the Board that unreasonable hardship to the Applicants would result if the application was denied, as the Applicant could not construct a residence on this lot.

Therefore, the Board moved to approve Applicant's request for a 16 foot variance from the 25 foot Floodplain boundary setback. Motion by Mr. Fenimore, second by Mr. Robinson, vote: Yea 5, Nay 0.

B-14-10 Bert & Deborah Newcomer (Request for Special Exception)

The Applicants, Bert & Debbie Newcomer (13403 Autumn Crest Drive, Mount Airy, MD 21771) requested a Special Exception approval to establish a Country Inn. The location is on the south side of Sixes Bridge Road (15014 Sixes Bridge Road, Emmitsburg, MD, Tax Map 21, Parcel 5). Planning Region is Thurmont, Zoning District is Agricultural (AG) and Resource Conservation (RC), and Comp. Plan Designation is Agricultural / Rural, Natural Resources.

Applicable Zoning Ordinances are:

- Section 1-19-3.210, Special Exceptions (General Criteria)
- Section 1-19-8.333, Country Inns in RC & A Districts (Specific Criteria)

Staff (Mr. Smith) presented findings from the Health Department regarding septic on the property. Following Applicants' testimony, several parties provided testimony both in support of and in opposition to the Applicants' request. Common concerns from neighbors who opposed the Special Exception were noise and traffic from the location when wedding and similar events were held at the site.

Following testimony by all who wished to speak, and following rebuttal by the Applicants, the Board discussed the case. The Board found that the Special Exception request did not meet the definition of a Country Inn in accordance with Section 1-19-11.100, Definitions. This defines Country Inn as the use of a structure that existed on January 24, 1977. Further, Section 1-19-8.333(D) provides that Country Inns in RC and A districts shall only be located within a structure that exists on January 24, 1977.

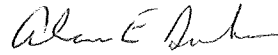
The Board found that the primary purpose of this Special Exception request was to establish a venue for weddings, banquets, and similar events, as stated and advertised by the Applicants. As the primary structure used for these events is the 50 ft x 100 ft pavilion built in 2013, and not the structure that existed on January 24, 1977, the Board found that this request did not meet the definition of a Country Inn.

Therefore the Board voted to deny the Applicants' request for a Special Exception to establish a Country Inn. Motion by Mr. Fenimore, second by Mr. Greenwell, vote: Yea 5, Nay 0.

Closing

The next Board meeting is scheduled for April 24, 2014. Being no further business, the meeting adjourned at 9:50 p.m.

Respectfully submitted,
Robert Fenimore
Recording Secretary



Alan Duke, Chair