

FREDERICK COUNTY BOARD OF APPEALS MEETING MINUTES FOR

Thursday, June 26, 2014

Mr. Mike Bowersox, Vice-Chair, called to order the regular hearing of the Frederick County Board of Appeals ("Board") for Thursday, June 26, 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 Board 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, was on vacation.

The Site visits for the Cases listed below were made on Wednesday, June 18, 2014. Board members Mike Bowersox, John Capoccia, Robert Fenimore, Wayne Robinson, and Alternate Board Member John Greenwell attended. Mr. Smith and Mr. Terry also attended the Site visits for Staff. 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. The Vice-Chair noted that Mr. Greenwell has been appointed as a regular Board member starting July 1, 2014, and Mr. Fenimore's and Mr. Capoccia's terms are ending as of June 30, 2014.

Approval of Minutes

On a motion by Mr. Robinson, seconded by Mr. Capoccia, the Board approved the minutes of the May 22, 2014 hearing (Yea 4, Nay 0, Abstain 1 – Mr. Greenwell who did not attend that hearing). The Findings and Decisions from the May 22nd Hearing were signed by the Board members who attended that meeting.

Rules and Procedures

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

CASES

B-14-18 Kelly L. Miller, 4-Bare Paws Doggie Camp (Request for Variance and Request for Special Exception)

The Applicant, Kelly L. Miller, 4-Bare Paws Doggie Camp, 10309 Bessie Clemson Road, Union Bridge, MD 21791, as represented by Shawn Cavenee, Esq. of Gordon & Simmons, LLC, is requesting the following:

- Variances to Kennel lot size and setback requirements, to include:
 - Variance of 3 acres from 5 acre minimum lot size
 - Variance of 7 feet from 50 foot rear yard setback
 - Variance of 107 feet from the 150 foot outdoor run requirement at both the front and rear
- A Special Exception approval to establish a Kennel

Location is on the west side of Bessie Clemson Road (10309 Bessie Clemson Road, Tax ID # 17-364804, Tax Map 44, Parcel 32), Planning Region is Walkersville, Zoning District is Agricultural (AG), and Comp. Plan Designation is Agricultural / Rural.

Applicable Zoning Ordinances are:

- Section 1-19-3.210, Special Exceptions (General Criteria)
- Section 1-19-3.220, Variances (General Criteria)

- Section 1-19-6.100, Design Requirements
- Section 1-19-8.338, Kennels, Animal Hospitals or Veterinary Clinics in the A and VC Districts (Specific Criteria)
- Section 1-19-11.100, Definitions

Mr. Terry read the Staff Report. Mr. Smith advised of Agency comments (comments received from the Health Dept. concerning septic system issues, to be addressed during Site Plan review). The Applicant presented her case. There were no other speakers in supporting the Applicant's request. Two speakers spoke against the Applicant's request (other kennel owners in Frederick County).

Mr. Chomel also advised, following questions from the Board, that the Variance requests should be considered first (with motion for same), and if approved by the Board, then the Request for Special Exception would be heard with motion following that discussion.

Based upon the evidence and testimony presented for the Variance requests, the Board discussed and expressed concerns that the Applicant's Variance request for lot size (3 acres from 5 acre minimum) and outdoor run requirement (107 feet from the 150 foot minimum at both the front and rear of property) were very significant. The Board was also having difficulty finding that special conditions and circumstances exist which are unique to the land or structure involved, as required by Section 1-19-3.220(C)(1). The Board discussed with Applicant whether options were explored to increase the property size by either purchasing or leasing additional acreage from neighboring properties.

Following additional discussion, the Applicant agreed and the Board voted to approve a 90-day continuance for Applicants' request for Variances and a Special Exception to establish a Kennel, in order to give the Applicant and Counsel additional time to work with Staff, in order to explore options to comply with the Applicable Zoning Ordinances above.

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

B-14-19 Randy D. Sowers, South Mountain Creamery (Request for Variance)

The Applicant, Randy D. Sowers, South Mountain Creamery, 8305 Bolivar Road, Middletown, MD 21769, represented by David L. Watt, Esq., is requesting a 9 foot Variance from the 65 foot total front yard setback to construct a loading dock addition to an existing structure. Location is on the east side of Bolivar Road (8305 Bolivar Road, Tax ID # 03-154777, Tax Map 54, Parcel 192), Planning Region is Middletown, Zoning District is Agricultural (AG), and Comp. Plan Designation is Agricultural / Rural.

Applicable Zoning Ordinances are:

- Section 1-19-3.220, Variances (General Criteria)
- Section 1-19-4.600, Measurement of Front Yard Depths
- Section 1-19-6.100, Design Requirements
- Section 1-19-11.100, Definitions

Mr. Terry read the Staff Report. Mr. Smith advised of Agency comments (comments received from Soil Conservation). The Applicant presented his case. There was one speaker in support of the Applicant's request and there were no speakers against.

Based upon the evidence and testimony presented at the Hearing, the Board discussed and found that the Applicant meets the general 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:

- Bolivar Road bisects the property and the locations of existing buildings.
- The current method of loading trucks from multiple locations on the property creates traffic safety issues and is very inefficient.
- Approving the Variance request will increase safety and efficiency, and result in the elimination of sea containers which are located across the road from the proposed structure.

It was also noted that the Applicant would incur unreasonable hardship if the Variance request is not approved, as it would deprive the Applicant of using his property in the most efficient manner.

Therefore the Board voted to approve the Applicants' request for a 9 foot Variance from the 65 foot total front yard setback to construct a loading dock addition to an existing structure.

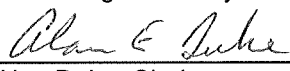
Motion by Mr. Robinson, second by Mr. Fenimore, vote: Yea 5, Nay 0.

Closing

The next Board meeting is scheduled for July 24, 2014. Being no further business, the meeting adjourned at 8:55 p.m.

Respectfully submitted,

Robert Fenimore
Recording Secretary



Alan Duke, Chair