

FREDERICK COUNTY BOARD OF APPEALS MEETING MINUTES FOR

Thursday, July 24, 2014

Mr. Alan Duke, Chair, called to order the regular hearing of the Frederick County Board of Appeals ("Board") for Thursday, July 24, 2014 ("Hearing") at 7:05 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 Greenwell, and Wayne Robinson. Also present were Mr. Michael Chomel, Assistant County Attorney, Ms. Kathy Mitchell, Assistant County Attorney, and for the Community Development Division ("Staff") Mr. Larry Smith, Zoning Administrator, Mr. Craig Terry, Planner, and Ms. Erica Cooke, Administrative Assistant. One regular member and the alternate member were appointed this date and they were not present.

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

Introductions and Administrative Matters

The Chair welcomed the attendees and the home audience. The Chair requested that all cell phones and other electronic devices be turned off. The Chair announced that Mr. Don Miller had been appointed to the Board and that Mr. Tom Conard had been appointed as alternate member of the Board.

The Chair noted that he, Mr. Bowersox and Mr. Robinson attended the site visits on Wednesday, July 16, 2014, which were also attended by Mr. Smith and Mr. Terry, for Staff. Mr. Greenwell stated that he had visited all the sites on his own time. Site visit observations were shared during the discussion for each case.

The Chair stated that the Election of Officers, normally held at this meeting, would be postponed to August in order to have a full board present.

Approval of Minutes

On a motion by Mr. Bowersox, seconded by Mr. Robinson, the Board approved the minutes of the June 26, 2014 hearing (Yea 4, Nay 0).

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-14-23 Old Line Arsenal, LLC c/o William J. Valois, Jr.

Mr. Smith stated that a request from the Applicant, Old Line Arsenal, LLC, for a continuance had been received. Mr. Peter Fitzpatrick (Weaver and Fitzpatrick, P. A., 47 East All Saints Street, Frederick, MD 21701) representing the Applicant stated that due to the great interest in the project, previous requests for Information, and various communications from neighboring property owners and other interested parties relevant to the project, the Appellant was requesting the continuance. The Applicant requests additional time to respond to all the inquiries and requests for information that have been received so that the community can be fully informed. Mr. Smith also noted that requests for more time had been received from several opponents of the project, though not formally.

Mr. Bowersox made a motion, seconded by Mr. Greenwell, to approve the Applicant's request for a continuance and to take up the case at the August meeting of the Board. The Chair noted that when there is a 4-member Board, the Chair does not vote, in order to avoid ties. The Board voted 2-1-1 to approve the continuance (Mr. Robinson opposed, Mr. Duke abstained).

B-14-20 Playground Specialists, Inc. c/o Tifford C. Jones

The Appellant, Playground Specialists, Inc. c/o Tifford C. Jones, as represented by Mr. Brian Maul, (Brian M. Maul, LLC, 47 East South Street, Ste.401, Frederick, MD 21701) filed a claim of Administrative Error relative to

the Zoning Administrator's decision regarding an alleged violation of the Zoning Ordinance, located on Whales Line (11700 Whales Lane, Tax Map 32, Parcel 28), zoned Agricultural.

Applicable Zoning Ordinances are:

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

Mr. Terry read the Staff Report. Mr. Smith advised that a number of comments had been received from the Health Department and noted the details. The Board members mentioned specific observations they noted during the site visit. The County Zoning Administrator present his case; Ms. Kathy Mitchell, Assistant County Attorney representing Mr. Smith, also commented on the case. The Appellant cross-examined Mr. Smith. The Appellant presented his case. The property owner declined the opportunity to speak. There were no other speakers on this case.

Based upon the evidence and testimony presented at the Hearing, site visit observations, and case law (Falls Road Community Association, Inc., et al. v. Baltimore County, Maryland, et al, pages 12-13), Mr. Robinson made a motion to deny the appeal. The motion was seconded by Mr. Bowersox. The Board voted 3-0-1 (Mr. Duke abstained) to deny the appeal of the Zoning Administrator's decision.

B-14-21 Hostetter Grain, Inc. c/o Barry Hostetter

The Applicant, Hostetter Grain, Inc. c/o Barry Hostetter requested Special Exception approval to expand a nonconforming use by adding an 18,000 gallon propane tank for a grain dryer, located on the south side of Kelly Road (9819 Kelly Road, Tax Map 58, Parcel 76).

Applicable Zoning Ordinances are:

- Section 1-19-3.210, Special Exceptions
- Section 1-19-4.230, Nonconforming Uses
- Section 1-19-11.100, Definitions

Mr. Terry read the Staff Report. Mr. Smith advised that there were no Agency comments. The Applicant presented his case. There were no other speakers on this case.

Based upon the evidence and testimony presented at the Hearing, the Board discussed and determined that Applicant has met the requirements of Sections 1-19-3.210 and 1-19-4.230. Mr. Bowersox made a motion to approve the Applicant's request for a Special Exception to add an 18,000 gallon propane tank for a grain dryer. Mr. Robinson seconded the motion. The Board voted 3-0-1 (Mr. Duke abstained) to approve the request for a Special Exception.

B-14-22 Christopher A. and Laura L. White

The Applicants, Christopher A. and Laura L. White, requested Special Exception approval to establish a Limited Agricultural Activity for the keeping of chickens and ducks, located on the north side of Kellys Store Road (7008 Kellys Store Road, Tax Map 25, Parcel 251).

Mr. Terry read the Staff Report. Mr. Smith advised that there were no Agency comments. The Applicant presented his case. Two individuals spoke in opposition to this case.

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 determined that Applicants have met the requirements of Sections 1-19-3.210 and 1-19-8.325. Mr. Greenwell made a motion to approve the Applicant's request for a Special Exception to establish a Limited Agricultural Activity for the keeping of chickens and ducks, with the additional conditions, first, to establish it keeping in mind the revised site plan, and second, the removal of the roosters from the site. Mr. Bowersox seconded the motion. The Board voted 3-0-1 (Mr. Duke abstained) to approve the request for a Special Exception.

Closing

The next Board meeting is scheduled for August 28, 2014, time and location to be announced. Being no further business, the meeting adjourned at 9:06 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Alan E. Duke".

Alan Duke, Chair