

FREDERICK COUNTY BOARD OF APPEALS MEETING MINUTES FOR

Thursday, August 28, 2014

Mr. Alan Duke, Chair, called to order the regular hearing of the Frederick County Board of Appeals ("Board") for Thursday, August 28, 2014 ("Hearing") at 1:15 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, Don Miller, and Wayne Robinson. Also present were Alternate Board member Tom Conard, Mr. Michael Chomel, 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.

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 audience to the hearing and introduced the Board members. The Chair requested that all cell phones and other electronic devices be turned off.

Approval of Minutes

On a motion by Mr. Bowersox, seconded by Mr. Robinson, the Board approved the minutes of the July 24, 2014 hearing (Yea 4, Nay 0, Abstain 1 (Miller)).

Election of Officers

Mr. Terry conducted the election of the Chair. Mr. Duke nominated Mr. Greenwell, seconded by Mr. Robinson. There were no further nominations and the nominations were closed. Mr. Greenwell was elected Chair (Yea 4, Nay 0, Abstain 1 (Greenwell)). Mr. Greenwell then assumed the office of the Chair.

Mr. Greenwell continued with the election. Mr. Robinson was nominated for Vice Chair by Mr. Bowersox, seconded by Mr. Duke. There were no further nominations and the nominations were closed. Mr. Robinson was elected Vice Chair (Yea 4, Nay 0, Abstain 1 (Robinson)).

Mr. Duke was nominated for Secretary by Mr. Bowersox, seconded by Mr. Miller. There were no further nominations and the nominations were closed. Mr. Duke was elected Secretary (Yea 4, Nay 0, Abstain 1 (Duke)).

Rules and Procedures

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

CASE

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

The Applicant, Old Line Arsenal, LLC, as represented by Mr. Patrick D. Fitzpatrick (of Weaver and Fitzpatrick, P. A., 47 East All Saints Street, Frederick, MD, 21701), requested Special Exception approval to establish a Shooting Range/Club, located on the west side of Thurston Road (near 2220 Thurston Road, Tax Map 105, Parcel 63).

Applicable Zoning Ordinances are:

- Section 1-19-3.210, Special Exceptions
- Section 1-19-8.355, Shooting Range/Club
- Section 1-19-11.100, Definitions

Mr. Terry read the Staff Report. Mr. Smith noted comments by Development Review/Planning, Development

Review, the Health Department, and Soil Conservation. He added to the record a letter that been received this morning from the office of Delegate Kelly Shultz. The Chair noted that all the emails and other correspondence relative to this case that had been received by the Zoning Administrator's Office would be incorporated into the record.

The Secretary noted that two site visits were made, one in July for the four members of the Board at that time, and in August to accommodate the two new members, also attended by Mr. Greenwell and Mr. Duke. The members made comments regarding their observations.

Ms. Powell, attorney for the Sugarloaf Alliance, requested to make a preliminary statement. This request was granted by the Chair. Ms. Powell noted that new materials and a new site plan map were submitted after the deadline and requested dismissal of the case. Mr. Fitzpatrick responded for the Applicant. The Chair noted the objections and the response and took the issue presented under consideration. The Chair then directed that the presentation of the case continue.

Mr. Fitzpatrick noted that there were several communications from political figures and requested the Board members to indicate whether this would influence their decision. All Board members indicated that it would not and that they could render an impartial decision. Mr. Fitzpatrick then requested additional time to present the Applicant's case due to the large volume of communications involved. Under the rules this was denied as a member, Mr. Bowersox objected to granting extra time.

Mr. Fitzpatrick and Mr. Andrew Valois presented the Applicant's case. Four witnesses presented testimony on technical aspects of the case.

Ms. Powell and 41 others cross-examined the Applicant.

At 5:15 PM the Board recessed until 7 PM.

The Board resumed the hearing at 7:05 PM.

The Chair discussed Ms. Powell's objection and request for dismissal. He noted that the site plan was diagrammatical in nature and should have no impact on the Board's findings. A brief discussion showed unanimous agreement with this decision. The chair then denied Ms. Powell's request for dismissal.

The Chair further discussed the binder that been submitted after the deadline, per Ms. Powell's objection. The Chair noted that the material in the binder were displayed and incorporated into evidence and thus would not impact on the Board's findings. The Board agreed with this decision.

Two witnesses testified in favor of the Applicant.

Ms. Powell then presented the case in opposition for Sugarloaf Alliance.

Ms. Powell called her first witness for the case in opposition. Mr. Fitzpatrick objected that her allocated time had expired and that the calling of witnesses as part of the Protestant's case in chief was not within the Board's rules and objected to the calling of these witnesses at this time. Mr. Chomel advised that these witnesses were allowed to testify for their four minutes as other people might be able to testify. The Chair then proceeded with the hearing. Ms. Powell then called her first witness. Upon his completing his testimony, Mr. Fitzpatrick cross-examined him. Ms. Powell called her second witness. Mr. Fitzpatrick made the same objection and indicated that it would continue through all the witnesses called by Ms. Powell. The Chair noted the objection and its continuing nature. Nine witnesses were called by Ms. Powell; all were cross-examined by Mr. Fitzpatrick.

Seven witnesses spoke in opposition to the proposal.

Mr. Peter Ciferi then testified in opposition to the proposal. At the end of his testimony, Mr. Fitzpatrick objected to his testifying as he was a legal counsel for Sugarloaf Alliance and requested that his testimony be stricken from the record since it was additional legal testimony for Sugarloaf Alliance, which had already used its time. The Chair noted the objection for the record.

Twenty-six additional witnesses testified in opposition to this proposal.

The Board recessed at 11:30 until Tuesday, September 2, 2014, at 7 PM.



Respectfully submitted,

Alan E. Duke, Secretary