

FREDERICK COUNTY BOARD OF APPEALS MEETING MINUTES FOR

Thursday, September 25, 2014

Mr. John Greenwell, Chair, called to order the regular hearing of the Frederick County Board of Appeals ("Board") for Thursday, September 25, 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, Don Miller, Wayne Robinson, and Alternate Board member Tom Conard. 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,

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 requested that all cell phones and other electronic devices be turned off.

Mr. Robinson reviewed the site visit to all three sites under consideration. All five Board members noted above were present at the visit.

Approval of Minutes

On a motion by Mr. Bowersox, seconded by Mr. Conard, the Board approved the minutes of the August 2014 meeting, to include the continuation meeting on September 2, 2014, (Yea 5, Nay 0).

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-14-24 Ms. Debra DeWitt Brunink

The Applicant, Ms. Debra DeWitt Brunink requested Special Exception approval to use a Historic Structure for a Facility for Functions, as represented by Mr. Noel S. Manolo, Esq., (Miles & Stockbridge, 15 North Court Street, Frederick, MD), located on the west side of Mussetter Road (4940 Mussetter Road, Tax Map 88, Parcel 186).

Applicable Zoning Ordinances are:

- Section 1-19-3.210, Special Exceptions
- Section 1-19-8.600, Historic Structures or Sites
- 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; one other comment was noted. Mr. Manolo presented the case for the applicant. At this point the Board noted its observations regarding the property during the site visit. Two witnesses testified in support of this proposal and one witness testified in opposition. Mr. Manolo presented the rebuttal for the Applicant.

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 1-19-8.600. Mr. Bowersox made a motion to approve the Applicant's request for a Special Exception to use a Historic Structure for a Facility for Functions. Mr. Robinson seconded the motion. The Board voted 5-0 to approve the request for a Special Exception.

The Applicant, Mr. Abdul Kamara, requested approval for Activity within a Floodplain and a Variance of 25 feet from the 25 foot required Floodplain Setback for reconstruction of a single-family dwelling, located on the south side of Michaels Mill Road (6929 Michaels Mill Road, Tax Map 95, Parcel 1201).

Applicable Zoning Ordinances are:

- Section 1-19-3.220, Variances
- Section 1-19-9.110, Activities within Floodplain District
- Section 1-19-9.120, Procedures for Activities within the FEMA Floodplain

Mr. Terry read the Staff Report. Mr. Smith advised that Soil Conservation had no objection; that was the only agency comment. The Applicant, Mr. Kamara, presented his case. There was no other testimony.

Based upon the evidence and testimony presented at the Hearing, the Board discussed and determined that Applicant has met the requirements of Sections 1-19-3.220, 1-19-9.110, and 1-19-9.120, including the requirements for uniqueness due to topography and wetlands as well as being a hardship for the applicant. Mr. Bowersox made a motion to approve the Applicant's request for Activity within a Floodplain and a Variance of 25 feet from the 25 foot required Floodplain Setback for reconstruction of a single-family dwelling. Mr. Miller seconded the motion. The Board voted 5-0 to approve the request for a Variance and also for Activities within the Floodplain District, and Procedures for Activities within a floodplain district.

B-14-26 St. John Properties, Inc.

The Applicant, St. John Properties, Inc., as represented by David Severn (Offit Kurman, 50 Carroll Creek Way, Frederick, MD) requested a Variance of 7 feet from the 40 foot setback requirement for a Child Care Center and Special Exception approval to establish a Child Care Center in the LI zoning district, located on the south side of Pegasus Court at the corners of Buckeystown Pike and Governors Way (5105 Pegasus Court, Tax Map 86, Parcel 245, Lot 15).

Applicable Zoning Ordinances are:

- 1-19-3.210, Special Exception
- 1-19-3.220, Variances
- 1-19-8.329, Child Care Centers or Nursery Schools in ... LI Districts
- 1-19-11.100, Definitions

Mr. Chomel indicated that it would be convenient and proper to hear the Special Exception first and then the Variance.

Mr. Terry read the Staff Report. Mr. Smith advised that Utilities and Solid Waste as well as Soil Conservation had no objection to this proposal. Mr. Severn and Ms. Diana Holzberger (representing Bright Eyes Child Care) presented the Applicant's case with respect to the Special Exception. There was no other testimony.

Based upon the evidence and testimony presented at the Hearing, the Board discussed and determined that Applicant has met the all the requirements of Zoning Ordinance, including Section 1-19-3.210. Mr. Bowersox made a motion to approve the Applicant's request for a Special Exception to establish a Child Care Center, seconded by Mr. Robinson. The Board voted 5-0 to approve the request for Special Exception.

Mr. Severn presented the case for the Applicant with respect to the Variance, calling three witnesses to testify to technical aspects of the application. There was no other testimony.

Based upon the evidence and testimony presented at the Hearing, the Board discussed and determined that Applicant has met the requirements of Sections 1-19-3.220. Mr. Bowersox made a motion to approve the Applicant's request for a Variance of 7 feet from the 40 foot setback requirement for a Child Care Center, seconded by Mr. Conard. The Board voted 4-1 (Miller) to approve the request for a Variance.

A handwritten signature in black ink, appearing to read "Alan E. Duke", is centered above a horizontal line.

Respectfully submitted,

Alan E. Duke, Secretary