

## FREDERICK COUNTY BOARD OF APPEALS MEETING MINUTES FOR

Thursday, December 18, 2014

Mr. John Greenwell, Chair, called to order the regular hearing of the Frederick County Board of Appeals ("Board") for Thursday, December 18, 2014 ("Hearing") at 7:00 p.m. in the 1<sup>st</sup> Floor Hearing Room in Winchester Hall, Frederick, MD. In addition to the Chair, present were Board members Mike Bowersox, Alan Duke, Don Miller, and Wayne Robinson. Also present were Mr. Michael Chomel and Ms. Kathy Mitchell, Assistant County Attorneys 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.

### **Approval of Minutes**

On a motion by Mr. Bowersox, seconded by Mr. Miller, the Board approved the minutes of the October 23, 2014 meeting. (Yea 4, Nay 0, Abstain 1 (Robinson))

### **Approval of 2015 Board of Appeals Schedule**

On a motion by Mr. Bowersox, seconded by Mr. Robinson, the Board approved the Board of Appeals Schedule for 2105. (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-14-18      Ms. Kelly L. Miller**

The Applicant, Ms. Kelly L. Miller, requests a Special Exception to establish a Kennel and requests a Variance of 3 acres from the 5 acre minimum acreage size, located on Bessie Clemson Road (10309 Bessie Clemson Road, Tax Map 44, Parcel 32), Zoned Agricultural (A). Applicable Zoning Ordinances are:

- Sec. 1-19-3.210 Special Exception
- Sec. 1-19-3.220 Variances
- Sec. 1-19-6.100 Design Requirements
- Sec. 1-19-8.338 Kennels...in the A and VC Districts
- Sec. 1-19-11.100 Definitions

Mr. Terry read the Staff Report. Mr. Smith read comments by the Health Department. There were no other Agency comments. Mr. Shawn Cavenee (Gordon & Simmons, LLC, 10309 Bessie Clemson Road, Union Bridge, MD 21791) presented the case for the Applicant, Ms. Kelly L. Miller. No witnesses spoke on this application.

Based upon the evidence and testimony presented at the hearing, the Board discussed and found that the request for a Special Exception met the requirements of the Zoning Ordinance, including Sections 1-19-3.210 and 1-19-8.338. Mr. Bowersox made a motion to approve the Applicant's request for a Special Exception, seconded by Mr. Robinson. The Board voted 3-0 with 2 Abstentions (Greenwell, Miller) to approve the request for a Special Exception.

Based upon the evidence and testimony presented at the hearing, the Board discussed and found that the request for a Variance met the requirements of the Zoning Ordinance, including Sections 1-19-3.210 and 1-19-8.338 and that uniqueness and unreasonable hardship requirements have been met. Mr. Bowersox made a motion to approve the Applicant's request for a Variance, seconded by Mr. Robinson. The Board voted 3-0 with 2 Abstentions (Greenwell, Miller) to approve the request for a Variance.

**B-14-30      Mr. Robert Donovan**

The Applicant, Mr. Robert Donovan, claims Administrative Error in the opinion of the Zoning Administrator in a response dated September 23, 2014 to Applicant's request for Interpretation and Enforcement of County Code Section 1-19-2.140, relative to subdivision rights of property located on Timmons Road (7950 Timmons Road, Tax Map 60, Parcel 43), Zoned Agricultural (A). Applicable Zoning Ordinance is:

- Sec. 1-19-3.230 Appeals

Mr. Chomel provided the board with legal and procedural background on this case. The question that is presented to the Board is not so much one of standing, but "whether, in fact, Mr. Smith made a decision or determination [in the subject letter] from which an appeal can be taken?"

Mr. Peter Ciferi of Powell Flynn, LLP, presented the case for the Appellant, Mr. Robert Donovan. Mr. Paul Rose of Miles & Stockbridge, P.C., presented the case for the Property Owner, Mr. Robert Laughlin. Mr. Smith, Zoning Administrator, provided information about the processes used by County Staff in matters such as this. Ms. Kathy Mitchell was present to represent the Zoning Administrator.

The Board discussed and found that there was no Administrative Error on the part of the Zoning Administrator; that the subject letter was informational in nature.

Mr. Robinson made a motion to dismiss the appeal as there was no appealable decision or determination made by the Zoning Administrator; that the subject letter merely reported information relating to a previous decision. The motion was seconded by Mr. Bowersox. The Board voted 5-0 to dismiss the appeal.

**B-14-31      Debby Ellen Moone**

The Applicant, Ms. Debby Ellen Moone, requests a Special Exception to establish a Bed and Breakfast, located on Rocky Springs Road (7814 Rocky Springs Road, Tax Map 56, Parcel 350), Zoned Residential (R-1). Applicable Zoning Ordinances are:

- Sec. 1-19-3.210 Special Exceptions
- Sec. 1-19-8.326 Bed and Breakfast in Residential districts

Mr. Terry read the Staff Report. Mr. Smith read comments by the Health Department. There were no other Agency comments. The Applicant, Ms. Debby Ellen Moore, presented her case. No witnesses spoke in favor of the application. Three witnesses testified in opposition to the application. Ms. Moore presented rebuttal testimony.

Based upon the evidence and testimony presented at the hearing, the Board discussed and found that the request for a Special Exception met the requirements of the Zoning Ordinance, including Sections 1-19-3.210 and 1-19-8.326. Mr. Bowersox made a motion to approve the Applicant's request for a Special Exception, seconded by Mr. Miller. The Board voted 5-0 to approve the request for a Special Exception.

**B-14-32      Sam Martin**

The Applicants, Scott and Kathy Deskins, represented by Mr. Sam Martin (2985 Honeywood Drive, Mt. Airy, MD 21771), request a Variance of 7 ft. from the required 30 ft. setback for a residential addition, located on Mountville Road (5419 Mountville Road, Tax Map 103, Parcel 9), Zoned Residential (R-1)

Applicable Zoning Ordinances are:

- 1-19-3.220, Variances
- 1-19-6.100, Design Requirements

Mr. Terry read the Staff Report. Mr. Smith advised that there were no Agency comments on this application. Mr. Martin presented the case for the Applicants, Mr. and Mrs. Deskins. There was no other testimony.

Based on the evidence and testimony presented at the Hearing, the Board discussed and determined that the Applicant has met all the requirements of the Zoning Ordinance, including Sections 1-19-3.220 and 1-19-6.100, and that uniqueness and unreasonable hardship requirements have been met. Mr. Duke made a motion to approve the Applicant's request for a Variance, seconded by Mr. Bowersox. The Board voted 5-0 to approve the request for a Variance.

**B-14-32        Lysia Stonemetz**

The Applicant, Ms. Lysia Stonemetz, as represented by Mike Muren (7680 Stewart Hill Road, Adamstown, MD 21710) requests a Variance of 37 ft. from the front, 21 ft. from the left side, and 33 ft. from the rear, all from the required 50 ft. setback in the Resource Conservation Zoning District, located on Mount Ephraim Road (2140 Mount Ephraim Road, Tax Map 104, Parcel 123) Zoned Resource Conservation (RC). Applicable Zoning Ordinances are:

- Sec. 1-19-3.220 Variances
- Sec. 1-19-4.210 Nonconforming Lots
- Sec. 1-19-6.100 Design Requirements
- Sec. 1-19-11.100 Definitions

Mr. Terry read the Staff Report. Mr. Smith read comments by the Health Department and Soil Conservation. Mr. Muren presented the case for the Applicants, Ms. Stonemetz. One witness testified in support of the application. No witnesses spoke in opposition to the application.

Based on the evidence and testimony presented at the Hearing, the Board discussed and determined that the Applicant has met all the requirements of the Zoning Ordinance, including Sections 1-19-3.220 and that uniqueness and unreasonable hardship requirements have been met. Mr. Bowersox made a motion to approve the Applicant's request for a Variance, seconded by Mr. Duke. The Board voted 5-0 to approve the request for a Variance.

The meeting adjourned at 9:37



Respectfully submitted,

Alan E. Duke, Secretary