

**Zoning Board of Appeals Minutes
July 23, 2019**

ZBA MEMBERS	ZBA ABSENT	MEMBERS STAFF PRESENT
Jim Racheff- Chair Lawrence Aronow Kenneth Ying Shuan Butcher Bob Sisson	Steve West	Gabrielle Collard – Manager of Current Planning Rachel Depo—Assistant City Attorney Marshall Brown, City Planner Sherry Kelly, City Planner Jessica Murphy – Administrative Assistant

I. ANNOUNCEMENTS:

Ms. Collard announced the 2020 comprehensive plan update and advised the public of the survey on the City of Frederick website.

II. GENERAL PUBLIC COMMENT:

III. APPROVAL OF MINUTES:

Approval of the **June 25, 2019** Zoning Board of Appeals Meeting Minutes as published:

MOTION: Mr. Sisson
SECOND: Dr. Ying
VOTE: 4-0

IV. PUBLIC HEARING-SWEARING IN:

“Do you solemnly swear or affirm that the responses given and statements made in this hearing before the Zoning Board of Appeals will be the whole truth and nothing but the truth.” If so, answer “I do”.

V. CONTINUANCES:

A. ZBA19-655V, Variance, 2606 Monocacy Ford Road

MOTION: Mr. Butcher motioned for a continuance to the September 24, 2019 Zoning Board of Appeals Meeting.
SECOND: Mr. Aronow
VOTE: 4-0

VI. OLD BUSINESS: None

VII. NEW BUSINESS:

B. ZBA19-153CU, Conditional Use, This is Home Assisted Living

Rachelle Romano of 2518 Rocky Pointe Ct. who is the President of the Rocky Point Home Owner's Association (HOA). Ms. Romano advised the neighbors have concerns about food deliveries, additional vehicles, the effect on property values, the regularity of trash pick up, medical waste clean up and wheelchair access. Ms. Romano also advised that the neighbors are concerned with the children's bus stop being close to the property and has concerns with the children being exposed to certain things from the patients.

Kurt Schecher of 2505 Rocky Pointe Ct. has concerns with a lot of people being packed into a small space. He advised that there is a lot of traffic in/out of the neighborhood and has concerns for patients if they have Alzheimers or dementia. Mr. Schecher also has concerns about the medical waste plan for the facility and how it will be taken care of per regulations. He advised that he feels that ambulances and paramedics will be showing up on a regular basis that will be extremely disruptive to the neighbors.

MOTION: Mr. Butcher moved for approval of the conditional use request for a Nursing Home/Domiciliary Care/Adult Living Facility at 1395 Rocky Springs Road finding that:

1. The proposed use provides alternative living options for the elderly and is deemed a conditional use in the R4 zoning district and as such, is in harmony with both the City's Comprehensive Plan and Land Management Code, respectively.
2. Based on the information provided by the Applicant, there will be no increase in traffic to the site beyond that typically associated with a residential dwelling unit and as such, the proposed use will not generate any greater impact on the surrounding community than that which would be normally associated with a permitted use not requiring conditional use approval.
3. The Applicant proposes no expansions or architectural modifications to the exterior of the existing home and has testified that there will be no increase in traffic or noise, which will adversely affect the character of the community.
4. The Applicant will obtain all required State approvals and licenses for the assisted living use.
5. The Property is surrounded by other residential uses and is located within a residential setting on local roads and as such, the residents of the facility will be equally as protected from noise, traffic, and air pollution as the surrounding residential uses.
6. The Applicant has demonstrated that the minimum lot area that must be provided per the Code (4,000 sq. ft.) will be met with full adequacy based on the total square footage of the Property (31,798 sq. ft.) provided versus the number of beds being provided on suite (8 beds).

With the conditions that:

1. Any visitor or service vehicle to the site shall be required to park onsite.
2. The Applicant provides the City with documentation of the State approvals and licenses for the use.
3. In accordance with Section 312(g) of the LMC, *Zoning Board of Appeals Decisions*, a development approval by the Board expires two years after the date of approval unless the use is established or a zoning certificate is issued and construction has begun in accordance with the terms of the decision.

SECOND: Mr. Sisson (Dr. Ying recused himself from the case)

VOTE: 3-0

B. ZBA19-639CU, Conditional Use, Gary L. Rollins Funeral Home

Paul Flynn of 100 N. Court Street who represents the Childrens World Daycare. Mr. Flynn advised there are concerns that approval would impact and shutdown the daycare. He advised there are also concerns about the safety and well-being of the children. Mr. Flynn advised the daycare has concerns about losing students. He also advised concerns about increased traffic.

Al Opack of 419 Burke Street advised that he owns Childrens World Learning Center and that the uses are not compatible. He advised that the funeral home will be alarming to the children at the daycare and could cause fear. Mr. Opack is concerned about losing students and children being displaced.

Alicia Weddle of 419 Burke Street advised the use is incompatible with the daycare. She advised it will disrupt the daycare's standard operating procedures with traffic and the use of the multiple buses at the daycare. Ms. Weddle has concerns about the children being exposed to death and believes enrollment will suffer.

Lisa McDonald of 413 Burke street is the Executive Director for the Boy & Girls Club. Ms. McDonald has concerns with the funeral home being down the street. She also has concerns with traffic as there is limited parking already. She explains that children being exposed to grief daily will have a negative impact to the healing process. Ms. McDonald does not support the application as it stands.

Kara Bowin of 327 Catoctin Avenue has concerns with the idea of the funeral home as her husband has Post Traumatic Stress Disorder (PTSD). She also has concerns with parking as her driveway can only fit one car. Ms. Bowin advised they already have problems with loitering. She is concerned with property values as well as evening wakes during rush hour. Ms. Bowin also wants to make sure there will be proper surveillance.

Arlene Smith of 412 Burke Street has concerns about parking and loitering. She advised that traffic will definitely be impacted. Ms. Smith also has safety concerns for pedestrians/children being hit by a vehicle. She advised the funeral home is not compatible with the neighborhood.

Dennis Barry of 333 Catoctin Ave just purchased his home and would not have if he knew the funeral home would be allowed. He is concerned with the impact the funeral home may have on his 15 month old son. He advised that there will be a lot of increased traffic and that the impact on the neighborhood will be great.

Robert Ready of 300 Billow Avenue is concerned about the impact the funeral home will have on children. He is concerned with traffic with the processions and property values. He advised they have narrow streets and there is no parking.

Kavonté Duckett of 108 McMurray Street who advised there has been a negative perception of the funeral industry. He feels that saying children will be negatively affected is a misinterpretation. Mr. Duckett advised that they have a grief center to assist young people with death so they can be more equipped to deal with the grief from the loss of a loved one. He feels that they will actually increase property values.

William Hall of Adamstown, MD advised that grief is a learning time for children. He advised that Mr. Rollins runs an excellent establishment. Mr. Hall advised most funeral are during the day.

Denise Rollins of 2610 Maywade Avenue Adamstown, MD who advised that she is the business manager and grief specialist at Rollins Funeral Home. She advised that the worst thing a community to do is to keep death from children. She also advised 80% of the funerals are completed at Jackson Chapel United Methodist Church in Ballenger Creek that house a daycare, and by the church there is an elementary

school. Ms. Rollins advised that 85% of the people they serve are African Americans and a lot of them celebrate death with a celebration. Ms. Rollins advised that if anything her husband is trying to build something that will aesthetically add to the community and to the property values. She looks forward to working with the community.

Tony Checchia of 8707 Liberty Road is a Real Estate Broker that managed the adjacent property. He advised at some point in history the property was up for a down-zoning and the owners appealed it and it remained commercial. He advised the adjacent property is not part of the application. He advised Mr. Rollins did purchase and owns the Burke Street lot.

MOTION: Mr. Butcher moved for approval of the conditional use request for a Funeral Home at 330 Catocin Avenue finding that:

1. The proposed use is in harmony with the Municipal Growth and Land Use Elements of the 2010 Comprehensive Plan and the Land Management Code.
2. Based on the documentation provided by the Applicant, the characteristics of the use and its operation on the property in question and in relation to adjacent properties will not create any greater adverse impact than the operation of any permitted use not requiring conditional use approval.
3. The proposed use complies with the requirements set forth in Section 823, *Funeral Homes*, as follows:
 - a. The funeral home will not adversely affect the character of the existing residential neighborhood due to any increased traffic or other characteristics which would be disruptive to the neighborhood.
 - b. The operations of a crematorium will not occur on site.
 - c. The Applicant has demonstrated that off-street parking to serve the proposed facility will comply with the standards of Section 607.
 - d. At the time of final site plan review, the Applicant will demonstrate compliance with the screening requirements of Section 607 specific to loading areas.
 - e. At the time of final site plan review, the Applicant will demonstrate compliance with the screening requirements for parking areas in accordance with Section 605.
 - f. The site is within one city block of a minor arterial street, S. Jefferson Street, and access to S. Jefferson Street is provided directly by a local street, Catocin Avenue, not an alley.

With the conditions that:

1. Funeral processions shall exit the property and proceed to Jefferson Street to avoid disruption on local streets in the surrounding neighborhood.
2. The Applicant must submit and receive approval of a site plan for the facility.
3. In accordance with Section 312(g) of the LMC, Zoning Board of Appeals Decisions, a development approval by the Board expires two years after the date of approval unless the use is established or a zoning certificate is issued and construction has begun in accordance with the terms of the decision.

SECOND: Mr. Sisson

VOTE: 3-1 (Dr. Ying Opposed)

B. ZBA19-548CU, Conditional Use, 650 Carroll Parkway

MOTION: Mr. Sisson moved for approval of the conditional use request for a telecommunications facility at 650 Carroll Parkway finding that:

1. The proposed use is in harmony with the Economic Development and Land Use Elements of the 2010 Comprehensive Plan and based on compliance with the applicable criteria of Section 866 of the Code, is also in harmony with the purpose and intent of the Land Management Code.
2. Based on the documentation provided by the Applicant, the characteristics of the use and its operation on the property in question and in relation to adjacent properties will not create any greater adverse impact than the operation of any permitted use not requiring conditional use approval.
3. The proposed use complies with the requirements set forth in Section 866, Telecommunications Facilities, as follows:
 - a. The Applicant has provided documentation to demonstrate that the proposed structure will not be a hazard to adjacent properties or constitute a nuisance because of radio interference or other potentially disruptive activity associated with operation of the tower or antenna.
 - b. The request is for the replacement of an athletic lighting structure and the setbacks standard for the structure does not apply to the athletic lighting structures.
 - c. The setbacks for the ground equipment associated with the structure do not apply as it pertains to an athletic lighting structure, but that fencing and landscaping will be provided to adequately screen the facility.
 - d. The Applicant has demonstrated that there is not a technically suitable space available on an existing communications tower within the geographic area that the new site is to serve.
 - e. The Applicant has demonstrated that the new structure supporting the antennas and athletic lighting fixtures will be consistent with the existing athletic lighting structures on the site and that the new structure will not adversely impact any historic vistas or gateways to the City.
 - f. Prior to building permit submission, the Applicant will be required to demonstrate that the athletic lighting structure is strong enough to support the equipment proposed and that the planned installation will be structurally sound.
 - g. The Applicant has provided documentation to demonstrate that the proposed T-Mobile antenna meet the radio frequency safety standards as established by the FCC.
 - h. The Applicant has provided the signed lease agreement with the property owner, Frederick County Board of Education, meeting the standards of subsection 866(a) (9).
 - i. The Applicant acknowledges and commits to compliance with the applicable local, state and federal laws, rules and regulations.
 - j. The Applicant has provided the agent authorizations necessary to file the application for conditional use approval.
 - k. The proposed structure exceeds the maximum height permitted in residential districts, however, the Property is not zoned residentially and the Applicant has demonstrated that its visual profile and appearance would make no substantial change in the character of the area.

With the conditions that:

1. That at the time of site plan review the landscaping along W. College Terrace will be reviewed for compliance with the Level I screening requirements supplemented with shrubbery to the extent feasible within the existing utility easement.
2. That prior to the submission of a final site plan, the Applicant must provide documentation of no impact from the FAA.
3. That with subsequent building permit applications for new antennas by other carriers, a statement by a Radio Frequency Engineering certifying that the equipment will not result in radio

interference or other potentially disruptive activity in association with the operation of the antenna be provided and that this requirement be noted on the final site plan.

4. That prior to the submission of a building permit, the Applicant must submit a sealed statement from a structural engineer certifying the safety of the proposed structure to support the athletic lighting and equipment of four carriers and that this requirement is noted on the final site plan.

SECOND: Mr. Aronow

VOTE: 4-0

E. BOARD BUSINESS:

Election of Officers

MOTION: Mr. Aronow motioned to table the election of officers till the August 27, 2019 Zoning Board of Appeals Hearing.

SECOND: Mr. Butcher

VOTE: 4-0

F. ITEMS ADDED TO AGENDA

Zoning Determinations Completed:

- ZBA19-145ZD, 100 Baughmans Lane
 - ZBA19-667, Frederick Airport Park, Lot D
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VIII. ADJOURNMENT

Meeting adjourned approximately at 10:30 p.m.

Respectfully Submitted,

Jessica Murphy
Administrative Assistant