

**Tax Map/Block/Parcel**  
**No. 32-03-198**  
**Case 5819**

**OFFICIAL DECISION**  
**BOARD OF ZONING APPEALS**  
**CARROLL COUNTY, MARYLAND**

**APPLICANT:** Henry E. Ruhlman  
2280 Harvey Gummel Road  
Hampstead, MD 21074

**ATTORNEY:** John R. Dudderar, Jr.  
538 Morelock Schoolhouse Road  
Westminster, Maryland 21158

**REQUEST:** Request for Reconsideration for a conditional use and a variance for a country inn with banquet facilities, a recreational area and a commercial campsite to furnish an existing area and a potential change of location to another site 45 feet by 100 feet area to hold one time catered events. Variance to be reduced from 400 feet to 225 feet from existing recreation area of 24 feet by 70 feet to property line of 2270 Harvey Gummel Road. Variance to reduce distance of 400 feet to 225 feet from proposed 45 feet to 100 feet recreation area to property line at 2352 Harvey Gummel Road.

**LOCATION:** The site is located at 2300 Harvey Gummel Road, Hampstead, Maryland 21074 on property zoned "A" Agricultural in Election District 6.

**BASIS:** Code of Public Local Laws and Ordinances, Section 158.070 (t)(k) and Section 158.040.

**HEARING HELD:** May 26, 2015

**FINDINGS AND CONCLUSION**

On May 26, 2015, the Board of Zoning Appeals (the Board) convened to hear the reconsideration of Case 5819. The request was for Reconsideration for a conditional use and a variance for a country inn with banquet facilities, a recreational area and a commercial campsite that was denied by the Board on March 27, 2015. Based on the arguments presented and law, the Board made the following findings and conclusions.

At the reconsideration hearing the Board addressed the issue of what type of reconsideration was being requested by the applicant. The following type of reconsideration is specifically addressed in Section 158.133 (H)(4) of the zoning regulations of the County Code:

(4) **Reconsideration.** An applicant may request reconsideration of a condition of approval within 30 days of the date of the written decision. At the BZA's discretion, the BZA may hold a hearing on the request or may reissue the decision with modifications or corrections. A reconsideration may not challenge the granting or denial of the application. A request for reconsideration stays the time for appealing the decision granting or denying the application until such time as the BZA decides on the reconsideration request.

The applicant stated that he was requesting the reconsideration to address certain factors that the Board set forth in the written decision. The applicant wanted to address any notion that he tried to pull one over on the Board. The applicant also offered to reduce the original variances requested to just one variance request. The applicant added that an additional ground for the reconsideration was that during the time of the original site visit by the Board that one or more Board members talked to people.

The Board found that a reconsideration was not appropriate because no condition was granted in the initial hearing before the Board. The Board also found that the applicant could not properly obtain a reconsideration for "the granting or denial of the application." That meant that there could not be a reconsideration of the denial of the conditional use to an approval of the conditional use.

The Board also considered the granting of a reconsideration hearing based on Maryland case law. The case of *Cinque v. Montgomery County Planning Board*, 173 Md. App. 349 (2007) addressed the issue of reconsideration. *Cinque* stated that in "Maryland, along with the federal courts and the majority of state courts that have addressed the issue, recognizes the inherent authority of agencies to reconsider their own quasi-judicial decisions." *Id.* at 361. Furthermore, an agency... not otherwise constrained, may reconsider an action previously taken and come to a different conclusion upon a showing that the original action was the product of fraud, surprise, mistake, or inadvertence, or that some new or different conclusion upon a showing that the original action was the product of fraud, surprise, mistake, or inadvertence, or that some new or different factual situation exists that justifies the different conclusion. The inherent power of reconsideration recognized in the case law applies in the absence of a rule or statute providing for reconsideration. *Id.* at 361. The Board found that the applicant did not meet the standard for a fraud, surprise, mistake, or inadvertence, or that some new or different factual situation existed that justifies the different conclusion.

The burden of proof for the proponent on a motion for reconsideration is extremely high. A motion for reconsideration is a request for extraordinary relief that may be granted only upon a showing of exceptional circumstances. See *Khodor v. Whiteford, Taylor & Preston*, 2005 MDBT 7, 19 (2005). The Board found that the applicant did not meet the burden for this extraordinary relief.

The applicant's attorney suggested that the Board violated Section 10-219 of the State Government Article of the Annotated Code of Maryland. Section 10 applies to the state Administrative Procedures Act. The Board is an administrative agency but is not a state agency. Therefore, the Administrative Procedures Act does not apply to the Board. County agencies are not included within the Administrative Procedures Act. *See, Urbana Civic Asso. v. Urbana Mobile Village, Inc.*, 260 Md. 458, 462 (1971).

The Board did not find that the ex parte communications provision in 10-219 was violated. The applicant merely alleged that Board members talked to other people. The provision states that there can be no "ex parte directly or indirectly regarding the merits of any issue in the case." There was no evidence that any communication occurred that pertained to the merits or any issue in the case. One Board member stated that he did not speak to anyone during the site visit. Another Board member, who voted in favor of the conditional use, stated that the only conversations dealt with the fact that the Board members could not speak to the neighbors during the site visit. The Board did speak to Mr. Ruhlman to address certain areas reflected in the application. No conversations took place that required any disclosures by the Board members. No conversations took place that were considered by the Board members in either the deliberations, the vote, or the written decision.

Based on the fact the Board found that the applicant was not granted any conditions in the original decision, the Board found that relying on the County Code for a reconsideration was not warranted. The Board found that the applicant could not change a denial to an approval pursuant to the County Code. The Board also found that the facts in the instant case did not support a reconsideration based on the case law. The Board clearly found that a reconsideration hearing was not just a second bite at a case that came before the Board approximately two months ago.

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Date

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Gary E. Dunkleberger, Chairman

Decisions of the Board of Zoning Appeals may be appealed to the Circuit Court for Carroll County within 30 days of the date of the decision pursuant to Article 66B, Section 4.08 of the Annotated Code of Maryland Rules of Procedure.

Pursuant to Section 158.133 (H)(3) of the County Code, this approval will become void unless all applicable requirements of this section are met. Contact the Office of Zoning Administration at 410-386-2980 for specific compliance instructions.

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