

## MINUTES OF FEBRUARY 3, 2014

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 3, 2014, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members Ms. Melissa Thibodeau – Zoning Inspector II, and Ms. Kelly Passwaters – Recording Secretary.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

### PUBLIC HEARINGS

**Case No. 11328 – Jean Maloney & Kevin Maloney, Jr.** – south of Road 453 (Robin Hood Road) 2,150 feet north of Road 452 (Cardinal Road). (Tax Map I.D. 5-32-14.00-37.26)

An application for a special use exception to place a multi-sectional manufactured home that is more than five (5) years old.

Ms. Thibodeau presented the case. Jean Maloney and Kevin Maloney, Jr. were sworn in and testified requesting a special use exception to place a multi-sectional manufactured home more than five (5) years old on a parcel. Jean Maloney submitted exhibits to the Board for its review. Jean Maloney testified that the 2004 manufactured home is owned by a bank; that the house has been completely remodeled with new carpet, paint, doors, and appliances; that the adjacent property is a farm owned by her; that other manufactured homes and single-family dwellings are located in the area; that the area is sparsely populated; that there are many doublewide homes on Cardinal Road; that the use will not substantially affect adversely the uses of surrounding and adjacent properties; that the unit will have a block foundation; and that the unit is for her son.

The Board found that four (4) parties appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11328 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11329 – Suzanne L. Mundorf** – northeast of Route 334 (Dagsboro Road) and being northeast end of Coffin Lane, a private road, and 800 feet southeast of Road 333 (Thorogoods Road). (Tax Map I.D. 2-33-5.00-186.12)

An application for a special use exception to use a manufactured home as a single-family dwelling to meet an emergency or hardship situation.

Mr. Sharp advised the Board that his firm has represented the Applicant in the past and that if the Board had any questions, they should direct them to Vince Robertson, Esquire.

Ms. Thibodeau presented the case. Suzanne Mundorf and David Coffin were sworn in and testified requesting a special use exception to use a manufactured home as a single-family dwelling to meet an emergency and hardship situation. Ms. Mundorf testified that the manufactured home is a 1984 unit that is fourteen (14) feet by seventy (70) feet and has been on the Property since she purchased the Property in 1984; that the unit has been previously approved for a medical hardship for her son; that the unit was also approved by the Board to be used as storage after her son moved out of the home; that her son needs to return to the home; that the unit has been remodeled and had a kitchen added; that she placed a double-wide manufactured home on the Property in 2006 which is where she lives; that the unit is in the same location as previously approved; and that the dwelling has skirting around it.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11329 for the requested special use exception for a period of two (2) years based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for a period of two (2) years and for the reasons stated.** Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11330 – Thomas E. Ream** – south of Route 9 (Lewes Georgetown Highway) 1,700 feet east of Road 262 (Fisher Road) and north of Penn Central Railroad. (Tax Map I.D. 2-35-31.00-11.04)

An application for a special use exception to place an off-premise sign.

Ms. Thibodeau presented the case. Thomas Ream and Joseph Crispin were sworn in and testified requesting a special use exception to place an off-premise sign.

Mr. Ream testified that the proposed billboard will measure ten (10) feet by twenty-five (25) feet; that the proposed billboard will be two-sided and a steel monopole structure; and that the proposed billboard will also help light up the dark entrance to the Property.

Ms. Thibodeau stated that the proposed location of the billboard will meet all the required setback and height requirements.

Mr. Ream testified that the lighting will not be directed to interfere with traffic.

Mr. Crispin testified that the Property is currently being used for a parking lot and that they do not currently have any contracts to lease the billboard.

Mr. Ream testified that the use will not substantially affect adversely the uses of the adjacent and neighboring properties; that the Property is zoned commercial and has a liquor store, sandwich shop and a doctor's office located on the Property; that there are other billboards in the area; and that the existing billboards are all rented.

Dr. Uday Jani was sworn in and testified in opposition to the Application. Dr. Jani testified that his office is located on the Property; that the Property has approximately ten (10) businesses on the Property; that the proposed location of the billboard is in the middle of the entrance to the Property; that there are businesses on both sides of the entrance; that there are numerous cars entering and exiting the Property throughout the day due to the businesses; that there have been three (3) major accidents in front of the Property, two (2) resulting in fatalities; that there are five (5) signs on the Property; that the billboard will be an additional distraction and safety issue to the already busy area; that there is a nearby railroad track where school buses and DART buses must stop; that the Property is located on Route 9 which is a busy road; that there is plenty of lighting in the area; that the Property is zoned commercially; that the billboard is a big distraction and further creates problems for his patients who pull out onto the busy road; that the entrance is very small; that there are other signs on the Property already which make visibility difficult. Dr. Jani submitted pictures of the Property for the Board to review.

Dr. Edward S. Abou-Jaoude was sworn in and testified in opposition to the Application. Dr. Abou-Jaoude testified that there are three (3) large billboards in the area; that the nearby railroad has buses and trucks stopping traffic flow; that the entrance is very small even though there are numerous businesses on the Property; that there is no deceleration lane available for motorists entering the Property; that the speed limit on Route 9 is 50 miles per hour so cars drive fast by the Property; that there are numerous signs along the Property; that there are numerous distractions along the Property which already create a safety concern; and that additional lighting is not needed.

Randy Reed was sworn in and testified in opposition to the Application and testified that he owns the Oak Creek Wine & Spirits on the Property; that the proposed location of the billboard is in the middle of the entrance; that he is also concerned for the safety of customers entering and exiting the Property; and that the proposed location of the billboard poses visibility concerns.

Dr. Uday Jani also testified that the proposed location of the billboard creates a visibility issue; and that the existing signs and trailer with advertisement already pose visibility issues.

Randy Reed testified that the proposed billboard will be located in the parking lot which is at the entrance to the Property.

Dr. Uday Jani testified that there are nine (9) businesses to one side of the entrance and three (3) businesses to the other side of the entrance and that all businesses are accessed through the one (1) entrance.

In rebuttal, Thomas Ream, testified that he plans to put the billboard in the grass area near the entrance; that he did have the option to put the billboard in the middle of the parking lot; that the existing sign can be removed; and that there are three (3) other billboards in the area.

The Board found that no parties appeared in support of the Application.

The Board found that three (3) parties appeared in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be tabled until February 17, 2014. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11331 – SBA Towers** – east of Road 494 (Dickerson Road) approximately 0.75 miles northeast of Road 501 (St. George Road) approximately 0.6 miles south of Route 24 (Sharptown Road). (Tax Map I.D. 4-32-12.00-4.00)

An application for a special use exception for a telecommunications tower.

Ms. Thibodeau presented the case. Peter Colosimo was sworn in and testified requesting a special use exception for a telecommunications tower. Mr. Colosimo testified that he represents SBA Towers and the Dickerson Family in requesting the special use exception for a cellular tower; that a special use exception for a tower was approved in 2012; that the approved tower was never constructed and the approval expired; that Verizon plans to use the proposed tower; that there is a great need for service in the area as the service in the area is poor; that the proposed tower is approximately 2,200 feet from the nearest dwelling; that the tower will enhance neighboring

properties because it will improve the cellular service provided to those properties; that the tower will not substantially affect adversely the uses of neighboring and adjacent properties; that the proposed tower will be 140 feet tall with a five (5) feet tall lightning rod; that the tower will be set up for four (4) carriers; that there will be a fenced in compound area of fifty (50) feet by fifty (50) feet at the base of the tower; and that SBA Towers will construct the tower and Verizon will lease space from the tower.

Richard Dickerson was sworn in and testified in support of the Application and testified that there are no other towers in the area; that the proposed tower will be on his property; and that service is badly needed in the area.

Mr. Colosimo testified that it takes approximately six (6) months to erect the tower; that there are no other sites for collocation within two (2) miles of the Property; that the pole will be set back at least one-third (1/3) of its height from surrounding properties; and that the pole will be surrounded by a six (6) feet tall fence.

The Board found that five (5) parties appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11331 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties and the proposed tower meets all of the other criteria required for approval of a telecommunications tower.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11332 – David G. Boyle** – south of Route 54 (Lighthouse Road) and being east of Maple Lane 1,100 feet south of Cedar Road and being more specifically Lot 22 Keen-wik Subdivision. (Tax Map I.D. 5-33-20.13-7.00)

An application for variances from the front yard and side yard setback requirements.

Ms. Thibodeau presented the case. David Boyle was sworn in and testified requesting a variance of 2.1 feet from the thirty (30) feet front yard setback requirement, a variance of 4.1 feet from the ten (10) feet side yard setback requirement, a variance of 4.05 feet from the ten (10) feet side yard setback requirement, and a variance of seven (7) feet from the ten (10) feet side yard

setback requirement for an existing dwelling. Mr. Boyle submitted to the Board exhibits in support of his application. Mr. Boyle testified that he purchased the Property last year; that, due to high flood insurance and flooding issues, the dwelling needs to be raised; that the existing attached sheds will be removed; that the condensing unit will be relocated and comply with the setback requirements; that the existing dwelling did not comply with the Sussex County setback requirements; that the dwelling was constructed in the 1970s; that a new second floor screen porch will be constructed.

The Board found that no parties appeared in support of or in opposition to the Application.

Ms. Thibodeau stated that the Office of Planning and Zoning received one (1) letter of support to the Application.

Ms. Thibodeau stated that the Office of Planning and Zoning received one (1) letter of opposition to the Application.

Mr. Boyle testified that he removed the condensing unit from the setback area in response to the letter of opposition.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11332 for the requested variances except the variance of seven (7) feet from the ten (10) feet side yard setback requirement for the condensing unit based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The Property is in a flood zone and the dwelling needs to be raised;
3. The Property is only fifty (50) feet wide;
4. The variances are necessary to enable reasonable use of the Property;
5. The difficulty was not created by the Applicant;
6. The variances will not alter the essential character of the neighborhood; and
7. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated except that the variance of seven (7) feet from the ten (10) feet side yard setback requirement for the condensing unit is denied because the condensing unit has been moved and the variance is no longer needed.** Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11333 – Bret Shue & Melinda Shue** – south of Route 54 (Lighthouse Road) and being south of Pine Road, 900 feet west of Holly Road and being Lot 13 Keen-wik Subdivision. (Tax Map I.D. 5-33-19.12-68.00)

An application for variances from the front yard and side yard setback requirements.

Ms. Thibodeau presented the case. Bret Shue was sworn in and testified requesting a variance of five (5) feet from the thirty (30) feet front yard setback requirement and a variance of 3.5 feet from the ten (10) feet side yard setback requirement for a proposed dwelling. Mr. Shue testified that the Property is located in the Keen-wik subdivision; that he intends to build a dwelling on the Property; that a portion of the Property is located in a creek to the rear of the Property; that the variance request will allow him to have a backyard; and that the previous dwelling had to be demolished as it was in poor condition.

Adelyn Aker was sworn in and testified in opposition to the Application. Ms. Aker testified that the Property can be developed in strict conformity with Sussex County zoning requirements; that the Property is rectangular with no unique features; that other lots have been constructed on similar sized lots in the neighborhood; that the hardship is being created by the Applicants; that the variances alter the essential character of the neighborhood; that all the dwellings on Pine Road comply with the front yard setback requirement; that Pine Road is a narrow road of only sixteen (16) feet; that the variances will create privacy issues; that the Applicant has removed trees from the Property; that the properties in the area are flood prone and feels structures that are built too close together will create drainage problems; and that, if the variance is approved, it will set a precedence.

Verlyn Aker was sworn in and testified in opposition to the Application. Mr. Aker testified that he has reviewed the lots along Pine Road; that the lots are all similar in size; that there is nothing unique about the Applicant's property; and that there have been two (2) dwellings recently constructed which have been built in compliance with setback requirements.

In rebuttal, Bret Shue testified that the proposed dwelling is a single-story ranch home less than 3,000 square-feet in size with a two (2) car garage; and that he could build within the setbacks, but strictly restricts the size of the home.

The Board found that no parties appeared in support of the Application.

The Board found that two (2) parties appeared in opposition to the Application.

Ms. Thibodeau stated that the Office of Planning and Zoning received six (6) letters of opposition to the Application. Ms. Thibodeau read the letters of opposition into the record.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until February 17, 2014**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11334 – Henlopen Homes, Inc.** – southeast of Road 619 (Old Shawnee Road) 1,157 feet south of Road 619A (Bontrager Road). (Tax Map I.D. 1-30-3.00-175.00)

An application for a special use exception to replace a nonconforming multi-sectional manufactured home.

Ms. Thibodeau presented the case. Kelly Collins was sworn in and testified requesting a special use exception to replace a nonconforming multi-sectional manufactured home; that the special use exception was first approved in 2011; that she was not aware the approval had an expired; that a single-wide manufactured home was on the Property when she purchased it; that the single-wide has been demolished; that she now has a buyer for the Property and plans to place a 2011 double-wide manufactured home on the Property; that this Application is identical to the request previously approved; that the use will not substantially affect adversely the uses of the adjacent and surrounding properties; and that a business, which has tractor trailers thereon, and a brick ranch house are located on the adjacent properties. The Applicant submitted pictures of the neighborhood to the Board for review.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11334 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties. The special use exception has also been previously approved by the Board.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11335 – BRF Holdings, LLC** – southeast of Route One and west of Pennsylvania Avenue and being 300 feet north of Fifth Street and Bethany Beach. (Tax Map I.D. 1-34-13.15-153.00)

An application for variances from the front yard and side yard setback requirements.



Ms. Thibodeau presented the case. Chris Eckleston was sworn in and testified requesting a variance of 31.2 feet from the sixty (60) feet front yard setback requirement and a variance of three (3) feet from the five (5) feet side yard setback requirement for a commercial building.

Mr. Eckleston testified that the State Fire Marshal issued a safety violation to the Applicant for not having a stairway to exit the building in case of an emergency; that the existing building does not meet the required setbacks; that the Property was previously owned by the Town of Bethany Beach; that when the Applicant purchased the Property there were no known setback issues; that the building does not meet the setback requirements and was not constructed by the Applicant; and that he believes the structure is at least thirty (30) years old. Mr. Eckleston submitted exhibits and a letter of support to the Application.

Ms. Thibodeau stated that the Property is a corner lot and a through lot; that a front yard variance was granted on the Property in 1996 but she was not clear which side of the building it applied to due to the fact that it is a through lot.

Mr. Eckleston testified that the existing stair tower is on the Pennsylvania Avenue side of the building; that the Fire Marshal requires stairwells on both sides of the building so one will need to be constructed on the Coastal Highway side of the Property as well; and that the stairwell will be approximately seventeen (17) feet tall.

The Board found that no parties appeared in support of or in opposition to the Application.

The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11335 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it is a through lot and the requirement for the stairwell by the State Fire Marshal also creates a unique situation;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**OLD BUSINESS**

**Case No. 11310 – Zea, LLC** – northeast corner of Bunting Avenue and West Virginia Avenue and 450 feet east of Route One (Coastal Highway) and being Lot 1 E in the unincorporated section of Fenwick Island. (Tax Map I.D. 1-34-23.16-329.00)

An application for variances from the side yard, rear yard, and corner side yard setback requirements.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be **tabled until February 17, 2014**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**OTHER BUSINESS**

**Case No. 11164 – Francis Clamer & Debbie Clamer** – south of Road 358 (Sandy Cove Road) approximately 1,480 feet west of Road 357 (Cedar Neck Road). (Tax Map I.D. 1-34-9.00-413.00)

An application for variances from the front yard, side yard, and rear yard setback requirements.

Request for a time extension.

Ms. Thibodeau read a letter from the Applicant requesting a time extension. The Board discussed the request.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the requested time extension for a period of one (1) year. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Meeting Adjourned 9:00 p.m.**