

## **MINUTES OF APRIL 21, 2014**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 21, 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, Mr. Lawrence Lank – Director of Planning and Zoning, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

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. 11376 – Harlton Communities, LLC** – east of Murray Road (Road 348A) and Irons Lane (Road 348) and 550 feet south of Old Mill Road (Road 349). (Tax Map I.D. 1-34-11.00-169.00)

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

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Tom Natelli and Frank Key were sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Fuqua stated that the Applicant is requesting a variance of three (3) feet from the ten (10) feet side yard setback requirements and a variance of eight (8) feet from the fifteen (15) feet corner side yard setback requirements for the entire subdivision; that the proposed subdivision is located near Millville; that there are nineteen (19) corner lots in the proposed subdivision; that all lots would have a setback of seven (7) feet from the side property lines; that the subdivision was approved by the Planning and Zoning Commission in 2007; that the proposed subdivision was approved for a total of 197 lots; that the preliminary site plan was approved showing the entrance to the subdivision on Old Mill Road; that the subdivision has never been started due the downturn in the economy; that no lots have been sold and no site work has taken place but the subdivision is still a valid subdivision; that there has been a significant change in the wetlands delineation since the original subdivision approval; that the definition of wetlands by the Army Corps of Engineers changed and the acreage of wetlands increased; that the Applicant cannot build in the wetlands area; that the subdivision must be re-designed due to the new wetlands areas; that the entrance to

the subdivision will now be on Murray Road; that the proposed lots in the wetlands area must be changed as well; that the new design for the subdivision changes the lot width of the parcels from seventy-five (75) feet to sixty-four (64) feet; that all lots remained 7,500 square-feet in size; that the proposed lots are deeper than the previously approved lots; that the market demands suggest that a dwelling be at least fifty-five (55) feet wide; that potential buyers want first floor living which includes a master bedroom and bath on the first floor; that the open space for the subdivision has increased from 35% to 43%; that the Property is unique due to the expansion of the wetland area; that the 197 lots cannot otherwise be developed in strict conformity with the Sussex County Zoning Code due to the existence of the wetland areas; that the difficulty was not created by the Applicant; that there is no negative impact to the community since no lots have yet been sold; that the request is the least modification needed to accomplish the result; that the Board granted a similar variance request for an entire subdivision (Case No. 11299) in December 2013; that the subdivision will be serviced by central water and County sewer; that the variances will not alter the essential character of the neighborhood; and that the revised site plan must still be approved by the Planning and Zoning Commission..

Mr. Natelli, under oath, confirmed the statements made by Mr. Fuqua. Mr. Natelli testified that the average square-footage of the proposed dwellings will range from 2,200 square-feet to 3,400 square-feet in size.

Mr. Fuqua stated that, without the reconfiguration, twenty-four (24) lots would not be able to be developed.

Mackie Banks was sworn in and testified in support of the Application and testified that she owns property adjacent to the proposed subdivision; that she has a good relationship with the Applicant; that the Applicant has other developments in the area and feels they are well designed; and that up until about two (2) years ago the area of the wetlands referenced by the Applicant was completely dry.

Don Klimer was sworn in and testified that he was not sure if he supported the Application or opposed the Application; that he wanted to see where the new entrance was going to be located; and that he would reserve further comments for the Planning and Zoning Commission.

The Board found that one (1) party appeared in support of the Application.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11376 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The change in the wetlands classification makes the Property unique;

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;
5. The variances requested are the minimum variances necessary to afford relief; and
6. The requested variances represent the least modifications of the regulations at issue.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances 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. 11377 – David DeCristo & Amy DeCristo** – 0.5 mile west of Route 1 (Coastal Highway) and Indian River Inlet and south of interior street within Simpsons Mobile Home Park south of South Shore Marina and being Lot 61 of Simpsons Mobile Home Park. (Tax Map I.D. 1-34-2.00-4.00-Park)

An application for special use exception for a dwelling in a mobile home park.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

David DeCristo was sworn in and testified requesting a special use exception for a dwelling in Simpson's Mobile Home Park; that he purchased the lot with the understanding that a stick-built dwelling could be built on the lot; that he intends to construct a more hurricane resistant structure that is two (2) stories tall on top of pilings; that the proposed stick-built dwelling will provide enough room for his large family and parking underneath; that he discovered that a stick-built dwelling was not permitted in the park when his builder tried to obtain the building permit; that there are other multiple story dwellings in the park; that the newer structures in the park are built on pilings; that there are modular homes in the neighborhood as well; that there are approximately fifteen (15) manufactured homes in the park; that the lot measures fifty (50) feet by one-hundred (100) feet; that the proposed stick-built dwelling will meet the setback requirements and will not exceed the 35% maximum allowable lot coverage requirement; that some mobile homes in the park have additions; that off-street parking is a problem in the park; and that he does not plan to have a shed on the lot.

Mr. Lank stated that there are two (2) other dwellings in the mobile home park.

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

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11377 for the requested special use exception based on the record made

at the public hearing and 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. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11378 – M & M Properties, LLC** – northwest of Road 611 (Owens Road) and south of Route 16 (Beach Highway). (Tax Map I.D. 4-30-6.00-38.00)

An application for variances from the front yard setback requirement for a through lot.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Anthony Morgan, III was sworn in and testified requesting a variance of fifteen (15) feet from the forty (40) feet front yard setback requirement for a through lot on Road 611 (Owens Road) and a variance of fifteen (15) feet from the forty (40) feet front yard setback requirement for a through lot on Route 16 (Beach Highway); that he purchases properties with older dwellings and builds new affordable dwellings on the properties; that he purchased the Property at a tax sale; that he originally believed it to be a half (½) acre lot but later discovered after surveying the Property that the Property was only a quarter (1/4) acre lot; that the Delaware Department of Transportation (“DelDOT”) acquired the corner of the Property in 1988 for a daylight easement; that the Property borders Road 611 and Route 16; that the triangular shaped lot and setback requirements for a through lot make the Property unique; that the proposed two-story dwelling will measure twenty-eight (28) feet by forty-two (42) feet; that there will be an attached garage, porch and deck; that the proposed dwelling will meet the ten (10) feet side yard setback requirement; that the current structure encroaches into the roadway; that the current structure is over a hundred years old and is falling down; that he intends to tear down the structure and build a new house; that the variances are needed to enable reasonable use of the Property; that the buildable area on the Property would only allow for a structure measuring twelve (12) feet by twelve (12) feet; that the difficulty was not created by him; that the proposed dwelling enhances the neighborhood and does not alter the character of the neighborhood; that the variances are the minimum variances to afford relief; that the Property cannot otherwise be developed without the variances; and that the proposed structure will encroach twenty-seven (27) feet less into the setback areas than the existing structures.

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

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11378 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The shape of the Property and the DelDOT right-of-way make the Property unique;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
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. Hudson, seconded by Mr. Rickard, 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.

**Case No. 11379 – Thomas H. Fletcher** – 260 feet east of State Route 1 (Coastal Highway) and being south of Dune Road and 180 feet west of Ocean Road and being Lot 67 Tower Shores. (Tax Map I.D. 1-34-5.00-75.01)

An application for a variance from the front yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had received three (3) letters in support of the Application and had not received any correspondence in opposition to the Application.

Thomas Fletcher and Alvin French, of French & Ryan, Inc., were sworn in and testified requesting a variance of 16.1 feet from the thirty (30) feet front yard setback requirement for a proposed addition. Mr. French submitted exhibits and letters of support to the Application for the Board to review. Mr. French reviewed the exhibits with the Board. Mr. French testified that he is an architect; that the Applicant owns Unit A-4; that the proposed addition will be a third story on the existing unit; that the neighboring units all have a third story; that the Applicant's unit currently has only two (2) bedrooms; that the Applicant has a large family and needs more living space; that the original units were built in the 1960s; that the existing Unit A-4 has had the same footprint since the early 1960s; that the proposed addition will not encroach any further into the setback area than the existing unit; that unique physical circumstances exist; that the units are located close together and have been that way for many years; that the difficulty has not been created by the Applicant; that the unit has been in its existing location since prior to the Applicant's ownership of it; that the variance will not alter the character of the neighborhood; that the proposed addition will bring the unit more in line with other units in the neighborhood; that the variance requested is the minimum variance necessary to afford relief; and that the Applicant has approval from the

Delaware Department of Natural Resources and Environmental Control (“DNREC”) for the construction.

Mr. Lank stated that a similar variance had been granted for Unit A-3 in July 2004.

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

Mr. Lank stated that the Office of Planning and Zoning had received a total of seven (7) letters in support of the Application including the three (3) letters previously noted.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11379 for the requested variance based on the record made at the public hearing and for the reasons stated:

1. The Property is unique;
2. The addition will be within the same footprint as existing structure and will not further encroach into the setback areas;
3. The variance is necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood as there have been similar variances granted in the neighborhood; and
6. The variance sought is the minimum variance 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.

**Case No. 11380 – Fenwick Communities, LLC** – west of Bayard Road (Road 384) 0.4 mile north of Church Road (Road 382). (Tax Map I.D. 5-33-11.00-84.00)

An application for a special use exception to place a manufactured home type structure for a temporary sales office.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had received one (1) letter in opposition to the Application and had not received any correspondence in support of the Application. Mr. Lank read the letter in opposition.

Ted Ruberti and Todd Hickman were sworn in and testified requesting a special use exception to place a manufactured home type structure for a temporary sales office. Mr. Hickman testified that he is a Vice President for NV Homes; that the Applicant seeks permission to use a

trailer as a temporary sales office; the unit has been delivered to the site; that the Applicant obtained approval from DelDOT on March 6, 2014 for the entrance; that there is no business currently being conducted at the manufactured home and will only do so if they receive approval from the Board; that the Applicant plans to only use the unit for six (6) months while the model home is being constructed; that, once the model home is completed, the Applicant will conduct sales from the model home; that the unit will be painted and the site will be landscaped; that there will be a paved parking lot; that there are no other houses within a couple hundred yards of the Property; and that the use will not substantially adversely affect the surrounding and neighboring properties.

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

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11380 for the requested special use exception for a period of one (1) year based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for a period of one (1) year for the reasons stated**. 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.

**Case No. 11381 – Ken Karpinski & Debbie Karpinski** – north of Cave Neck Road (Road 88) and being north of Riverstone Drive 420 feet northwest of Fieldstone Drive, and being Lot 165 of Windstone Subdivision. (Tax Map I.D. 2-35-22.00-1137.00)

An application for a variance from the rear yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Ken Karpinski and Debbie Karpinski were sworn in and testified requesting a variance of 4.9 feet from the ten (10) feet rear yard setback requirement for a proposed screen porch. Mr. Karpinski testified that the Property is a rectangular lot; that the Applicants propose to construct a screen porch over an existing twelve (12) feet by fourteen (14) feet deck; that the open unenclosed deck was permitted to be five (5) feet from the property line; that the screen porch addition must

meet the ten (10) feet setback requirement; that the rear of the Property is adjacent to designated open space for the subdivision; that their neighbors have similar screen porches or morning room additions; that the porch will not alter the character of the neighborhood; that the porch will not impact future development of neighboring properties because it is adjacent to common area; that the difficulty was not created by the Applicants; that the variance will provide the least modification possible of the regulation at issue; and that the variance sought is the minimum variance to afford relief. Mr. Karpinski submitted pictures for the Board to 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 Variance Application No. 11381 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The size and shape of the Property are unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The porch will allow the Applicants to use the space in inclement weather;
4. The difficulty was not created by the Applicants; and
5. The variance sought is the minimum variance 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.

**Case No. 11382 – The Village at Highway One, LLC** – east of Road 275A (Airport Road) at the intersection southwest of Route 1 (Coastal Highway). (Tax Map I.D. 3-34-13.00-325.02)

An application for a special use exception to place an off-premise sign and a variance for the height requirement for an off-premise sign.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Doug Motley was sworn in to testify about the Application. David Hutt, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Hutt stated that the Applicant is requesting a special use exception to place an off-premise sign and a variance of ten (10) feet from the twenty-five (25) maximum height requirement for an off-premise sign; that there are two (2) commercial buildings on the Property; that the Applicant purchased the Property in 2004; that the buildings have been on the Property since 1954;



that the Property is unique due to its odd shape; that under the current Zoning Ordinance the lot would be unbuildable due to a sixty (60) feet setback; that the area is predominately commercial; that the proposed billboard will meet all the required setback requirements and will not exceed the permitted square-footage for a billboard; that the use will not substantially adversely affect the uses of surrounding and neighboring properties; that there are other billboards in the area; that the closest off-premise sign is 763 feet away; that the proposed billboard will be placed further back on the Property to lessen the impact of the billboard and so as not to affect the nearby highway visually; that the Property has two (2) front yards and a rear yard but no side yard; that the proposed sign is consistent with the uses of the area; that the height variance is needed to allow the billboard to be seen over the existing buildings on the Property; that there are marquee signs on neighboring properties which are over twenty (20) feet tall; that the Applicant proposes to raise the billboard to thirty-five (35) feet so that the sign can be seen over the existing structures on the Property; that the Property has unique physical circumstances due its odd shape and its unique zoning; the variance is necessary to enable the reasonable use of the Property; that the need for the variance was not created by the Applicant; the proposed billboard will not alter the character of the neighborhood; that the use will not be detrimental to the public welfare; and that the variance is the minimum variance to afford relief.

Mr. Motley, under oath, confirmed the statements made by Mr. Hutt.

Mr. Hutt stated that the proposed billboard will be a steel monopole structure; that other signs along Route 1 are larger and taller than the proposed sign; that DelDOT has a ninety (90) feet tall structure nearby and this proposed sign will not affect this sign; that the proposed billboard will not interfere with neighboring signs and structures; and that the Applicant feels it will have no problem leasing the proposed billboard.

Mr. Motley testified that all of the billboards owned by the Applicant are occupied and that the affiliate businesses of the Applicant will likely use the billboard.

Mr. Hutt stated that the buildings have been on the Property since at least the 1950s which makes it difficult to place a billboard in compliance with the Sussex County Zoning Code.

Sanford Lee Hazard was sworn in and testified in opposition to the Application and testified that he owns a business on the adjacent parcel to the rear of the Property; that he feels the Applicant's property is at full capacity and does not have adequate parking; that the proposed billboard will overshadow his business; that his sign meets the required twenty-five (25) height requirement; that the sign will be detrimental to neighboring properties; that the sign is not needed; and that he feels the proposed billboard will substantially adversely affect his property.

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

The Board found that one (1) party appeared in opposition to the Application.

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously to **table the case until May 5, 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.

### **OLD BUSINESS**

**Case No. 11375 – Carolyn E. Ortwein & Ann S. Barry** – west of Silver Lake Road (Route 1A) 602 feet north of Pine Lane. (Tax Map I.D. 334-20.09-125.00-Unit 4)

An application for a variance from the side yard setback requirement.

Mr. Sharp advised the Board that the Applicants submitted a letter requesting the opportunity to submit additional testimony and evidence before the Board makes a decision.

The Board discussed the case which has been tabled since April 7, 2014.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to **re-open the case and have it re-advertised for a new hearing**. 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.

**Meeting Adjourned 9:15 p.m.**