

MINUTES OF APRIL 4, 2016

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 4, 2016, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Brent Workman, and Mr. Norman Rickard, with Mr. David Rutt – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Planning and Zoning Manager, and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes and Finding of Facts for February 15, 2016 as circulated. Motion carried 5 – 0.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Finding of Facts for February 29, 2016 as circulated. Motion carried 5 – 0.

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

OLD BUSINESS

Case No. 11739 – Upesch Vyas – seeks variances from the front yard setback requirement (Section 115-83.8B of the Sussex County Zoning Code). The property is located on the northwest corner of John J. Williams Highway and Indian Mission Road. 911 Address: 24858 John J. Williams Highway, Millsboro. Zoning District: CR-1. Tax Map No.: 2-34-23.00-269.08.

Ms. Cornwell presented the case, which has been tabled since March 21, 2016.

Mr. Rickard stated that he has no issue with the request since the existing underground gas tanks cannot be moved.

Mr. Workman stated that he also has no issue with the request; that the Applicant needs a larger store and the underground gas tanks cannot be moved.

Mr. Mills stated that he feels the exceptional practical difficulty is being created by the Applicant; that he feels the Applicant can relocate the pumps; and that the value of the Property should be worth the expense.

Mr. Callaway stated that the Applicant lost a portion of the Property to the Delaware Department of Transportation (“DelDOT”); and that the Property cannot otherwise be developed.

Mr. Hudson stated that he agrees with Mr. Mills.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11739 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its irregular shape;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicant since the underground tanks cannot be relocated;
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 that the variances be **granted for the reasons stated**. Motion carried 3 – 2.

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

Case No. 11740 – Anthony Morgan, III – M&M Properties, LLC – seeks a variance from the side yard setback requirement (Section 115-25C of the Sussex County Zoning Code). The property is located on the west side of Nassau Drive approximately 114 feet south of Minos Conaway Road. 911 Address: 31276 Nassau Drive, Lewes. Zoning District: AR-1. Tax Map No: 3-34-5.00-13.00.

Ms. Cornwell presented the case, which has been tabled since March 21, 2016.

Mr. Mills stated that the Applicant admitted he has created his own hardship.

Mr. Rickard stated that the existing dwelling has been torn down; that the builder stated the Property can be otherwise developed; that the fact that a prospective buyer has a need for the handicap ramp is not definite need for the variance; and that the Applicant is creating his own hardship.

Mr. Rickard stated that he would move that the Board recommend denial of Variance Application No. 11740 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The exceptional practical difficulty has been created by the Applicant; and
2. The Property can be otherwise developed in strict conformity with the Sussex County Zoning Code.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the variance be **denied for the reasons stated and with the stipulation that if a contract is signed with the prospective buyer this would be a different application.** 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. 11742 – Gaw Ventures Group, LLC – seeks variances from the lot width requirement for a parcel, from the side yard setback requirements, and the square footage for a parcel requirement (Sections 115-25B(1) and 115-25C of the Sussex County Zoning Code). The property is located on the southwest corner of 7th St. and Bay View Road. 911 Address: None Available. Zoning District: AR-1. Tax Map No: 3-34-19.16-87.00 & 87.01.

Ms. Cornwell presented this case, which has been tabled since March 21, 2016.

Mr. Mills stated that the lots were combined and used as one parcel but have been divided into two (2) parcels; that the existing utility pole and guy wires make it difficult to enable reasonable use of Lot 314A; that the exceptional practical difficulty was not created by the Applicant; and that turning the lots does not alter the essential character of the neighborhood.

Mr. Hudson stated that the proposed application gives uniformity of dwellings along Bay View Road; that the guy wires and pole create a difficulty; and that he is in support of the Application.

Mr. Workman stated that he has no issue with the Application.

Mr. Rickard stated that either way the lots face the neighboring property owners will have blocked views; and that either way the lots face the corner lot will have a fifteen (15) feet setback requirement.

Mr. Mills stated that the proposed rotation of the lots will positively impact the neighborhood.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11742 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique since it can be used as two (2) separate lots which are small;
2. The Property is also unique due to the location of the utility pole and guy wires;
3. The variances are necessary to enable reasonable use of the Property;
4. The existing utility pole prevents Lot 314A from being otherwise developed in strict conformity with the Sussex County Zoning Code;
5. The exceptional practical difficulty was not created by the Applicant;
6. The variances will not alter the essential character of the neighborhood;

7. The variances do not impair the uses or development of neighboring and adjacent properties;
8. The use is not detrimental to the public welfare; and
9. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variances 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.

PUBLIC HEARINGS

Case No. 11744 – Michael K. Mantlo & Hilda L. Mantlo – seek a special use exception to place a manufactured home type structure for a medical hardship (Sections 115-23A and 115-210A(1) of the Sussex County Zoning Code). The property is located on the north side of Salt Barn Road approximately 1,390 feet west of Old State Road. 911 Address: 11101 Salt Barn Road, Laurel. Zoning District: AR-1. Tax Map No: 3-32-8.00-2.01.

Ms. Cornwell 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.

Michael Mantlo was sworn in and testified requesting a special use exception to place a manufactured home type structure for a medical hardship; that he submitted exhibits for the Board to review which included fifty-two (52) letters of support to the Application; that his brother is completely disabled and needs nursing care 24 hours a day; that his brother needs to be near family; that the proposed manufactured home will meet all setback requirements and will be compatible with other structures on the Property; that the use will not substantially adversely affect the uses of the neighboring and adjacent properties; that he understands the approval is temporary and that the manufactured home must be removed when his brother no longer lives there; that he owns the proposed 2005 manufactured home and it is currently in a mobile home park; that his brother suffers from the effects of a traumatic brain injury; that the home will be skirted; that he will live in the dwelling that is currently on the Property; that there is only one residence near the Property which is located west of the Property; that the Property is otherwise adjacent to fields; that the Property is approximately 5 acres in size; that the Department of Natural Resources & Environmental Control (“DNREC”) has approved the connection of the proposed manufactured home to the existing septic system; and that there will be some landscaping and a handicap ramp to access the proposed manufactured home.

Charles Bredbenner, Jr. was sworn in and testified in opposition to the Application and testified that he feels the current dwelling on the Property can accommodate the need; that he is concerned that two (2) dwellings will be on the Property; that, after understanding the unit will be removed when no longer needed, he has no objection to the Application; and that the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

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

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

Mr. Mills stated that he would move that the Board recommend approval of Special Use Application No. 11744 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent 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. 11745 – Pot-Nets Homes, LLC – seeks a variance from the separation requirement between units in a mobile home park (Section 115-172G(7) of the Sussex County Zoning Code). The property is located on the southwest corner of River Road and Pinebrine Road in Pot Nets Bayside. 911 Address: 34434 River Road, Millsboro. Zoning District: AR-1. Tax Map No: 2-34-30.00-2.00-55123.

Ms. Cornwell 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.

James Kuhn was sworn in and testified requesting a variance of 6.76 feet from the twenty (20) feet separation requirement between units in a mobile home park; that the setback requirements pertain to the separation between a manufactured home on Lot 111 and a shed on Lot 58; that a new manufactured home was placed on Lot 111 as a sales model; that the home complies with all setback requirements; that the Applicant intends to sell the home; that the shed on Lot 58, which is adjacent to Lot 111, is only two (2) feet from the shared property line; that the manufactured home on Lot 58 was placed in 1964 and the shed was placed on the lot in 1972; that the setback requirements were not established at that time; that the Applicant offered to remove or relocate the shed but the owners of Lot 58 refused; that offsite storage would create a hardship for the current owners of Lot 58; that the shed is too old to move without damaging or destroying the structure; that the location of the existing manufactured home on Lot 58 does not allow a new shed to be placed in conformity; that, if the variance is granted, the issue will resolve itself in the foreseeable future; that, when the current homeowners on Lot 58 no longer live there, the ground lessor of Pot Nets will remove all structures on Lot 58 – at which time there will no longer be a need for the variance; that the variance will not alter the character of the neighborhood; that the shed has a lean-to which brings it closer to the property line; that there was no setback requirement when the shed was placed; that the home on Lot 111 meets all setback requirements for Lot 111 except for the separation distance between the home and the shed on Lot 58; that a new home could be placed on Lot 58 in compliance with the Sussex County Zoning Code; that a fence for Lot 58 encroaches into Lot 111; that separation distance requirement was overlooked when the

home on Lot 111 was placed; that the home on Lot 111 measures 30 feet by 74 feet and is multi-sectional; that smaller homes have been replaced with larger homes and lots have been combined in Pot Nets in recent years; and that most of the homes in this area have been replaced – with the exception of a few homes like the one on Lot 58.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until April 18, 2016**. 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. 11747 – Comesha Haynes – seeks a special use exception to operate a daycare facility (Sections 115-23C(5) and 115-210A(3)(e) of the Sussex County Zoning Code). The property is located on the west side of Cannon Road approximately 1,468 feet south of Wesley Church Road. 911 Address: 6968 Cannon Road, Bridgeville. Zoning District: AR-1. Tax Map No: 5-31-4.00-26.01.

Ms. Cornwell 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.

Comesha Haynes was sworn in and testified requesting a special use exception to operate a daycare facility; that she currently operates a daycare at this location and has since 2012; that she would like to increase the number of children served at the daycare from six (6) to twelve (12) children; that the ages of the children range from nine (9) months to seven (7) years old; that she has not received any complaints from neighbors; that the hours of operation range from 6:00 a.m. to 10:00 p.m.; that no extra employees are required; that there is adequate parking available; and that the use has not and will not substantially adversely affect the uses of the neighboring and adjacent properties.

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. 11747 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent 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. 11748 – Furniture and More – seeks a special use exception for tents for a special purpose exceeding three (3) days (Section 115-80A of the Sussex County Zoning Code). The property is located on the northeast corner of Coastal Highway and Munchy Branch Road. 911 Address: 19287 Coastal Highway, Lewes. Zoning District: C-1. Tax Map No: 3-34-13.00-325.04.

Ms. Cornwell presented the case and read one (1) letter of opposition into the record and stated that the Office of Planning and Zoning had not received any correspondence in support of the Application.

Deborah Thompson was sworn in and testified requesting a special use exception for tents for a special purpose exceeding three (3) days; that the Applicant was previously approved for this use in 2010; that the tent will be located in the same location and used during the same dates as previously approved; that the tents are used during Memorial Day and Labor Day Weekends; that there will be no change in the use of the tents; that there have been no complaints in the last five (5) years; that the tent will be solely for retail purposes; that there is adequate parking available during the time the tent is used; that there is no additional signage on the tent or the Property; that the location of the tent does not block any other businesses or signage; that the tent will be erected seven (7) days prior to Memorial Day Weekend and Labor Day Weekend and will be removed seven (7) days after the stated weekends; and that the use has not and will not substantially adversely affect the uses of the neighboring and adjacent properties.

Mr. Rutt read into the record the Findings of Fact for Case No. 10739-2010.

Michael Vasilikos was sworn in to testify in opposition to the Application. Craig Aleman, Esquire, represented the opposition and stated that, since the request is the same as the prior approval, his client has no opposition to the Application.

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. 11748 for the requested special use exception based on the record made at the public hearing because the use will not substantially adversely affect the uses of the neighboring and adjacent properties. The approval is conditioned on the tent not exceed 30 feet by 60 feet and be located on the south side of the building as depicted on the survey submitted by the Applicant.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for a tent measuring 30 feet by 60 feet to be placed on the south side of the existing building 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. 11749 – Clean Energy USA – seeks a variance from the front yard setback requirement (Section 115-77.1B(2) of the Sussex County Zoning Code). The property is located on the west side of Coastal Highway approximately 1,142 feet south of Cave Neck Road. 911 Address: 16192 Coastal Highway, Lewes. Zoning District: C-1. Tax Map No: 2-35-23.00-54.06.

Ms. Cornwell presented the case and read one (1) letter of opposition into the record and stated that the Office of Planning and Zoning had not received any correspondence in support of the Application.

John Sertich was sworn in and testified requesting a variance of 54.4 feet from the sixty (60) feet front yard setback requirement for a proposed open carport; that he represents Harvard Business Services which is a business offering LLC formation and tax planning services at the Property; that the Property is located along Route 1; that the proposed open air carport will provide shade for the existing parking spaces closest to Route 1; that some of the employees are parking in the limited shaded spots during the summer while others are not; that the owner of the Property wants to provide this amenity for his employees; that the carport will have solar panels on the top; that, due to the existing building and another business located at the rear of the Property, the proposed location is the only available space for the proposed carport; that the building on the rear of the Property is sublet to another business; that the proposed carport will not alter the character of the neighborhood; that other businesses are located nearby; that the carport would be part of the business complex along Route 1; that the carport will only be used for storage of cars; that the carport would serve no purpose closer to the building, since the building already provides shade on those parking spaces; that the property owner wants the carport so that all of the parking spaces for his employees are shaded and so that the vehicles do not get too hot; that the building would block the solar panels and not allow the panels to be used at full capacity; that the existing building has solar panels on the roof; that more solar panels are needed to offset the cost of electric; that he is unaware of many covered parking spaces in Sussex County; that he is not aware of any covered parking spaces for businesses similar to Harvard Business Services; that the Property is unique because the proposed location of the carport is the only location where the carport can be placed which will also allow for solar panels; that this also prevents the Property from being otherwise developed in strict conformity with the Sussex County Zoning Code; that solar paneling has only recently become affordable and the property owner cannot place the panels elsewhere on the Property; that when the Property was developed solar use was not viable; that the recent need for solar panels creates an exceptional practical difficulty to the Applicant; that there is an antique flea market and a hotel nearby; that the use will not be detrimental to the public welfare since it poses no more threat than existing structures and signs in the area; that the variance represents the minimum variance to afford relief; and that fourteen (14) parking spaces will be covered by the proposed carport.

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 denial of Variance Application No. 11749 for the requested variance based on the record made at the public hearing since the exceptional practical difficulty is being created by the Applicant.

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

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

Case No. 11750 – Ron Abremski & Diane Abremski – seek a variance from the rear yard setback requirement (Sections 115-25C and 115-183C of the Sussex County Zoning Code). The property is located on the east side of Herring View Drive approximately 0.6 miles east of Angola Beach Road. 911 Address: 33613 Herring View Drive, Lewes. Zoning District: AR-1. Tax Map No: 2-34-18.00-746.00.

Ms. Cornwell presented the case and read two (2) letters in support of the Application into the record and stated that the Office of Planning and Zoning had not received any correspondence in opposition to the Application.

Pamela McDonald, of Del-Coast Design and Build, was sworn in and testified requesting a variance of five (5) feet from the twenty (20) feet rear yard setback requirement for a proposed three season room; that Del-Coast Design and Build has been retained by the Applicants to construct a three season room on the Property; that the Property is unique as it is shallow; that the Property cannot be otherwise developed; that Ryan Homes constructed and placed the dwelling; that construction of homes in the development is complete; that Ryan Homes offered limited choices of dwellings to be built on this lot and this dwelling is one of the smaller choices; that all the dwellings offered fall just within the building restriction lines of the Property; that this leaves no alternative location for the proposed three season room; that the exceptional practical difficulty was not created by the Applicants since Ryan Homes developed the lot; that the Applicants opted out of having a porch built at the time of construction but were informed by Ryan Homes that a three season room could be built at a later date; that the variance will not alter the essential character of the neighborhood; that the proposed addition is similar to others in the development; that there is no impact to the public since the property adjacent to the rear of this lot is a wooded and contains a retention pond; that the adjacent neighbors to each side of the Property have no objection to the Application; that the variance requested is the minimum variance to afford relief; that the variance requested represents the least modification possible of the regulation at issue; that there is a fireplace hut to the rear of the house which would limit the usability of a three season room built in compliance with the Code; that the area is plagued with mosquitos and without a three season room the Applicants have not chance to enjoy the outdoors; that other variances have been granted in the neighborhood; that similar variances could be needed for 10%-15% of homes in the neighborhood; and that the Applicants purchased the Property approximately a year and a half ago.

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 **tabled until April 18, 2016**. 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 9:17 p.m.