

MINUTES OF APRIL 6, 2015

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 6, 2015, 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 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 James Sharp – Assistant County Attorney, and staff members Lawrence Lank – Director of Planning and Zoning, Ms. Janelle Cornwell – Planning and Zoning Manager, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Rickard, seconded by Mr. Workman, 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 2, 2015 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes and Finding of Facts for February 16, 2015 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. 11544 – Wolfe Properties, Inc. – west of U.S. Route 13 (Sussex Highway) approximately 1,100 feet south of Route 64 (Dorothy Road) (911 Address: None Available) (Tax Map I.D. 5-32-6.00-82.00)

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

Mr. Lank presented the case and stated that the Office of Planning and Zoning had received a letter from the Applicant requesting to withdraw the Application.

The Board reviewed the letter submitted.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously to **accept the letter of withdrawal from the Applicant.** 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. 11545 – John H. Hartman Revocable Trust – south of Route 54 (Lighthouse Road) and being east of Roosevelt Avenue, approximately 1,080 feet south of Lincoln Drive and being

more specifically Lot 20 Block 7 within Cape Windsor Subdivision (911 Address: 38805 Roosevelt Avenue Ext., Selbyville, DE) (Tax Map I.D. 5-33-20.18-15.00)

An application for variances from the side 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. Mr. Lank also stated for the record that 12 variances had been granted within 200 feet of the Applicant's property.

Doug Tenly was sworn in and testified requesting a variance of 8.3 feet from the ten (10) feet side yard setback requirement for a proposed HVAC unit and a variance of five (5) feet from the ten (10) feet side yard setback requirement for a proposed dwelling; that he lives in Cape Windsor and is representing the Applicant; that the Property is unique in size; that the variance will allow for more parking on the Property; that parking on the street is not permitted in the development; that the parking restrictions create an exceptional practical difficulty; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that the variances are necessary to enable reasonable use of the Property; that the need for the variances has not been created by the Applicant; that the variances will not alter the character of the neighborhood; that the variances will not be detrimental to the public welfare; that the variances are the minimum variances to afford relief; that the house cannot be moved closer to the south property line because space is needed on that side of the house for parking; that the Property is in a flood zone; that the house will be raised; that there will be space for one car to park underneath the deck; that the proposed dwelling is similar to neighboring dwellings; that other homes in the neighborhood have similar placements of HVAC units and dwellings in relation to the lot lines; that the Applicant expects to be able to park 5 cars on the Property; that there will be a 2 car garage under the dwelling; and that 1 additional car can park under the deck and 2 cars can park along the south side of the house.

The Board found that two (2) parties appeared in support of the Application.

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

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be taken under advisement. 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.

At the conclusion of the public hearings, the Chairman referred back to this case and the Board discussed the Application. Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11545 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant due to the size of the Property;
4. The variances will not alter the essential character of the neighborhood;
5. The variances represent the least modifications of the regulation at issue; and
6. 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**. 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. 11547 – Phillip Hruska – east of Road 352 (Windmill Drive) and being north of Pine Grove Road approximately 1,090 feet east of Road 352 (Windmill Drive) (911 Address: 36451 Pine Grove Lane, Ocean View, DE)

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.

Mr. Hruska was sworn in and testified requesting a variance of ten (10) feet from the twenty (20) feet rear yard setback requirement for a proposed detached garage; that the variance will not alter the properties to the rear of his property; that the rear yard is adjacent to a wooded buffer; that there is also a trail and a second buffer until you reach the proposed townhouses being built on the adjacent property to the rear of his lot; and that there will be approximately three-hundred (300) feet between his detached garage and the townhouses. Mr. Hruska submitted a drawing of the community being built to the rear of his property. Mr. Hruska testified that the variance will not affect anyone; that he has a rear garage attached to his dwelling; that the variance is necessary in order to gain access to the attached garage on his existing dwelling; that the attached garage faces the rear of his property; and that he would like more time to prepare his case.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to leave the case open to allow the Applicant more time to prepare. Motion carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case.

Mr. Hruska being already sworn in testified that the Property is a shallow lot which makes it unique; that the variance will leave enough room to access his existing attached garage; that the Property cannot be developed in strict conformity due to the location of the existing dwelling and

attached garage; that the difficulty was not created by the Applicant; that the variance will not alter the character of the neighborhood since there are similar detached garages in the area; that the use will not be detrimental to the public welfare; that the variance requested is the minimum variance to afford relief; that the Property is serviced by sewer; that the house has already been built; that the attached garage is a rear entry garage and placing the proposed garage in compliance with the Zoning Code would limit his ability to access the attached garage; that the dwelling was set back on the lot and is consistent with other dwellings in the development; and that the neighboring development has not yet been constructed.

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. 11547 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The existing dwelling and attached garage create a unique situation;
2. The proposed garage cannot be built in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

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

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

Case No. 11548 – Nita Conaway – northeast of Route 567 B (Craft Road) approximately 2,500 feet southeast of Route 567 A (Handy Road) (911 Address: 3025 Craft Road, Bridgeville, DE) (Tax Map I.D. 1-31-12.00-18.00)

An application for a special use exception to place a manufactured home for a medical hardship.

Mr. Lank presented the case and stated that the Office of Planning and Zoning received twenty-one (21) letters in opposition to the Application and had not received any correspondence in support of the Application. Mr. Lank summarized the physician's statement submitted by the Applicant.

Mr. Sharp advised the Board that his firm has represented the Applicant in the past and that if the Board had questions, the Board should direct them to Vince Robertson, Esquire. Mr. Sharp recused himself and stepped out of the Council Chambers for the public hearing.

Nita Conaway and Pam Crick were sworn in and testified requesting a special use exception to place a manufactured home for a medical hardship basis. Ms. Crick testified that she is the Applicant's daughter; that she is suffering from cancer; that the Applicant is suffering from dementia; that they are taking care of each other; that no one is living in the trailer right now; that she lives on the Property; that the Applicant lives with her sister and no longer lives on the Property; that she may decide to sell the trailer; and that the trailer is parked on the Property.

Ms. Conaway testified that Ms. Crick previously lived in the mobile home on another property; that the manufactured home belongs to her daughter and she gave her permission to store the unit on her Property; that the unit was placed on the lot without any permits; that no one will be living in the manufactured home; that Ms. Crick will live in the house with the manufactured home being parked next to the home; that they are unsure what to do with the unit; that they may sell it or use it for storage on the Property; and that they were advised by a mobile home sales company to apply for a medical hardship.

The Board advised the Applicant that a special use exception for a medical hardship could not be granted, since no one is planning to live in the manufactured home.

Mr. John Tarburton, Esquire, stated that he represented the opposition, and testified that since the Applicant was not able to request the special use exception as submitted the opposition had no further comment.

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

The Board found that twenty-one (21) parties were present in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the special use exception be **denied because the hardship does not exist and the manufactured home is not intended to be lived in, only stored**. 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. 11549 – Timothy Tribbitt – east of Road 365 (Powell Farm Road) approximately 1,600 feet south of Road 353 (Burbage Road) (911 Address: 32585 Powell Farm Road) (Tax Map I.D. 1-34-15.00-25.03)

An application for a variance from the side yard setback requirement for the principal structure and an accessory structure.

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.

Timothy Tribbitt was sworn in and testified requesting a variance of one (1) foot from the fifteen (15) feet side yard setback requirement for an existing manufactured home and a variance of 4.8 feet from the five (5) feet side yard setback requirement for an existing accessory structure; that he purchased the Property and placed the manufactured home in 2004 based on stakes placed by a surveyor; that a Certificate of Compliance was issued for the manufactured home in 2004; that he is trying to sell the Property; and that the accessory structure on the side yard has been removed and a variance is no longer required for it. A copy of a new survey and pictures of the Property were submitted to the Board. Mr. Tribbitt testified that the manufactured home has been on the Property since 2004; that the home has not been moved since it was placed on the Property; that the surveyor's error created the difficulty; that the original survey showed no encroachment; that the angled property line and difference in surveys create a unique situation; that the variance is necessary to enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the variance does not alter the character of the neighborhood; that there are other similar mobile homes in the neighborhood; that the variance will not affect the development of adjacent and neighboring properties; that the use is not detrimental to the public welfare; that the variances are the least modifications of the regulation at issue; that to move the manufactured home into compliance would cost approximately \$20,000; that the variances are the minimum variances to afford relief; and that there have been no complaints from the neighbors.

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 Variance Application No. 11549 for the requested variance of one (1) foot from the side yard setback for the existing dwelling based on the record made at the public hearing and for the following reasons:

1. The difference in surveys and the shape of the property creates a unique situation;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The variance will not be detrimental to the public welfare;
6. The variance will not substantially or permanently impair the uses of the neighboring and adjacent properties; and
7. The variance sought is the minimum variance necessary to afford relief.

The variance from the side yard setback for the shed was denied because the shed had been removed from the Property and was no longer needed.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted in part and denied in part 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. 11550 – Cape Henlopen School District for Beacon Middle School Addition – southeast of Route 24 (John J. Williams Highway) approximately 1,000 feet southwest of Road 284 (Mulberry Knoll Road) (911 Address: 19483 John J. Williams Highway, Lewes, DE) (Tax Map I.D. 3-34-12.00-107.00)

An application for a special use exception to place two (2) temporary manufactured home structures to be used as classrooms.

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. Mr. Lank advised the Board that the Property was previously approved in 2010 for a special use exception for two (2) manufactured-home type structures for a period of five (5) years.

Zachary Crouch was sworn in and testified requesting a special use exception to place two (2) temporary manufactured home structures to be used as classrooms; that the Board previously approved the units to be placed on the Property in August 2010 for a period of five (5) years; that the school plans to relocate the units on the Property to make room for the proposed school additions; that the new construction is scheduled to be completed by February 2016; that the units will be removed from the Property once construction is complete; that the units will be relocated in the interim near the bus parking lot; that the use will not substantially adversely affect the surrounding and neighboring properties; that the Applicant has not received any complaints about the structures; that the structures are needed to provide classroom space; that the structures are currently 70-80 feet from neighboring properties; that the structures will be moved farther away from neighboring properties; that trees on the north side of the Property provide a buffer from neighboring properties; and that the Applicant requests an approval of one (1) year.

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. 11550 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 the adjacent and neighboring properties.

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

Letter to County Council Referencing Signs

The Board discussed the letter proposed to be submitted to the Sussex County Council, as prepared by Mr. Sharp based on suggestions from the Board, relating to sign issues and concerns.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to accept the letter to the Council as written and that all members need to sign the letter. Motion carried 5 – 0.

Rules of Procedure

The Board discussed the Rules and Procedures of the Board of Adjustment.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to accept the revised rules and procedures for implementation as of April 6, 2015. Motion carried 5 – 0.

Meeting Adjourned 8:50 p.m.