

MINUTES OF AUGUST 17, 2015

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 17, 2015, at 7:00 p.m. in the County Council Chambers, 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 Mr. James Sharp – 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. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Findings of Fact for July 6, 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. 11620 – Keith Bryan – seek variances from the side yard and rear yard setback requirements (Section 115-42B and 115-185F of the Sussex County Zoning Ordinance). The property is located on the northwest side of Swann Drive within the Swann Keys subdivision. 911 Address: 37829 Swann Drive, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.16-514.01.

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.

Bryan Keith¹ was sworn in and testified requesting a variance of 3.8 feet from the ten (10) feet side yard setback requirement, a variance of three (3) feet from the ten (10) feet rear yard setback requirement for an existing manufactured home, a variance of 1.9 feet from the five (5) feet side yard setback requirement, and a variance of 1.4 feet from the five (5) feet rear yard setback requirement for an existing shed; that the Property is located in Swann Keys; that a 1979 manufactured home was located on the lot; that he purchased his neighbor's manufactured home, which was model unit nine (9) years newer than his existing unit; that he tore down the existing unit and replaced it with the newer unit; that he placed the unit in the same location as the previous unit; that he had a footer plan drawn up for the placement of the newer unit; that the previous unit did not have footers; that the footer and tie down passed inspections by Sussex County officials; that the unit has been located on the Property for approximately a year; that he recently sold the Property and a survey completed for settlement showed the encroachments; that he was not aware

¹ The Applicant was mistakenly referred to as "Keith Bryan" at the beginning of the hearing.

of the encroachments; that the setback requirements were different when the previous unit was placed; that the shed has been on the lot for approximately thirty (30) years; that the new owner of the Property plans to remove the existing manufactured home and build a dwelling; that there are tenants currently living in the unit; that there have been no complaints from the neighbors; that the unit was placed in July 2013 and used the existing electrical and septic hook ups; that the unit is the same size as the prior unit; that the existing bulkhead juts in towards to the manufactured home; and that the Property is not rectangular shaped.

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. 11620 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The forty (40) feet width and the location of the existing bulkhead make the Property unique in size and shape;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical 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 that the variances be **granted for the reasons stated**. Motion carried 4 – 1.

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

Case No. 11621 – Edward Olson – seeks a special use exception for a garage / studio apartment (Section 115-23C(6) of the Sussex County Zoning Ordinances). The property is located on the west side of Hopkins Road across from Park Pavilion Way. 911 Address: 20396 Hopkins Road, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-5.00-46.03.

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.

Edward Olson was sworn in and testified requesting a special use exception for a garage / studio apartment; that he purchased the Property in 2011; that he is currently building a dwelling on the Property; that he removed an existing dwelling from the Property because it was beyond repair; that the existing garage was built in 1995 and is in good shape; that an existing detached garage will be converted into the studio apartment; that the studio apartment will be for his mother who suffers from dementia; that he may also live in the apartment until the dwelling is complete; that the existing garage measures 24 feet by 30 feet; that he plans to add a 10 feet by 12 feet

addition to the garage; that he is aware the apartment cannot exceed 800 square feet; that the neighbors have no objection to the Application; that he has cleaned up the Property which was poorly maintained at one point; that the use will not substantially adversely affect the uses of the adjacent and neighboring properties; that the existing septic system can handle both structures; that the existing garage and addition will meet setback requirements; that there is a designated parking space for the studio apartment; and that the surrounding area is residential. Mr. Olson submitted a floor plan and a site plan for the Board to review.

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. 11621 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. Rickard, and carried unanimously that the special use exception be **granted for a studio apartment not to exceed eight-hundred (800) square feet in size and 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. 11622 – Vicki Divittorio – seeks a special use exception for a garage / studio apartment (Section 115-23C(6) of the Sussex County Zoning Ordinance). The property is located on the northeast side of Red Mill Drive and Minos Conaway Road. 911 Address: 31509 Red Mill Drive, Lewes. Zoning District: AR-1. Tax Map No.: 3-34-1.00-51.00.

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.

Vicki Divittorio was sworn in and testified requesting a special use exception for a garage/studio apartment; that she plans to place a cottage consisting of 657 square feet on her property; that the cottage like structure will be for her handicapped grandmother; that the grandmother will receive home health care; that the Property is one (1) acre in size and fenced in; that the Property is located near the edge of the community; that the structure will be placed near the existing dwelling; that the neighbors have no objection to the Application; and that the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Robert DeLacy was sworn in and testified in opposition to the Application; that there are deed restrictions prohibiting this use; and that he sympathizes with the Applicant but he is concerned for the future use of the structures.

The Board explained to Mr. DeLacy that the Board is unable to enforce private deed restrictions and / or Homeowners Association covenants.

The Board found that three (3) 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 Exception Application No. 11622 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. Rickard, and carried unanimously that the special use exception be **granted for a garage / studio apartment not to exceed 800 square feet in size and 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. 11623 – Pamela McMillan – seeks a variance from the front yard setback requirement (Section 115-42B of the Sussex County Zoning Ordinance). The property is located on the north side of Fir Drive approximately 546 feet west of Myrtle Drive. 911 Address: 36351 Fir Drive, Rehoboth Beach. Zoning District: GR. Tax Map No.: 3-34-13.00-806.00.

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.

Pamela McMillan and Jamie Donaway, of Donaway Homes, Inc. were sworn in and testified requesting a variance of 1.5 feet from the thirty (30) feet front yard setback requirement for an existing bay window. Mr. Donaway testified that the proposed location for the dwelling was staked out and was to be thirty-three (33) feet from the front property line; that they are unclear who made the error or how it occurred; that the encroachment was not discovered until after the dwelling was set; that the bay window has its own foundation and is not cantilevered which is why the dwelling was staked thirty-three (33) feet from the road; that he contacted an engineer about reconfiguring the bay window but the engineer did not recommend it; that the dwelling is a modular home; that there are existing trees along the side yard property lines; that the window does not block any water views; that the Property is located on a hill and slopes significantly in the rear yard; that the slope of the rear yard prevented the dwelling from being placed further back on the property; that the foundation at the rear of the dwelling has ten (10) courses of block; that the construction of the dwelling is complete; that the exceptional practical difficulty was not created by the Applicant; that the variance will not alter the essential character of the neighborhood; that the dwelling replaces an older single-wide mobile home and is an improvement

to the neighborhood; that the variance is the minimum variance to afford relief; that the rear of dwelling is close to the steep slope of the hill; that the Property has a small building envelope due to its topography; and that the topography of the Property is very unique.

Ms. McMillan testified that, during construction, an underground pipe was discovered and they were permitted to re-route the piping; and that the other lots in the neighborhood are flatter.

Mr. Donaway 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. 11623 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its unique slope and topography;
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; 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 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. 11624 – Estate of Virginia Ray – seek variances from the side yard and rear yard setback requirements (Section 115-25C of the Sussex County Zoning Ordinance). The property is located on the northeast corner of Dirickson Creek Road and Beth Marie Lane. 911 Address: 37469 Dirickson Creek Road, Frankford. Zoning District: AR-1. Tax Map No.: 1-34-21.00-18.14.

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.

Jane Hiegel was sworn in and testified requesting a variance of 1.1 feet from the fifteen (15) feet side yard setback requirement, a variance of 4.5 feet from the twenty (20) feet rear yard setback requirement, and a variance of 3.1 feet from the twenty (20) feet rear yard setback requirement for an existing dwelling; that she is the executrix of her sister's estate; that, per her sister's will, the Property must be sold; that a survey completed for the sale showed the existing encroachments; that the existing dwelling was moved to the Property in 1985; that her sister had an addition built in June 2002; that a Certificate of Compliance was issued for the addition in

March 2003; that the rear of the Property is adjacent to a lagoon; that an exceptional practical difficulty exists; that the Property cannot otherwise be developed; that the exceptional practical difficulty was not created by the Applicant; that the variances do not alter the character of the neighborhood; that the variances are the minimum needed to afford relief; that the septic system is in the rear yard; and that the Estate plans to combine the Property with a neighboring parcel.

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. 11625 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique in shape;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood;
5. The variances will not substantially impair the uses of neighboring properties;
6. The use is not detrimental to the public welfare; and
7. 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. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11625 – Nancy Custer McKenzie – seeks a variance from the side yard setback requirement (Section 115-34B of the Sussex County Zoning Ordinance). The property is located on the southeast side of Oyster Catcher Drive approximately 142 feet south of Dowitcher Lane. 911 Address: 38805 Oyster Catcher Drive, Ocean View. Zoning District: MR. Tax Map No.: 1-34-8.00-955.00.

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.

Nancy McKenzie and Jerry Schaeffer were sworn in and testified requesting a variance of 1.8 feet from the ten (10) feet side yard setback requirement for a proposed screen porch. Mr. Schaeffer testified that he builds the majority of decks and porches in the development; that the rear of the Property is adjacent to an existing pond; that the lots surrounding the pond are oddly shaped; that the proposed screen porch will measure 16 feet by 18 feet; that the Property narrows towards the rear; that, during construction of the dwelling, the location shifted and is not centered on the Property; that the Applicant told NV Homes she wanted to add a porch on the rear of the

dwelling; that NV Homes assured her there would be room for the porch; that during construction NV Homes admitted the dwelling was shifted on the lot thereby creating the need for the variance; that the home is not centered on the lot; that the proposed porch roof must match the roof line of the existing dwelling per the Homeowners Association regulations; that the proposed porch cannot be built on the opposite side of the dwelling because there is no outside access and the Applicant's bedroom is located there; that all the porches in the development are built on the same side of the dwelling and are similar in size to the proposed porch; that the Applicant will also construct a deck off of the morning room and the deck will be accessible from the porch; that the proposed size of the porch will provide better ventilation as a smaller porch will not provide adequate ventilation; that the neighbors have no objection to the Application; that the location of the dwelling and narrowing of the lot create a uniqueness to the Property; that the variance will enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the porch will not alter the character of the neighborhood; and that the variance requested is the minimum variance to afford relief. Mr. Schaeffer submitted pictures for the Board to review.

Ms. McKenzie testified that she was told by NV Homes that she would be able to fit a porch of the proposed size on the lot with the dwelling; and that her neighbors support the variance 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 Variance Application No. 11625 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it is narrow and the dwelling is not centered thereon;
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; 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. 11626 – Schell Brothers LLC – seek variances from the front yard and rear yard setback requirements (Section 115-25C of the Sussex County Zoning Ordinance). The property is located on the south side of Jennifer Way approximately 315 feet south of Cindy Way. 911 Address: 28660 Jennifer Way, Harbeson. Zoning District: AR-1. Tax Map No.: 2-34-12.00-321.00.

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.

Mark Fitzgerald was sworn in and testified requesting a variance of 5.7 feet from the thirty (30) feet front yard setback requirement and a variance of 9.5 feet from the twenty (20) feet rear yard setback requirement for an existing dwelling; that the requested variances were approved by the Board on March 19, 2013; that the lot is in the final phase of the community; that the Applicant does not offer a dwelling that would fit on the lot; that the prior application was for the smallest dwelling offered by the Applicant which would be placed on the lot; that the approved variances expired before the Property could be sold; that it was discovered at settlement the variance approvals had expired; that the lot is irregular in shape; that there are no changes from the original request; that the lot was originally designed for the on-site sewer treatment plant; that the last phase of the community was built once County sewer became available; and that the Applicant was not involved in the design of the development.

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. 11626 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The irregular shaped lot makes the Property unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical 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 that the variances be **granted for the reasons stated**. Motion carried 4 – 1.

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

Case No. 11627 – Mountaire – seeks a special use exception to place a temporary manufactured home type structure as an office (Section 115-114A of the Sussex County Zoning Ordinance). The property is located on the northeast corner of John J. Williams Highway (Route 24) and Maryland Camp Road. 911 Address: None Available. Zoning District: HI-1. Tax Map No.: 2-34-32.00-106.00.

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

Greg Esham was sworn in and testified requesting a special use exception to place a temporary manufactured home type structure as an office; that the proposed unit will be used by the Applicant's accounting department; that the prior building used by the department was in poor shape and had been demolished; that the employees were moved to a leased space; that the staff complained of moldy conditions in the leased space; that numerous attempts were made to clear up the issue; that the proposed unit will be used for the twenty-four (24) employees until the Applicant completes a new office complex; that the new office complex will consist of approximately 45,000 square feet in size; that the proposed unit will measure 48 feet by 66 feet; that the unit will be located behind the Applicant's existing complex; that the unit will use the existing drive and parking area; that the unit will be connected to the existing septic system; that the State has approved of the plans for the water and septic servicing the unit; that the proposed office complex is projected to be completed in September 2016 and will be used by all employees; that the unit will be removed once the new office complex is complete; that the Applicant is requesting approval for two (2) years; and that the use will not substantially adversely affect the uses of neighboring and adjacent properties. Mr. Esham submitted schematics and drawings of the site.

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. 11627 for the requested special use exception because it does not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Rickard, 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.

OLD BUSINESS

Case No. 11612 – 19366 Coastal Highway, LLC – seek a special use exception to replace an existing billboard and variances from the side yard setback, the separation from another billboard, height, the distance from public lands and maximum square footage for a billboard requirements (Section 115-159.5B(2), 115-159.5B(3), 115-1159.5C, and 115-210A(3) of the Sussex County Zoning Ordinance). The property is located on the west side of Coastal Hwy. (Route 1) between Miller Road and Airport Road. 911 Address: 19366 Coastal Highway, Rehoboth Beach. Zoning District: C-1. Tax Map No.: 3-34-13.00-325.29.

The Board discussed this case, which has been tabled since August 3, 2015.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until September 14, 2015**. 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. 11604 – Mark Yoder & Polly Yoder – seek a variance to place a multisectional manufactured home that is more than five (5) years old (Section 115-20A(1)(h) of the Sussex County Zoning Ordinance). The property is located on the north side of Hickman Road approximately 453 feet east of Farm Lane. 911 Address: None Available. Zoning District: AR-1. Tax Map No.: 5-30-3.00-2.02

The Applicant submitted a letter to withdraw this Application on August 5, 2015.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously to **accept the letter of withdraw for Case No. 11604** – Mark and Polly Yoder. 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.

Meeting Adjourned 9:10 p.m.