

MINUTES OF AUGUST 5, 2013

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 5, 2013, 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 Mr. James Sharp – Assistant County Attorney, and staff members – Mr. Lawrence Lank – Director of Planning and Zoning, and Ms. Melissa Thibodeau, Zoning Inspector.

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. Mills, seconded by Mr. Workman, and carried unanimously to approve the Minutes for July 1, 2013 as circulated. Motion carried 5 - 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Findings of Fact for July 1, 2013 as circulated. Motion carried 5 - 0.

PUBLIC HEARINGS

Mr. Sharp announced the process for holding public hearings.

Case No. 11239 – Joseph Morea & Mary Ellen Morea – south of Cedar Road west of KeenWik Road, being Lot 12 Subdivision 1 within Keen-Wik Development (Tax Map I.D. 5-33-20.13-35.00)

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

Ms. Thibodeau presented the case. Joseph Morea and Mary Ellen Morea were sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board on behalf of the Applicants and stated that the Applicants are requesting a variance of four (4) feet from the thirty (30) feet front yard setback requirement and a variance of five (5) feet from the ten (10) feet side yard setback requirement on both sides of the Property. Mr. Fuqua submitted exhibits for the Board to review and stated that the Property is fifty (50) feet wide and one hundred (100) feet deep; that the Property is vacant and abuts a lagoon in the rear yard; that the Applicants intend to construct a dwelling which will be forty two (42) feet wide by fifty two (52) feet deep; that the Applicants need a variance on both sides of the Property; that the development is unusual because the private deed restrictions for the Keen-Wik Development differ from the Sussex County Zoning requirements; that the Keen-Wik restrictions require setbacks of twenty five (25)

feet for the front yard, twenty (20) feet for the rear yard, and five (5) feet for the side yard; that the home will meet all Keen-Wik setback requirements; that several variances have been granted in Keen-Wik; that the building plans have been approved by the Keen-Wik Building Committee; that the most lots in Keen-Wik are larger than fifty (50) feet wide; that the Keen-Wik rear yard building restrictions create a difficulty in building a house in compliance with both the restrictions and the Sussex County Zoning Code; that the variances will not alter the essential character of the area and will be similar to several other variances in the immediate area; that the variances requested are the least modifications necessary to afford relief; that most of the homes in Keen-Wik comply with the twenty five (25) feet front yard setback; and that the deed restrictions for Keen-Wik were established prior the Sussex County having zoning jurisdiction over the Property.

The exhibits presented by Mr. Fuqua include a site plan a comparison of the differences in the setback requirements from the Zoning Ordinance and the deed restrictions for Keen-Wik, a copy of portions of the deed restrictions for Keen-Wik, a copy of the Minutes of the Board of Adjustment for Case No. 9798, a copy of a letter from Edward J. Brady, Chairman Keen-Wik Building Committee, and a copy of a portion of the Sussex County Tax Map showing lots that were granted variances in the immediate area to this lot.

Joseph Morea, under oath, confirmed the statements of Mr. Fuqua as being true and correct.

Ms. Thibodeau stated that the Office of Planning and Zoning received one (1) letter in support of 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 Variance Application No. 11239 for Joseph and Mary Ellen Morea for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is fifty (50) feet wide and one hundred (100) feet deep;
2. The variances requested represent the least modification possible of the regulation at issue;
3. The Property is unique due to the small lot size;
4. The variances are necessary to enable reasonable use of the Property;
5. The front of the home will line up with the other homes along this street;
6. The difficulty was not created by the Applicants;
7. The variances sought will not alter the essential character of the neighborhood;
8. 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. Workman – yea; Mr. Rickard – yea; Mr. Hudson – yea; Mr. Mills – yea; and Mr. Callaway – yea.

Case No. 11240 – Lisa Lawson – southeast of Gills Neck Road (Road 267) east of Black Marlin Circle, being Lot 36 within Wolfe Pointe Development (Tax Map I.D. 3-35-9.00-144.00).

An application for variance from the side yard setback requirement.

Ms. Thibodeau presented the case. Amy Warrick was sworn in to testify about the Application. Jon Horner, Esquire, presented the case to the Board on behalf of the Applicant. Mr. Horner stated that the Applicant is requesting a variance of 0.6 feet from the fifteen (15) feet side yard setback requirement; that the home was built in 2007; that Certificates of Compliance and Occupancy were issued by Sussex County; that the Applicant purchased the home in 2007; that the Applicant's settlement attorney and lender advised her that she did not need a survey at the time she purchased the Property because the Certificate of Compliance was issued; that she has title insurance; that she recently found out that the home violates the side yard setback by 0.6 feet; that the footprint of the dwelling has not changed since it was purchased in 2007; that the permanent physical structure of the dwelling cannot be moved without exceptional practical difficulty; that the Property cannot strictly conform with the Zoning Ordinance without a variance; that the adjacent homeowner is in support of the Application; that the variance is necessary to enable reasonable use of the Property; that the home has been a part of the community since 2007 and will not alter the essential character of the neighborhood; and that the variance is the least modification possible to afford relief.

Ms. Warrick, under oath, confirmed the statements of Mr. Horner. Ms. Warrick testified that the dwelling was built as a spec home and that the builder has since gone out of business.

Mr. Horner stated that he believed the problem arose from a surveying error.

The Board found that there were no parties present in support of or in opposition to the Application.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11240 for Lisa Lawson for the requested variance based on the record made at the public hearing and for the following reasons:

1. The variance sought represents the least possible modification of the regulation at issue;
2. The need for a variance appears to be the result of a surveying error;
3. There is a uniqueness to the Property since the Applicant purchased the Property not knowing that a variance was necessary to conform to the zoning regulations;
4. The variance sought are necessary to enable reasonable use of the Property;
5. The difficulty was not created by the Applicant;
6. The variance will not alter the essential character of the neighborhood: and
7. The requested variance is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the variance 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. 11241 – Anthony Moag & Elizabeth Moag – east of Route One (Coastal Highway) north of Collins Road, being Lot 1-2 A Block 3 with Sussex Shores Development (Tax Map I.D. 1-34-13.11-25.00)

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

Withdrawn 07/09/2013

Case No. 11242 – Richard Reinhart – north of Road 235A (Williams Farm Road) north of Crescent Court, being Lot 14 within Starlight Meadows Development (Tax Map I.D. 2-35-7.00-217.00)

An application for variance from the side yard setback requirement.

Mr. Sharp advised the Board that his office may have performed work for the Applicant in the past and asked that the Board direct any questions to Vince Robertson, Esquire, if they believed that a conflict existed.

Ms. Thibodeau presented the case. Richard Reinhart, Ann Downes, and Steve Welsh were sworn in to testify about the Application. Mr. Reinhart testified that he is requesting a variance of 0.3 feet from the fifteen (15) feet side yard setback requirement for the corner of an attached garage; that he is not aware of any opposition to this Application; that he believes the issue is the result of a surveying error or a builder error; that Ann Downes purchased the Property; that the variance will not affect the character of the neighborhood; that the variance is necessary to afford relief; that he is requesting the minimum variance to necessary afford relief; that a cul-de-sac is located adjacent to the front of the Property which makes the Property unique; that the front yard is narrower than the rear yard; that the encroaching corner of the

garage is closer to the front yard than the rear yard; that Ms. Downes did not build the garage; that the garage has been in place since 2008; and that no neighbors have complained about the location of the garage.

The Board found that there were two (2) parties present in support of the Application.

The Board found that there were no parties present in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11242 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The lot is unique since it is located on a cul-de-sac and the Property is angled;
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 sought will not alter the essential character of the neighborhood; and
5. The variance is the minimum variance necessary to afford relief.

Motion by Mr. Mills, 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. Workman – yea; Mr. Rickard – yea; Mr. Hudson – yea; Mr. Mills – yea; and Mr. Callaway – yea.

Case No. 11243 – Scott Illian & Karen Illian– west of Breasure Road north of Louise Street, being Lot 10 within Langrell Development (Tax Map I.D. 1-33-6.00-241.00)

An application for a special use exception to operate a daycare facility.

Ms. Thibodeau presented the case. Scott Illian and Karen Illian were sworn in to testify about their Application. Mrs. Illian testified that she currently operates a family day care for six (6) children and would like to increase the number of children served to nine (9); that she is the main operator of the day care; that a couple of day care facilities exist in the general area; that she feels that she provides a valuable resource since she has regularly scheduled educational curriculum for the children; that the day care is open Monday through Friday from 7:15 a.m. to 5:30 p.m.; that the Applicants have a circular driveway for ease of dropping off and picking up the children; that she cares for children ages one (1) through twelve (12); that she has been operating the family day care for two (2) years; that the lot is surrounded by trees; that the Property has an open, unfenced playground area in the rear yard; and that there are no neighbors to the side or rear of the Property.

Mrs. Illian provided copies of a letter and six (6) cards from area residents in support of the Application.

The Board found that there were no parties present 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. 11243 for the requested special use exception based on the record made at the public hearing and since the Applicants substantiated that there should be no substantial adverse effect on neighboring and adjacent properties by the expansion of the number of children in the daycare facility.

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. 11244 – Scott Boatman – north of Route 26 approximately 1.04 miles east of Road 382 (Tax Map I.D. 2-33-11.00-95.00)

An application for special use exception to retain a manufactured home type structure as a classroom.

Ms. Thibodeau presented the case. Scott Boatman was sworn in to testify about this Application. Mr. Boatman testified that the manufactured home classroom has been on the site for over five (5) years; that he is requesting a renewal to allow the classroom to remain on the site for an additional five (5) years; that the classroom is used for bible study; that the typical hours of the bible study classes are on Sunday from 7:00 a.m. to 5:00 p.m., Wednesday from 12:00 p.m. to 3:00 p.m., and occasionally on Tuesday; that there should be no negative impact on the neighborhood; that he is not aware of any complaints or opposition to this Application; that the request is the same as the original Application for a special use exception that was approved in December 2004; that he was unaware that the use was limited to a five (5) year period; that he purchased the Property three (3) years ago; that, if approved, he will not let this approval expire; that there is adequate area for parking on the site; that there is no change in the use intended; that the site can accommodate parking for ten (10) vehicles; that the front access has been improved with stairs with handrails; that he has cleaned up the site since he purchased it; and that the unit is designed as a classroom and not for residential occupancy.

The Board found that there were no parties present in support of or in opposition to this Application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception No. 11244 for the requested special use exception for a period of five (5) years based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties; since the structure has been used since 2004 without complaint; and since there was no opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for the reasons stated for a period of five (5) years**. 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. 11245 – 36 Builders d/b/a Insight Homes – south of Piney Neck Road north of Anchor Watch Loop, being Lot 23, within The Marina's at Pepper Creek Development (Tax Map I.D. 2-33-7.00-230.00)

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

Ms. Thibodeau presented the case. Mark Davidson of Pennoni Associates, Inc. was sworn in to testify about the Application requesting a variance of 0.2 feet from the thirty (30) feet front yard setback requirement, rather than the originally requested variance of 0.4 feet for the front left corner of the dwelling; that the Property is located off of Piney Neck Road in a development; that the Property is identified as Lot 23 within the development; that a house built by the Applicant is located on the adjacent Lot 22; that adjacent Lot 24 is vacant; that the rear portion of the Property abuts to open space; that the Property was re-surveyed and it was discovered that a variance of approximately three (3) inches was needed to bring the Property into compliance with the Sussex County Zoning Code; that the site is zoned AR-1 Agricultural Residential within an Environmentally Sensitive Development District Overlay Zone, which allows for a smaller lot size when subdivided as a cluster subdivision; that the lot contains approximately 7,800 square feet; that the lot size restricts the lot to a small building foot print to build a modest size home with a two car garage making the lot unique and creating a practical difficulty; that the home has been completely constructed; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code without a variance since the home has been constructed and the encroachment was not discovered until the final location survey was completed; that the variance of 0.2 feet is necessary to keep from having to demolish what is essentially three (3) inches of the front of the garage to meet the required setback; that the Applicant was the general contractor and therefore hires subcontractors to perform all the tasks to construct the home; that Pennoni Associates was hired to stake the home; that a mason was hired to dig the footer, pour the footer and build the foundation; that after the footer was dug and

poured, the foundation was shifted three (3) inches (0.2 feet) during the course of laying the block foundation; that the Applicant was not aware of the error caused by the shift in the foundation; that the variance of 0.2 feet will not alter the essential character of the neighborhood because the encroachment is not noticeable unless you view it on the survey/site plan and even then it has to be dimensioned to notice the difference; that the variation of 0.2 feet is not noticeable in the field; that the variance of 0.2 feet is the least modification to afford relief; that the home has been sold dependent on the variance; that, because of this issue, Pennoni Associates, Inc. has suggested to the Applicants that they will recheck the footers after poured and to mark the footers to show the correct setback so that this type of error does not occur again; and that fourteen (14) homes have been developed to date, of which six (6) have been sold, with no variances being necessary.

Mr. Davidson submitted exhibits which included responses to the variance standards relating to uniqueness, the possibility of development, the effect on surroundings, and the effect of variances; a survey depicting the proposed home location and setbacks; an as-built survey; a foundation drawing prepared for Insight Homes; and a building restriction line exhibit for this lot and the lots on either side.

The Board found that there were two (2) parties in attendance in support of the Application and that there were no parties present in opposition.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11245 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The requested variance represents the least possible modification of the regulation at issue;
2. The Property is unique because the lot is only 75 feet wide;
3. The variance is necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood; and
6. The requested variance is the minimum variance necessary to afford relief.

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.

Case No. 11246 – Harry B. Boley – east of Road 341B (Pepper Creek Road) 600 feet south of North Dogwood Drive west of Long Leaf Road, being Lot 196 within Dogwood Acres Development (Tax Map I.D. 1-34-6.00-225.00)

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

Ms. Thibodeau presented the case. Donald Norman, Sharon Norman, and Harry Boley were sworn in to testify about this Application requesting a variance of fifteen (15) feet from the thirty (30) feet front yard setback requirement for a garage, and a variance of 7.4 feet from the twenty (20) feet rear yard setback for a dwelling. Mr. Boley testified that he intends to place a garage on the Property; that the garage cannot be placed on the side yard next to Lot 197 due to the location of the septic system; that the only other place to locate the garage is in the front yard; that turning the garage will still not comply with the required setback and will block the view of the front yard from the entry porch on the dwelling because the garage is wider than the dwelling; that he is trying to keep some separation between the dwelling and the garage for ventilation; that the movable shed in the rear yard is being relocated to meet the required setbacks; that the lots in the development are small; that a unique situation exists due to the location of the dwelling and septic system; and that the garage to the rear is used for boat and equipment storage.

Mr. Norman testified that the proposed building will improve the neighborhood and will enhance the Property; and that the space is needed between the house and the garage to prevent a fire hazard.

Mr. Boley testified that he purchased the Property with the dwelling in its current location; that the variance will not alter the essential character of the neighborhood; that the proposed setback is similar to the setback on the adjacent lot; and that he did not propose to add on to the existing garage since an addition would increase the square footage of the garage to exceed 600 square feet which would also require a variance.

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

The Board found that there were three (3) parties present in support of this Application.

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

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

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11246 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The lot is unique in that it is only eighty (80) feet wide and one hundred twenty five (125) feet deep;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty has not been created by the Applicant;
4. The variances will not alter the character of the neighborhood;
5. The dwelling will line up with other homes in the neighborhood; and
6. The requested variances are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 1.

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

Case No. 11247 – Sara Absher – south of Route 31 (Dublin Hill Road) west of Road 563 (Ray Road) (Tax Map I.D. 1-31-9.00-20.00)

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

Ms. Thibodeau presented the case. Jon Absher and Sara Absher were sworn in and testified regarding the Application. Mrs. Absher testified that they are requesting a special use exception to permit a 1998 manufactured home, measuring twenty eight (28) feet by seventy (70) feet for placement on this lot; and that there will be no change in the character of the neighborhood since the area is improved by similar modular and manufactured homes.

Mr. Absher testified that the Applicant lives in a mobile home park and now plans on improving the Property; that the Property is fourteen (14) acres; and that he plans to move his mother to the Property so that he can look after her.

Mrs. Absher testified that the Property has been abandoned for over ten (10) years; that no other homes currently exist on the Property; that they are providing photographs of modular homes and manufactured homes, singlewide and doublewide, in the area so that the Board can see that they are proposing a similar unit to those that already exists in the area; and that he had no photos of the proposed manufactured house.

The Board found that Mr. Absher submitted eighteen (18) photographs for review.

The Board found that there were no parties present in support of or in opposition to this Application.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that this case be tabled and to leave the record open until the next regular meeting so that the Applicant can provide photographs of the proposed unit. 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 at 8:30 p.m.