

## MINUTES OF DECEMBER 16, 2013

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 16, 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 James Sharp – Assistant County Attorney, and staff members Mr. Lawrence Lank – Director of Planning and Zoning, and Mrs. Jennifer Norwood – Recording Secretary.

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

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

Mr. Sharp stated that Case No. 11296 – AT&T was originally tabled until the December 16, 2013 meeting but, due to the fact that the Board was hearing cases on consecutive weeks, the Board was unable to meet the seven (7) day notice requirement. As such, the case would not be discussed at this meeting but will be added to the Agenda for the January 6, 2014 meeting.

### PUBLIC HEARINGS

**Case No. 11299 – John Duffy & Tom Buescher** – south side of US Route 9 north side of Beaverdam Road 0.50 mile west of Delaware Route One at Five Points. (Tax Map I.D. 3-34-5.00-176.00 & 177.00)

An application for a variance from the side yard requirement from an Environmentally Sensitive Development District Overlay Zone Subdivision (Deep Valley Farm).

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

Mark Davidson and John Duffy were sworn in to testify about the Application. Dennis Schrader, Esquire, presented the case to the Board on behalf of the Applicants and stated that the Applicants seek a side yard variance so that each of the 192 lots in the subdivision on the Property has an eight (8) feet side yard setback; that Mr. Duffy is an owner of Lewes Crossing Capital Partners, LLC, which owns the Property; that the Property is located on Route 9 across from the Nassau Valley Vineyard project; that the project consists of eighty four (84) acres and 192 lots; that the Applicants are requesting a variance of two (2) feet from the ten (10) feet side yard setback requirement on both sides for all 192 lots in the subdivision; that there are lots that will only be sixty six (66) feet wide; that the reduction of the side yard setback requirement will allow for a fifty (50) feet wide building envelope; that a previous variance application was withdrawn; and that the name of the subdivision will soon be changed to Lewes Crossing.

Mark Davidson testified that he represents Pennoni Associates, Inc., which designed the subdivision for the previous owner; that the project started in 2007; that in May 2012 the Planning & Zoning Commission granted final approval of the subdivision; that the subdivision is located in an Environmentally Sensitive Overlay Zone; that the subdivision was recorded in June 2012; that the Applicants purchased the Property in May 2013; that the Applicants seek an eight (8) feet side yard setback throughout the subdivision; that the lots are a minimum of 7,500 square feet in size and have a minimum sixty (60) feet lot width; that there are ninety two (92) lots that are less than seventy (70) feet wide; that the variance will provide a fifty (50) feet wide building envelope needed for the style homes Ryan Homes plans to build in the subdivision; that the variance will provide uniformity throughout the subdivision; that the subdivision was designed not to exceed the density regulations and to preserve existing wetlands and wooded areas; that all the rear yards in the subdivision back up to open space; that thirty two (32) acres of the subdivision has been dedicated to open space which is much greater than the minimum required by the Sussex County Code; that landscaping buffers will surround the entire subdivision; that there will be no change to the drainage; that the subdivision will use central water; that the State Fire Marshal supports the proposed side yard setback requirement of eight (8) feet since there will be fire hydrants throughout the subdivision; that the subdivision is currently under construction but no lots have been sold and no building permits have been obtained; that all lots will benefit by having the same side yard setback requirement; and that the variance will not alter the character of the neighborhood.

John Duffy, under oath, confirmed statements made by Mr. Schrader and Mr. Davidson.

Dennis Schrader summarized by stating the variance request protects the open space areas planned for this subdivision and that fifty (50) foot wide dwellings are standard size dwellings.

Mark Davidson also testified that the subdivision has no entrances on Route 9 and that Beaverdam Road is being widened.

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. 11299 for the requested variance for all 192 lots so that each lot has an eight (8) feet side yard setback based on the record made at the public hearing and for the following reasons:

1. The lots are unique due to their small lot size;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants as the Property is an environmentally sensitive area;
4. The variance will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance necessary to afford relief; and
6. The variance requested is the least modification necessary of the regulation at issue.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted 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. 11300 – Stephen N. Pinkstone** – south of Long Neck Road and being northeast of Brockton Pass and south of North Gloucester Circle within Fairfield at Long Neck multi-family project and being Unit B12-4. (Tax Map I.D. 2-34-30.00-8.00)

An application for a variance from separation requirement between buildings in a multi-family project.

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

Stephen Pinkstone was sworn in and testified requesting a variance of 7.4 feet from the forty (40) feet separation requirement between buildings in a multi-family project for a proposed second floor deck and enclosed porch. Mr. Pinkstone testified that he purchased the unit in July 2010; that he obtained a building permit for the deck and porch and then realized the addition would not meet the separation requirement; that the original owner had the option to build a deck and porch; that the separation requirement creates a uniqueness to the Property; that the deck is a reasonable use of the Property; that there are other decks in the community; that Anderson Homes developed the community; that the units are staggered within the community which creates a unique situation; that his unit is setback two (2) feet further from the road than other units in his building; that the variance will not affect the public welfare; that the difficulty was not created by him; that there have been similar additions and variances granted in the community; that the use will not be detrimental to the public welfare; that the deck will measure ten (10) feet by twenty (20) feet with half of that area enclosed; that there is an existing patio that will remain; that he has the Homeowners Association approval; that the addition will not block any views; and that the area surrounding the unit is common land and owned by the Homeowners Association. Mr. Pinkstone submitted pictures and a copy of the Homeowners Association approval to the Board.

Mr. Lank confirmed to the Board that the variance being sought is actually a variance of 7.4 feet rather than 9.1 feet as stated on the Application. Mr. Lank also advised that three (3) other units in the community have received variances.

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. 11300 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. Other homes in the neighborhood have similar types of decks;
3. The variance is necessary to enable reasonable use to the Property;
4. The difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood; and
6. The variance sought is the minimum variance necessary to afford relief.

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

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

**Case No. 11301 – Michael Vallerie & Joann Vallerie** – north of Route 54, and being northwest of Blue Teal Road 1,160 feet north of Swann Drive and being Lot 29 Block C of Swann Keys Subdivision. (Tax Map I.D. 5-33-12.16-430.00)

An application for variances from the side yard setback requirement.

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

Adam Rones, Joann Vallerie, and Michael Vallerie were sworn in and testified requesting a variance of 5.3 feet from the ten (10) feet right side yard setback requirement for a proposed dwelling, a variance of 1.2 feet from the ten (10) feet left side yard setback requirement for a proposed dwelling, a variance of 4.2 feet from the ten (10) feet left side yard setback requirement for a proposed air conditioning unit and platform, and a variance of 1.2 feet from the ten (10) feet left side yard setback requirement for a proposed uncovered staircase. Mr. Rones testified that the Property is located within Swann Keys; that the Applicants seek to place a modular home on the Property which is more consistent with the newer homes within Swann Keys; that the lot is only forty (40) feet wide; that the required ten (10) feet side yard setback requirements only leave a twenty (20) feet wide building envelope; that the proposed dwelling is a modular home measuring twenty six (26) feet by fifty two (52) feet; that the requested variances are similar to other variances granted in the development; that the previous manufactured home with attached porch measured fourteen (14) feet by seventy (70) feet with a twelve (12) feet wide sunroom; that the proposed dwelling is only six (6) inches wider than the previous home; that the variances requested are minimum variances necessary to afford relief; that the Applicants purchased the Property in 2005; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that the difficulty was not created by the Applicants; that the variances will not alter the character of the neighborhood; that the air conditioning unit cannot be placed in the front yard since that area is used for parking; and that there is minimal parking available in the community.

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. 11301 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The size of the lot makes the Property unique;
2. The Swann Keys community was originally designed for single-wide mobile homes;
3. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
4. The variances are necessary to enable reasonable use of the Property;
5. The difficulty was not created by the Applicants as they did not create the narrow lot;
6. The variances will not alter the essential character of the neighborhood; and
7. The variances sought are the minimum variances necessary to afford relief.

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

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

**Case No. 11302 – Robin Wright** – south of Route 9 (Lewes Georgetown Highway) 3,100 feet west of intersection of Road 258 (Hudson Road) and Road 262 (Fisher Road). (Tax Map I.D. 2-35-30.00-58.04)

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

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.

No one appeared on behalf of the Application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to move the hearing to the end of the public hearings. Motion carried 5 – 0.

At the end of the public hearings, Mr. Lank re-presented the case.

No one appeared on behalf of the Application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be **denied due to lack of representation**. 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. 11303 – Lewis Goodman & Nancy Goodman** – north of Route 54 (Lighthouse Road) and being southeast of Canvasback Road 2,000 feet north of Swann Drive and being Lot 51 Block D within Swann Keys Development. (Tax Map I.D. 5-33-12.16-372.00)

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

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

Lewis Goodman and Nancy Goodman were sworn in and testified requesting a variance of 0.7 feet from the five (5) feet rear yard setback requirement for an existing shed, a variance of 4.1 feet from the ten (10) feet front yard setback requirement for an existing manufactured home, a variance of 9.5 feet from the ten (10) feet side yard setback requirement for an existing deck, and a variance of 4.8 feet from the ten (10) feet side yard setback requirement for an existing manufactured home.

Mrs. Goodman submitted a letter of support from their neighbor.

Mrs. Goodman testified that the Applicants purchased the Property in October 2013; that difficulty was not created by the Applicants; that the Applicants purchased the Property as it is and that the structures have been on the lot since 1986; that the lot is only forty (40) feet wide; that the Property is located in the Swann Keys community; that the stairs cannot be moved since they go into the kitchen and it is the most convenient way to enter the home; that the house cannot be moved into compliance due to its age and condition; that the variances will not alter the character of the neighborhood; and that the Applicants have made no changes nor intend to make any changes to the Property.

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. 11302 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The size of the lot makes the Property unique;
2. The Applicants purchased the Property in its current state;
3. The variances are necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicants;

5. The variances will not alter the essential character of the neighborhood because the dwelling has been in its current location for quite some time; and
6. The variances sought are the minimum variances necessary to afford relief.

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

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

**Case No. 11304 – Carol L. Curran** – southeast of Road 341B (Pepper Creek Road) 0.45 mile north of Road 341 (Falling Point Road) being Lot 222 of Dogwood Acres Subdivision. (Tax Map I.D. 1-34-6.00-187.00)

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

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

Carol Curran was sworn in and testified requesting a variance of 6.1 feet from the ten (10) feet side yard setback requirement for a proposed pole building on an undersized lot. Ms. Curran testified that the proposed pole building will measure twenty-four (24) feet by forty (40) feet; that she wants the pole building to line up with her existing driveway; that she would have to place the pole building behind her house and not lined up with the driveway in order to meet the setback requirements; that the two (2) existing sheds will be removed from the Property; that there is no garage attached to the dwelling; that the septic system is in the rear yard and the proposed pole building will be approximately fifteen (15) to twenty (20) feet from the existing septic system; that she plans to store her pontoon boat and car in the pole building; that the pole building will be approximately twenty-two (22) feet from the existing dwelling; that there is another pole building on a property nearby; and that the pole building will be fourteen (14) feet tall.

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. 11304 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The undersized lot makes the Property unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The Applicant has a need for the proposed pole building;
4. The difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood; and

6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, 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. 11305 – Amanda Randall** – north of Route 1 (Coastal Highway) southeasterly corner of Road 273C (Oyster Road) and across from Road 273A (Bald Eagle Road). (Tax Map I.D. 3-34-19.08-31.00)

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

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

Amanda Randall was sworn in and testified requesting a variance of 38.25 feet from the sixty (60) feet front yard setback requirement and a variance of 32.5 feet from the sixty (60) feet front yard setback requirement for an existing open air structure on a through lot. Ms. Randall testified that she moved her ice cream business to the Property; that the Property is weirdly shaped as it is pie-shaped and surrounded by roads on three (3) sides; that the lot is 110 feet wide at the widest point; that the open air structure provides shelter for outdoor seating; that the setback requirements make the lot impossible to develop in strict conformity with the Sussex County Zoning Code; that she also built a small trash enclosure on the Property; that the existing building is non-conforming; that there is only seating for four (4) people available inside the building; and that she has no plans of enclosing the open air structure. Ms. Randall submitted pictures 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 Variance Application No. 11305 for the requested variance with the stipulation that the structure not be enclosed based on the record made at the public hearing and for the following reasons:

1. The setback requirements and shape of the lot make the Property unique;
2. The Property cannot be built in strict conformity with the Sussex County Zoning Code;
3. The difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.



Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variances be **granted for the reasons stated and with the stipulation that the structure will not be enclosed**. 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. 11306 – Jeanne Rogers & Barbara Black** – southwest of Road 275 (Plantation Road) and being north of Bay Terrace 100 feet southwest of Pier Point, private streets, and being Lot 248 within Henlopen Landing Subdivision.(Tax Map I.D. 3-34-5.00-1077.00)

An application for a variance 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.

Jeanne Rogers and Barbara Black were sworn in and testified requesting a variance of 3.8 feet from the five (5) feet side yard setback requirement for an existing shed. Ms. Rogers testified that the shed was placed on the lot a few months ago and believed it to be in compliance based on the property markers then in place; that Pennoni surveyed the neighboring property and discovered the markers were not placed correctly and moved the markers; the Applicants were unaware that the markers were placed incorrectly; that moving the shed would be difficult, if not impossible, because the shed has been wired with electric; that the Applicants have placed a fence and a concrete walkway around the shed; that the neighbors who own property adjacent to the shed support the Application; and that the difficulty was not created by the Applicants as they believed that the shed was placed in compliance with the property lines.

Ms. Black testified that the shed is anchored to the ground.

Ms. Rogers testified that there are other sheds in the neighborhood; and that the variance will not alter the character of the neighborhood. The Applicants submitted a copy of a letter from neighbors supporting the Application.

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.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11306 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The property markers placed incorrectly created a unique situation;

2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood because there are similar sheds in 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. 11307 – Boys & Girls Club of Delaware** – 225 feet northeast of Road 297 (Oak Orchard Road) on the southeast side of Cedar Street. (Tax Map I.D. 2-34-34.08-52.00)

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

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.

Mildred Charnick was sworn in and testified requesting a special use exception to operate a daycare facility; that the proposed daycare facility will be located in the Oak Orchard Community Center; that the children served will be ages four (4) and five (5) years old; that the Applicant will go through the proper licensing process from the Fire Marshal and child licensing offices; that the Applicant previously cared for sixty-seven (67) children at the site; that the Applicant will care for a maximum of twenty (20) children; that the hours of operation will be Monday through Friday from 6:30 a.m. to 6:00 p.m.; that from 2001 to 2005 the Applicant used this same location to care for children ranging in ages six (6) to fourteen (14) years old; that there is adequate parking; that the neighboring volunteer fire company allows the Applicant to use its playground; and that the use does not substantially adversely affect the uses of neighboring or 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. 11307 for the requested special use exception 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. Hudson, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 11308 – Elizabeth Cherico** – north of Route 9 (Lewes Georgetown Highway) 0.8 mile east of Road 265 (Minos Conaway Road). (Tax Map I.D. 3-34-5.00-152.08)

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

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

Elizabeth Cherico was sworn in and testified requesting a special use exception to operate a daycare facility; that the proposed facility will be located near Nassau Vineyards; that the existing site has a mixed use of residential and commercial uses; that the bottom floors of the buildings are designated for business use; that the ages of children served will range from six (6) weeks to five (5) years old; that she will care for a maximum of fifty-nine (59) children; that she will have thirteen (13) employees; that her hours of operation will be 7:00 a.m. to 7:00 p.m.; that she has worked for the Cape Henlopen School District for ten (10) years; that she has discovered a great need for quality daycare in the area; that she plans to schedule her days of operation and hours to accommodate the Cape Henlopen School District schedule; that she is working with the landlord to have a designated outdoor playground; that the landlord will soundproof the facility; that there is adequate parking available; that the facility will be approximately 3,500 square-feet; and that the proposed use will not substantially affect adversely the uses of surrounding and adjacent properties.

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. 11308 for the requested special use exception 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. Rickard, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted 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.

**Meeting Adjourned 8:48 p.m.**