



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF DECEMBER 6, 2010

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 6, 2010, 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. Ronald McCabe, Mr. John Mills, Mr. Brent Workman and Mr. Jeff Hudson, with Mr. Richard Berl – Assistant County Attorney and staff members, Mrs. Susan Isaacs – Chief Zoning Inspector, Lawrence Lank, Director and Mrs. Jennifer Norwood – Recording Secretary.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of November 15, 2010 as circulated. Vote carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 10736 – Patrick and Ethel Lennon – east of Route One, east of Grenache Court, being Unit 53 within Nassau Grove development.

A variance from the separation requirement between townhomes.

Mrs. Isaacs presented the case. Patrick and Ethel Lennon were sworn in with, Jane Patchell, Attorney, and testified requesting a 10-foot variance from the required 40-foot separation requirement between townhomes for a 14'x 20' deck; that the original contractor was unable to obtain a building permit for the deck; that Shane Abbott advised the Applicant that the proposed deck must meet the 40-foot separation requirement between townhomes or they would need to apply for a variance; that the Applicant then hired a second contractor to re-design the deck and removed the proposed roof and lowered the height of the landing of the deck; that the second contractor did obtain a building permit from the County; that 3-days into construction of the deck, a Zoning Inspector stopped by the site to advise them that the deck was in violation of the separation requirement; that the Zoning Inspector stated they would receive written

notice in the mail of the violation; that a few hours later the County Constable called the Applicant and had all work stopped immediately; that the Applicant had the contractor stop all construction; that the Applicant came to the Planning & Zoning Office the next day to apply for the variance; that the Zoning Ordinance that was passed in 1982 for multi-family units did not include detached single-family style units; that for this type of unit to comply with the 40-foot separation requirement is an extreme requirement; that there is an exterior door on the side of the unit, there is no rear entry on this unit; that the

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request is unique due to the fact the Zoning Ordinance does not include this type of multi-family structure; that without the variance it creates a hardship to the Applicant; that it cannot be otherwise developed without the variance; that it was not created by the Applicant; that the Homeowner's Association supports the application; that the Architectural Review Board supports the application; that they submitted 15-letters in support of the application; that this is the minimum variance to afford relief; and that there have been other variances granted in surrounding townhome communities.

Mr. Lawrence Lank stated that Nassau Grove chose to build cluster single-family dwellings; that this type of development consists of detached dwellings built within a 165-square-foot cluster area; and that the cluster style dwellings must still meet the 40-foot separation requirement as if the units are multi-family units connected as one building.

The Board found that 14-parties appeared in support of the application.

Mrs. Isaacs stated that the office received 16-letters in support of the application.

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

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **denied since it does not meet the standards for granting a variance**. Vote carried 5 – 0.

Case No. 10737 – John and Wendy Godwin – north of Route 54, Blue Bill Drive, being Lot 21, Block G within Swann Keys development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. John Godwin was sworn in and testified requesting an 8-foot variance from the required 10-foot side yard setback requirement for

a proposed manufactured home and HVAC units; that the proposed placement of the unit is to provide room for parking; that there are numerous variances in the development; and that he needs parking for 2 to 3 vehicles.

Charles and Wilma Denton were sworn in and testified in opposition to the application and stated that the Applicant could place the manufactured home on the lot without any variances; that they own the adjoining Lot 20; that no parking is permitted on

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the streets in Swann Keys development; that there is not a hardship to the Applicant to comply with the required setbacks; that there are also safety concerns with the proposed placement of the unit; and that the home was placed in 1979 when the setback requirement was only a 5-foot side yard requirement.

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

The Board found that 2 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **left open to allow the Applicant to better prepare their case.**

Vote carried 5 – 0.

Case No. 10738 – Alfred H. Johnson – northwest of Route 13A, north of Garden Lane, being Lot 55 within Green Acres development.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Alfred and Blanche Johnson and Guy Baynard were sworn in and testified requesting a 5-foot variance from the required 30-foot front yard setback requirement for an addition; that the addition is to extend an existing bedroom; that their builder obtained the building permit for the addition; that the Homeowner's Association approached their builder and stated the addition was not meeting the required setback requirements; that the builder measured from the road not the property line; and that they submitted 3 letters in support of the application.

Donald Smith and Walter Landing were sworn in and testified in opposition to the application and stated that he is the President of the Homeowner's Association; that when he spoke to the builder about the encroachment the builder was not concerned and would not stop construction; that the Applicant had to have the builder stop construction; that he pulled a tape from the rear property marker to measure 150-foot the recorded length of the lots in the development; and that the front yard property markers have all been moved or destroyed over the years.

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

The Board found that 2 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **left open to allow the Applicant to better prepare their case.**
Vote carried 5 – 0.

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Case No. 10739 – Furniture & More – northwest corner of Route One and Road 270A.

A special use exception for tents for special purposes exceeding three (3) days.

Mrs. Isaacs presented the case. John McCann was sworn in and testified requesting a special use exception for a tent; that the tent will be used twice a year; that the tent will be up for 7-days before and 7-days after the Memorial and Labor Day weekends; that they have had 2, 3-day tent sales at this location with the Director of Planning & Zoning's approval; that the Board approved similar tent sales at their previous location of business; that they submitted 2 proposed locations and would prefer Plan B; and that the previous 2 tent sales were at Plan B's location.

Heidi Gilmore, Attorney, representing adjacent property owners testified in opposition to the application and stated that they are concerned that the tent will block the view of their existing business and the view of traffic in the area; that they are also concerned the tent could blow over in inclement weather; that there may be an increase in signage on the property; that they prefer the proposed location of Plan A the Applicant submitted; and that they would like the tent set back as far as 200-foot from the Route One.

In rebuttal, John McCann, stated that the purpose of the tent is to attract business and to set the tent 200-foot back would not provide that type of visibility; that the tents are erected by a licensed tent company; that in previous years the tents have weathered any inclement weather without incident; that they have 24-hour security during the tent sales; and that the proposed tent will measure 30'x 60'.

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

The Board found that 1 party appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the special

use exception be **granted for the requested two dates per year; that the tent will not exceed 30'x 60'; and that the tent shall be located next to the South side of the building as shown in Plan A; and that this approval is valid for a period of five (5) years.** Vote carried 5 – 0.

Case No. 10740 – Charles P. and Loretta Evans – east of Long Neck Road, south of Breakers Street, being Lot E741 within Pot Nets Bayside Mobile Home Park.

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A variance from the separation requirement between units in a mobile home park.

Mrs. Isaacs presented the case. Charles Evans was sworn in and testified requesting a 2.2-variance from the required 20-foot separation requirement between units in a mobile home park for an existing screen porch; that he obtained a building permit to construct the porch on his existing deck; that he was granted a variance for the property in 2003; that he did not realize the variance did not cover the porch due to the fact that the deck was permitted to encroach into the setback by 5-foot; that he now lives at this property full-time; and that he built the porch.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it meets the standards for granting a variance.** Vote carried 5 – 0.

Case No. 10725 – Gary and Jeaneen Malinofsky – north of Route 54, west of Blue Teal Road, being Lot 13, Block B within Swann Keys development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Gary and Jeaneen Malinofsky and Joe Henderson were sworn in with Ray Tomasetti, Attorney, and testified requesting a 4-foot variance from the required 10-foot side yard setback requirement for a proposed manufactured home and a 7-foot variance from the required 10-foot side yard setback requirement for an AC unit, steps and propane tanks; that the previous unit measured 23'x 40' and has been on the lot since 1972; that the lot measures 40'x 100'; that the proposed unit will measure 24'x 62'; that they purchased the lot in 2002; that there are numerous variances in the development; that the variance is necessary to enable reasonable use of the property; that it will not alter the character of the neighborhood since all other lots on the street have been upgraded from manufactured homes to modular type structures; that modular dwelling units are built in a minimum of 12-foot wide sections making it impossible to build a structure smaller than 24-foot wide; and that they were not able to

provide an alternative plan for the dwelling, but did however adjust the location to seek less of a variance.

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

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variances be **granted for a 4-foot variance and a 7-foot variance from the**

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required 10-foot side yard setback requirement, since it meets the standards for granting a variance. Vote carried 5 – 0.

Case No. 10732 – Robert Dobbs – west of Road 273A, southeast of Wellington Place being Lot 4, Phase 10 within Rehoboth Beach Yacht and Country Club.

A variance from the front yard setback requirement for a through lot and a variance from the height requirement for a fence.

This case was left open from the November 15, 2010 meeting to allow the staff to report back to the Board of other variances in the area.

Mrs. Isaacs stated that other pools in the area meet the required setbacks and that there are no variances in the area.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **denied since it does not meet the standards for granting a variance.** Vote carried 3 – 2.

Case No. 10730 – Mike Stough – northeast of Route 9, northeast of Colonial Lane, being Lot 20 within Colonial East Mobile Home Park.

A variance from the separation requirement between units in a mobile home park.

This case was left open from the November 1, 2010 meeting to allow the Counsel to review.

Mrs. Isaacs stated that the lots in the park are clearly marked to indicate the lot lines.

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the variance be **granted since it meets the standards for granting a variance.** Vote carried 5 – 0.

OLD BUSINESS

Case No. 10728 – Wendy J. Grooms and Barbara L. Fishel – east of Road 273, north of Leeds Way, being Lot 30, Block 26, Section G within Rehoboth Beach Yacht and Country Club development.

A variance from the side yard setback requirement.

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The Board discussed the case which has been tabled since November 1, 2010.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood and will enable reasonable use of the property and since it is the minimum variance to afford relief**. Vote carried 5 – 0.

Meeting Adjourned 9:20 p.m.