



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF FEBRUARY 20, 2012

The regular meeting of the Sussex County Board of Adjustment was held Monday, February 20, 2012, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:05 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with James Sharp, Assistant County Attorney, and staff members, Mrs. Susan Isaacs – Chief Zoning Inspector, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 4 – 0.

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously to approve the Minutes of February 6, 2012 as circulated. Motion carried 4 – 0.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously to approve the Finding of Facts of January 23, 2012. Motion carried 4 – 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. 10940 – Michael O. Watson – west of Road 274 (Old Landing Road) 277 feet south of Road 275 (Warrington Road).

A special use exception for a garage/studio apartment and a variance from the maximum square feet of total floor area.

Mrs. Isaacs presented the case. Michael Watson was sworn in and testified requesting a special use exception for a garage/studio apartment and a 76.04-square-foot variance from the required 800-square-foot maximum allowable square footage for a garage/studio apartment; that he plans to rent the apartment; that the apartment will be above his existing 876.04-square-foot 3-car garage; that the square-footage of the apartment will be 757-square-foot, therefore a

variance for square footage is not needed; that the apartment will have 1-bedroom, 1-bath, 1-living room/kitchen and 1-utility room; that the apartment will have separate utilities; that there will be 3-parking spaces available; that there is a bed and breakfast on the neighboring property; and that the use will not substantially adversely affect the surrounding properties.

The Board found that 3-parties appeared in support of the application.

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

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Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 10940 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 adjacent and neighboring properties, and that the variance is not needed.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the Special Use Exception be **granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 10941 – Margaret D. Gorman, Trustee – south of Road 351 (Club House Road) approximately 145.87 feet east of Bird Haven Street being Tract D within Rogers Haven development.

A special use exception to operate a daycare facility.

Mrs. Isaacs presented the case. Teresa Rogers was sworn in and testified requesting a Special Use Exception to operate a daycare facility; that she wants to increase her daycare to care for up to 9-children; that she purchased the property in January 2012; that she has installed a driveway to allow easy access for parents; that she will obtain all agency approvals prior to increasing her daycare; that her hours of operation are 7:00 a.m. to 5:30 p.m., Monday through Friday; that she cares for pre-school age children and after school age children; that she has a certified substitute to take care of children when she needs time off; that she has cared for children for 16-years in her prior home; that she has complied with the requirements set forth by the Fire Marshal's Office; that she has adequate parking for parents; and that the State will determine if she needs to add additional fencing for her yard.

John Warren was sworn in and testified that the nearby ponds and the road are a safety concern; and that the Applicant should be required to fence in her yard.

Martha Vogel was sworn in and testified in opposition to the application and stated that she is opposed to a business in the development; that there is no other day care in the community; that her backyard is adjacent to the Applicant's property; that she would like to see the Applicant put up a fence between their properties; that the fence will help buffer the noise of the children; and that she would have no objection to the application if a fence is erected.

Ron Shiggins was sworn in and testified in opposition to the application and stated that he has spoken to the Applicant and she has stated that she would like to take the children to the pond in front of White Creek at Bethany; that the pond does pose a huge safety risk with children; and that the pond is only 55 feet away from the Applicant's property.

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In rebuttal, Teresa Rogers stated that she has operated her daycare business for 16-years without incident; that she takes every precaution when it comes to the care of the children; and that she is willing to install a fence if the Board of Adjustment and / or the Office of Child Care Safety so requires.

The Board found that 1-party appeared in support of the application.

Mrs. Isaacs stated that the office received 6-letters in support of the application.

The Board found that 3-parties appeared in opposition to the application.

Mrs. Isaacs stated that the office received 1-letter in opposition to the application.

Motion by Mr. Workman, seconded by Mr. Rickard, and carried unanimously that the case be **tabled until March 5, 2012**. Motion carried 4 – 0.

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

Case No. 10942 – Wyatt F. & Elizabeth A. Hammond – east of Route 16 (Broadkill Road) east of Bay Front Road, being Lot 49 Block 12 within Broadkill Beach development.

A variance from the front yard and side yard setback requirements.

Mr. Sharp stated that he previously represented the Applicant and that he felt it could be a conflict of interest and if the Board felt they needed to seek legal counsel, Vince Robertson would be available to advise the Board prior to a final decision. Vince Robertson was unable to attend the hearing tonight.

Mrs. Isaacs presented the case. Mark Dunkle, Attorney, was present on behalf of the Applicant, with Wyatt Hammond and Robert Nash, Surveyor, who were sworn in and testified requesting a 25-foot variance from the required 30-foot front yard setback requirement for a proposed dwelling and cantilevered deck and a 7-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that the Board granted a 19.9-foot front yard variance, a 7.2-foot side yard variance and a 6.9-foot side yard variance for this property in 2009; that the Applicant just received DNREC approval to build, however they have eliminated approximately 50% of the buildable area due to the Mean High Water Line; that the original structure was lost in a storm; that the proposed dwelling is smaller than the proposed dwelling in 2009; that the proposed dwelling is still in the design phase and the proposed deck may be removed to allow for an elevator; that the proposed dwelling will be approximately 2,000 square feet; that the Applicant is unable to build a dwelling within the setback requirements due to the

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Mean High Water Line; that the property is unique due to the Mean High Water Line restrictions; that a delay in constructing the dwelling was created by a dispute between different arms of DNREC; that the dispute with DNREC has been resolved to the parties' satisfaction; that the variance is needed to enable reasonable use of the property; that it was not created by the Applicant; that it will not alter the character of the neighborhood; that it is the minimum variance to afford relief; that the house will meet flood zone requirements; and that there will be a septic holding tank on the property.

The Board found that 5-parties appeared in support of the application.

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

Mrs. Isaacs stated that the office received 1-letter in opposition to the application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 10942 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 the Mean High Water Line restriction;
2. The variance will enable reasonable use of the property;
3. The difficulty was not created by the Applicant;
4. The variance, if granted, will not alter the character of the neighborhood; and
5. The variance is the minimum variance 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 – 0.

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

Case No. 10943 – Jean A. Wingenroth – south of Road 22 (Long Neck Road) southwest of Marsh Clam Lane, being Lot 14B within White House Beach development.

A variance from the front yard and side yard setback requirement and a variance from the maximum lot coverage.

Mrs. Isaacs presented the case. Bill Wingenroth was sworn in and testified requesting a 1-foot variance from the required 5-foot setback requirement for an existing deck, a 4-foot variance from the required 5-foot setback requirement for an existing deck, and a 350-square-foot variance from the 35% maximum allowable lot coverage in a mobile home park; that he is

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representing his wife Jean Wingenroth; that they built the small deck to have easier access in and out of the home due to their arthritis; that they installed handrails to help the Applicant better access the dwelling; that he obtained the building permit and built the deck in July 2010; that he obtained permission from White House Beach to construct the deck; that he received notice from the Planning & Zoning Department that the deck did not comply with the setback requirements; and that the other deck and shed were on the lot when they purchased the home; and that he believes the other deck and shed were on the property in the 1970s.

The Board found that 4-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. 10943 for the requested variances based on the record made at the public hearing and for the following reasons;

1. The lot is unique in size since it is only 41-feet wide;
2. The variance will enable reasonable use of the property;
3. The difficulty was not created by the Applicant;
4. The variance, if granted, will not alter the character of the neighborhood; and
5. The variance is the minimum variance to afford relief.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 10944 – Lambert J. Slaubaugh – northwest of Road 32 (Scott’s Store Road) approximately 456 feet east of Road 585 (Woodbridge Road).

A variance from the required ten (10) acres to place a manufactured home for farm help.

Mrs. Isaacs presented the case. Lambert Slaubaugh was sworn in and testified requesting a 2.21-acre variance from the required ten (10) acres to place a manufactured home for farm help; that he purchased the unit for farm help; that there are four (4) chicken houses on the property; that he has spoken to neighbors and they support the application; that there are other chicken farms in the area; that he submitted pictures; and that it will not alter the character of the neighborhood.

Karen Eastridge was sworn in and testified in opposition to the application and stated that she owns the adjacent property; that the Applicant did not to speak to her about the proposed

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unit; that she would like to know where on the property the unit will be placed; and that she is concerned about run-off into the branch that runs along their properties.

In rebuttal, Lambert Slaugaugh, stated that the location of the unit will depend on the location of the new septic system; that he plans to put it near the front of his property; that there will not be a run-off problem; and that he could build a dwelling on the property without permission from the Board.

In rebuttal, Karen Eastridge, stated that she has no objection to the unit since it will not be at the rear of his property.

The Board found that 4-parties appeared in support of the application.

Mr. Workman stated that he would move that the Board recommend approval of Variance Application No. 10944 for the requested variance based on the record made at the public hearing because it meets the standards for a variance.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 10945 – Derek E. Cathell – northwest of Road 380 (Parker Road) approximately 712 feet west of Route 113 (DuPont Blvd).

A variance from the required fifty (50) feet from all boundary lines, a variance from the required two hundred (200) feet from any dwelling not on the premises, and side yard setback requirement.

Mrs. Isaacs presented the case. Derek Cathell was sworn in and testified requesting a 37-foot variance from the required 50-foot setback requirement for a poultry house, a 2.1-foot variance from the required 15-foot side yard setback requirement for an existing dwelling, and a 172-foot variance from the required 200-foot setback requirement from any dwelling not on the premises; that his parents gave him and his wife the 10-acre farm in 2010; that his parents still operate the poultry farm; that he plans to build a dwelling on the 3-acre parcel he plans to subdivide; that the property must be subdivided for him to obtain a loan to build the dwelling; that the lenders will not give them a loan with the poultry houses on the property; and that he did not create the hardship.

The Board found that 5-parties appeared in support of the application.

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

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 10945 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The need to subdivide for lenders makes the situation unique;
2. The variance is necessary to enable reasonable use of the property;
3. The difficulty was not created by the Applicant;
4. The variance, if granted, would not alter the character of the neighborhood; and
5. The variance sought is the minimum variance to afford relief.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 10946 – John McMahan – northeast of Road 619 (Old Shawnee Road) south of Turtle Hill Road, being Lot 35 within The Holly's development.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Edwin Justiniano was sworn in and testified requesting a 0.3-foot variance from the required 30-foot front yard setback requirement for an existing dwelling; that he built the dwelling in 2004; that a survey done in 2004 showed the dwelling in

compliance with the required setback requirements; that a survey done in 2011 for settlement showed the encroachment; that the variance he is seeking is a slightly larger than the encroachment to prevent the need for an additional variance should a future survey be more accurate or if the dwelling settles and shifts on the lot; and that he submitted a review of factors to grant the requested variance with his application.

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

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be **tabled until March 5, 2012**. Motion carried 4 – 0.

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

Case No. 10947 – Gap Outlet – northeast of Route 1 (Coastal Highway) northwest of Road 271 (Holland Glade Road) being within Tanger Outlets.

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A variance for the additional wall sign.

Mrs. Isaacs presented the case. Darlene Matthes was sworn in and testified requesting a variance for an additional wall sign; that the proposed sign will measure 3' x 9'; that the location of the store can be seen by traffic on 3 sides; that the proposed sign will not alter the character of the neighborhood; that there are similar signs throughout the center; and that the total square-footage of all 3-signs does not exceed the 150-square-foot permitted by the County. The Applicant submitted photographs of the property.

Mr. Sharp asked the Applicant if they have approval from the Tanger Outlet Center and was advised that the Planning & Zoning Department has that letter on file with the pending building permit for the proposed sign.

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. 10947 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The variance will enable reasonable use of the property;
2. The variance, if granted, will not alter the character of the neighborhood; and
3. The variance is the minimum variance 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 4 – 0.

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

OLD BUSINESS

Mr. Callaway stated that he read the minutes and listened to the audio of hearing on February 6, 2012.

Case No. 10933 – Amy S. & Mark Miller – east of Road 277, 0.8 feet north of Cedar Grove Road.

A variance from the maximum height requirement.

The Board discussed this case which has been tabled since February 6, 2012.

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Mr. Rickard stated that he would move that the Board recommend denial of Variance Application No. 10933 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Applicant did not show any uniqueness to the property;
2. The property can otherwise be developed;
3. The difficulty was created by the Applicant;
4. The variance is not needed to enable reasonable use of the property; and
5. The variance, if granted, would alter the character of the neighborhood.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried by the vote of 3 to 1 that the variance be **denied for the reasons stated**. Mr. Hudson opposed the Motion because he feels a property owner has a right to privacy and that the Applicant did not create the hardship.

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

Case No. 10937 – Fontana Residence Trust – east of Route 1 (Coastal Highway) northeast of Seaside Drive, being Lot 11 within Bethany Village development.

A variance from the maximum height requirement and / or appealing the staff's decision to reject a certificate of compliance.

The Board discussed the case which has been tabled since February 6, 2012.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried by the vote of 3 to 0 that the case be **tabled until March 5, 2012**. Motion carried 3 – 0. Mr. Rickard abstained from this case.

Case No. 10939 – Anthony & Penny Rovillard – east of Road 48 (Hollyville Road) 1,655 feet north of Road 302 (Avalon Road).

A special use exception to operate a daycare facility.

The Board discussed the case which has been tabled since February 6, 2012.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until March 5, 2012**. Motion carried 4 – 0.

Meeting Adjourned 9:25 p.m.