



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF FEBRUARY 6, 2012

The regular meeting of the Sussex County Board of Adjustment was held Monday, February 6, 2012, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Vice-Chairman Mills presiding. The Board members present were: Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with Mr. James Sharp – Assistant County Attorney, and staff members, Mrs. Susan Isaacs – Chief Zoning Inspector, Mr. Dean Malloy – 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 January 23, 2012 as circulated. Motion carried 4 – 0.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously to approve the Finding of Facts of January 9, 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. 10933 – Amy S. Miller & Mark Miller – east of Road 277, 0.8 feet north of Cedar Grove Road.

A variance from the maximum height requirement.

Mrs. Isaacs presented the case. Mark Miller and Amy Miller were sworn in and testified requesting a 5-foot variance from the required 7-foot maximum height requirement for a fence; that the height of the fence is to deter recent vandalism to their property; that the neighbor has a camera directed at their driveway; that the height of the fence is designed to block the camera the neighbor uses to monitor their daily activity; that when they have left their home they believe the neighbor has slashed car tires, vandalized lawn ornaments and their fence; that they put the fence up and obtained the permit for the fence; that they did not understand the height requirement on

the permit; that the vandalism has slowed since the fence has been erected; that an adjacent neighbor did not want to sign a petition in support of the application due to being intimidated from the neighbor; that the fence is 4-foot from the property line; that the fence withstood the winds of a recent hurricane; that there is no front yard encroachment; that Amy Miller is often home but leaves for short intervals and returns home and sees vandalism; and that the fence enhances their privacy. The Applicants submitted a petition with signatures from 55 supporters who are their friends and pictures of the property.

Mrs. Isaacs stated that the office received 1-letter from a neighbor expressing their thoughts on the application.

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

Mr. Rickard moved that the Board recommend denial since the Applicant did not meet that standards for granting a variance. There was no second to his motion.

Mr. Rickard withdrew his motion to deny the variance.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until February 20, 2012**. Motion carried 4 – 0.

Case No. 10934 – Paul A. King and Gladys D. King – southeast corner of Route 54 (Old Lighthouse Road) and Taft Avenue, being Lot 1, within Cape Windsor development.

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

Mrs. Isaacs presented the case. Ray Tomasetti, Jr., Attorney, was present on behalf of the Applicant, with Paul King and Gladys King and David Haller, who were sworn in. Mr. Tomasetti presented that the Applicants were requesting a 3-foot variance from the required 5-foot front yard setback requirement for a swoop and stairs with a roof, and a 4-foot variance from the required 10-foot side yard setback requirement for a dwelling; that they are no longer requesting the corner side yard variance; that the lot is a unique triangular shape; that the variance is necessary to enable reasonable use of the property; that the relief sought is the minimum to fit a building envelope on the property; that it was not created by the Applicant; that the lot has existed since the development of the subdivision; that it will not alter the character of the neighborhood as it conforms with other homes therein; that it is the minimum variance to afford relief; that the proposed 3-story dwelling will be approximately 2,800-square-foot in size; that the third floor is unfinished. The Applicants also submitted pictures.

Mr. Sharp asked the Applicants to confirm the presentation of Mr. Tomasetti as their own testimony and they affirmed.

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. 10934 for the requested variance based on the record made at the public hearing and for the following reasons;

1. The property is a unique triangular shape;
2. The variance is necessary to enable reasonable use of the property;
3. The lot was not created by the Applicant;
4. The variance will not alter the character of the neighborhood; and
5. The variance sought 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. Mills – yea.

Case No. 10935 – Steve Golding and Linda Golding – west of Route 1 (Coastal Highway) south of South Shore Drive Extended off of South Inlet road, being Lot 67 within Rock Turn Mobile Home Park.

A special use exception to build a dwelling in a mobile home park.

Mrs. Isaacs presented the case. Steve Golding and Linda Golding and Adam Rones were sworn in and testified requesting a special use exception to build a dwelling in a mobile home park; that they purchased the property with plans to build a dwelling; that they were unaware the property was considered a mobile home park; that, when the builder came to obtain the building permit, they discovered that they could not build a dwelling on their lot; that there are other single-family dwellings in the park; that the proposed 1-story dwelling will measure 28'x 60'; that the proposed dwelling will be a modular home; that the proposed dwelling will meet all the required setback requirements; that the proposed dwelling will be on pilings; that it will not alter the character of the neighborhood; and that two similar homes on pilings are located nearby. The Applicants also submitted pictures.

Gail Payne was sworn in and testified about the application and stated that she is the Secretary of the South Short Marina Home Owners Association which is an adjacent development maintaining roads accessing the property; that she is concerned the road their development maintains cannot handle the increased traffic larger homes may bring; that the increased size of dwellings will affect property values. Gail Payne also testified that she does not object to a single story home on pilings and that the Home Owners Association is in favor of the Application.

Robert Payne was sworn in and testified in opposition to the application because approval of this special use exception will set a precedent; the roads in the community are substandard; the addition of this home will impact the sewer system; that Fire and Rescue Companies cannot easily access the mobile home park; that 22 lots are in the park; and that one lot in the park has a house on pilings and one lot in the park has a stick built house.

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

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

Mrs. Isaacs presented a letter submitted by the South Shore Marina Home Owners Association expressing concerns about the application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 10935 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.

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. Mills – yea.

Case No. 10936 – Anton A. Lindale & Beverly J. Lindale – north of Road 620 (Abbott's Pond Road) 3,000 feet west of Road 633 (Griffith Lake Drive).

A special use exception to retain a manufactured home on less than 10 acres.

Mrs. Isaacs presented the case. Anton Lindale and Beverly Lindale were sworn in and testified requesting a special use exception to retain a manufactured home on less than 10 acres; that the unit has been on the lot since 1980; that the unit was originally placed on the lot for a medical hardship; that the property was originally owned by his father; that they purchased the property from his uncle in 1996; that they have done over \$10,000 in repairs the unit; that they use the property as a rental and wish to subdivide the property to build a dwelling; that the subdivision of the property has been approved by the Planning & Zoning Commission; that the unit does not adversely affect the adjacent properties; that the property is surrounded by farm land and property owned by the State of Delaware; that the property abuts the Kent County line; that the unit was placed over a basement. The Applicants also submitted pictures.

James Lindale was sworn in and testified in support of the application and stated that he is a neighbor; and that he has no objection to the unit; and that the property is well kept.

The Board found that 1-party 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 Special Use Exception Application No. 10936 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.

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. Mills – yea.

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.

Mr. Rickard stated that he needed to abstain from hearing the case since he was previously a Zoning Inspector, and that he has prior knowledge of this property.

Mrs. Isaacs presented the case. Dennis Schrader, Attorney, was present on behalf of the Applicant, with Gabriel Fontana and Ken Lloyd, builder of the structure, who were sworn in and testified requesting a 1.22-foot variance from the required 42-foot maximum height requirement to enclose a widow's walk with a roof and / or to appeal the staff's decision to reject a certificate of compliance; that the property has a litigation history; that the court decided in 1997 to allow the Applicant to retain the roof structure; that the private deed covenant was ruled vague and unenforceable; that in 1998 an amendment was made to the covenant that the height of any building be measured from the radius point of the street turnaround abutting such Lots to the highest point of the building; that this amendment includes Lot 11; that the plans submitted to the County for a building permit showed the proposed height of the roof structure to be the same height as the existing roof structure; that the change to the roof structure was made to prevent water from pooling on the roof; that the roof also prevents birds from clogging the holes used for drainage; that the builder was aware that he must build the new structure at the same height; that the widow's walk consists of a stairway in the center with a 3-foot walkway for sightseeing only; that the area is not living space; that the prior widow's walk had a small enclosure around the staircase and a short outside wall for a walkway around the widow's walk that was not enclosed; that drainage issues existed in the unenclosed area; that the variance sought is the minimum to enclose the widow's walk completely; that the new roof has less pitch than the prior roof; that the State of Delaware does not have a line of site law; that it does not alter the character of the neighborhood; that it is the minimum variance to afford relief. The Applicant submitted a packet of information to the Board.

Mike Johnson was sworn in and testified in opposition to the application and stated that he is on the Board of Directors for Bethany Village; that he purchased property in Bethany Village in 1989; that he was on the Board during the litigation and does not argue any of the prior court decisions; that he feels the Applicant has made significant changes to his property; that there is a much larger structure now; that the new structure impacts the view of neighbors; that the Applicant did not seek approval from the Board of Directors for the new structure; that the Board of Directors is not in the business of turning down proposed plans; that the Board of Directors works with homeowners to come to an agreement that suits all parties involved; and

that the new structure is not higher than the previous structure, however it is much wider now thereby extending the non-conformity; that he would not object to a widow's walk of the same size of the old widow's walk. Mr. Johnson submitted 16 letters in opposition to the application.

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. Workman, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until February 20, 2012**. Motion carried 3 – 0.

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

Case No. 10938 – Laura Mason – east of Route 1 (Coastal Highway) southeast of Robinson Drive, being Lot 37 within Dodd's Addition development.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Laura Mason and Rick Banning, a builder, were sworn in and testified requesting a 13-foot variance from the required 30-foot front yard setback requirement for a proposed extension of a front porch; that the extension is to allow for handicap access; that Mr. Banning built the existing dwelling; that the existing deck is only 18-inches above grade; that it is unique since the dwelling was built at the setback requirement; that it cannot be otherwise developed to accommodate the wheelchair; that it was not created by the Applicant; that it will not alter the character of the neighborhood, since there are similar porches in the development; that it is the minimum variance to afford relief. The Applicant also submitted pictures.

Mr. Workman stated that he would move that the Board recommend approval of Variance Application No. 10938 for the requested variance based on the record made at the public hearing and for the following reasons;

1. The dwelling was built at the building restriction line;
2. The property is unique due to its odd shape;
3. The variance will enable reasonable use of the property;
4. The difficulty was not created by the Applicant;
5. The variance if granted will not alter the character of the neighborhood; and
6. The variance is the minimum variance to afford relief.

Motion by Mr. Workman, seconded by Mr. Rickard, 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. Mills – yea.

Case No. 10939 – Anthony Rovillard & 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.

Mrs. Isaacs presented the case. Anthony Rovillard and Penny Rovillard were sworn in and testified requesting a special use exception to operate a daycare facility; that she currently operates a daycare at this property; that she cares for 6 children and wants to expand to care for up to 53 children, ages 1-year old to 13-years old; that she has operated the daycare at this location since 1998; that her hours of operation are Monday through Friday, from 7:30 p.m. to 5:30 p.m.; that her driveway and property can accommodate up to 14 cars at one time; that the parents are mainly on property at drop-off and pick-up times only; that she will fence in a play area; that she will have all agency approvals prior to further expansion; and that the developer was aware of her daycare business when she purchased the property.

Mr. Sharp stated for the record that the opposition is possibly related to a member of his firm.

Joyce May and Steven May were sworn in and testified in opposition to the application and stated that they share a driveway with the Applicant; that they are not opposed to the current daycare facility; that the increase of up to 53 children may affect their privacy; that they purchased their property in 1997; that they are opposed to such a large business in a residential area; and that they disagree that ample parking exists. The Mays submitted pictures of the property.

In rebuttal, Anthony Rovillard and Penny Rovillard stated that they are looking to expand their business to care for approximately 12 to 15 children; that the increase is needed to cover expenses to care for their family; that they maintain the driveway at their own expense; that they respect their neighbors' privacy; and that Shore Maintenance is only 400 yards away on Holly Hill Road.

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

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

Mrs. Isaacs stated that the office received 2 letters in opposition to the application including one from Joyce May and Steven May

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be **tabled until February 20, 2012**. Motion carried 4 – 0.

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

OLD BUSINESS

Case No. 10928 – John Yost and Catherine Yost – east of Route 16 (Broadkill Road) east of Bayshore Drive, being Lot 9, Block A, within Broadkill Beach development.

Appealing Director's decision that the lot requires only a side yard setback instead of a corner side yard setback because it lies adjacent to a "pedestrian access" rather than a "street".

The Board discussed this case which has been tabled since January 23, 2012.

Mr. Hudson stated that he would move that the Board recommend to uphold the Director's decision that the lot only requires a side yard setback requirement based on the record made at the public hearing and for the following reasons;

1. The pedestrian beach access adjacent to the Pomilio property is not a "street" under the Code.
2. Because the adjacent pedestrian beach access is not a "street," the Pomilio property cannot be considered a "corner lot."
3. And because the Pomilio property is not a corner lot, the applicable side yard setback is ten (10) feet – not fifteen (15) feet.

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously that the Board **uphold the Director's decision for the reasons stated.** Motion carried 4 – 0.

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

Case No. 10932 – Christopher Lopez – northeast of Route 113 (DuPont Blvd) 1,420 feet south of Road 321 (Woodbranch Road).

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

The Board discussed the case which has been tabled since January 23, 2012.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 10932 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The property is unique due to the size of the lot and due to fact the existing structure is non-conforming;
2. The difficulty was not created by the Applicant;
3. The variance is necessary to enable reasonable use of the property;
4. The variance, if granted, would not alter the essential character of the neighborhood;
5. The variance sought is the minimum necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Rickard, 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. Mills – yea.

Case No. 10930 – Bruce S. Lane and Leslie Barron Lane – north of boundary of Henlopen Acres approximately 1,886 feet east of Ocean Drive, being Lot 5, within North Shores development.

A variance from the front yard setback requirement.

The Board discussed the case which has been tabled since January 23, 2012.

Mrs. Isaacs passed out Lawrence Lank's findings that the ocean side of the property is not considered the front yard.

Mr. Rickard stated that he would move that the Board recommend denial of Variance Application No. 10930 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The property is not unique since the ocean is not the front yard;
2. The property can otherwise be developed;
3. The need is created by the Applicant; and
4. The variance, if granted would alter the character of the neighborhood, since there are no other pools in the front yard.

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

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

Meeting Adjourned 9:50 p.m.