



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF JANUARY 23, 2012

The regular meeting of the Sussex County Board of Adjustment was held Monday, January 23, 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 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, Mrs. Susan Isaacs – Chief Zoning Inspector, and Mrs. Jennifer Norwood – Recording Secretary.

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

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of January 9, 2012 as circulated. 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.

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

The Board called for applications where an attorney was present on behalf of the application, acknowledging that the attorneys were unaware of the new procedure that applications represented by attorneys would be heard first. Therefore the Board continued with the scheduled Revised Agenda.

PUBLIC HEARINGS

Case No. 10925 – Lullaby House, Inc. – north of Route 9 (Savannah Road) southeast corner of North Village Main Blvd and east of Edgemoor Street, being within Village of Five Points.

A special use exception to operate a daycare facility.

Mr. Sharp stated to the Board that his girlfriend lives above the proposed location, however he would still be able to guide the Board with any legal question without bias.

The Board had no objection to proceed with the application.

Mrs. Isaacs presented the case. Joseph and Sherry Gibbia and Pamela Weddle were sworn in and testified requesting a special use exception to operate a daycare facility; that the

Minutes

January 23, 2012

Page 2

daycare is currently located on Savannah Road in Lewes; that the proposed location will allow the daycare to expand; that they want to care for 60-children, ages birth to 5-years old; that the hours of operation will be Monday through Friday from 6:00 a.m. to 6:00 p.m.; that the surrounding businesses have no objection to the application; that the Homeowner's Association has no objection to the application; that there is adequate space for parking; that their State approval is pending this Board's approval first; that they are currently in a residential area; that they have outgrown their current location; that they have received no noise complaints at their current location; and that the application should not adversely affect the neighborhood.

The Board found that 19-parties appeared in support of the application.

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

The Board received one letter in support of the application and one letter in opposition to the application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 10925 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect the uses of adjacent and neighboring properties, and with the stipulation that the hours be Monday through Friday from 6:00 a.m. to 6:00 p.m. and that they obtain license from the State.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the Special Use Exception No. 10925 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. 10926 – Luther E. Leighton – south of Road 280 (Stockley Road) 3,400 feet east of Road 290 (Coolspring Road).

A variance from the minimum lot width requirement.

Mrs. Isaacs presented the case. Tim Willard, Attorney, was present on behalf of the Applicant, with Luther Leighton, who was sworn in and testified requesting a 95.39-foot

variance from the required 150-foot minimum lot width requirement for a parcel; that the parcel consists of 26.73 acres and the Applicant seeks to subdivide that parcel into a 24.22 acre parcel and a 2.5-acre parcel; that the 2.5 acre parcel would be used for their daughter so she can build a dwelling; that the existing parcel is 26.73-acres with only 223-foot of road frontage, however the property expands to 500-foot in width; that they want to build a dwelling on the remaining 24.22-acre parcel; that they also will have horses on the larger parcel; that the two parcels will have a combined driveway per the letter of no objection from DelDOT; that he intends to leave the existing woods “as is”; that there are similar lots in the area; that the property is unique since it is such a large parcel with very little road frontage; that the property cannot be otherwise developed; that the variance will enable reasonable use of the property; that it will not alter the character of the neighborhood; and that it is the minimum variance to afford relief.

The Board found that 3-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. 10926 for the requested variance based on the record made at the public hearing because it meets the standards for a variance.

A Motion by Mr. Rickard was seconded by Mr. Hudson, and carried by the vote of 4 to 1 that the variance be **granted for the reasons stated**. Mr. Mills opposed the Motion because he felt the need for a variance was created by the Applicant.

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

Case No. 10927 – Beach Babies Child Care – southwest corner of Route 1 (Coastal Highway) and Best Lane.

A special use exception to operate a daycare facility.

Mrs. Isaacs presented the case. Debra and Thomas Toner and Freddie Lyle were sworn in and testified requesting a special use exception to operate a daycare facility; that the proposed facility will be an after-school care center; that they plan to care for children ages 5 to 12-years of age before and after school; that the proposed facility will allow them to separate the older children from the existing daycare center which is geared more for younger children; that the existing facility has been in operation for years; that they are surrounded by commercial property; that the proposed facility will be approximately 2,500-square-foot in size; that the exterior will match the existing building; that there will be approximately 4 to 6 employees; that there will be adequate parking; that the hours of operation will be 6:30 a.m. to 8:30 a.m. and 2:30 p.m. to 6:00 p.m., Monday through Friday; and that it will not substantially affect the surrounding properties.

The Board found that 2-parties appeared in support of the application.

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 Special Use Exception Application No. 10927 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect the uses of adjacent and neighboring properties.

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

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

The Applicants appeal the 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".

Mrs. Isaacs presented the case. Tim Willard, Attorney, was present on behalf of the Applicants, and presented the Applicants' appeal of the 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"; that the Board previously granted a variance for this property; that the Court overturned the Board's decision and denied the variance; that the Planning & Zoning office has since determined the property is not a corner lot, therefore only requiring a 10-foot side yard setback requirement; that the lot is not considered a corner lot since it is a "pedestrian access" and not a "street"; that the Applicants feel the definition of "street" does encompass public or private thoroughfare or otherwise a designated passage open at both ends; that every 8 blocks there a similar access points; that the access connects Bayshore Drive to the beach for the public; that nothing states streets have to be vehicular; that the setback requirement from a corner is to allow more cushion for the public; that the 2008 survey submitted with the Application stated the access was a walkway and they feel a variance is still required; that there is precedence with Lot #37 in Broadkill Beach where the Planning & Zoning Office determined that a corner lot existed even though it abutted next to a walkway; and that the Applicants believe that this lot constitutes a corner lot.

Glenn Mandalas, Attorney, was present on behalf of the Umberto V. Pomilio, who owns the lot in question and opposes this appeal, and stated that increased setback requirement of 15-foot is predominantly for vehicular traffic and this access is strictly for people to walk to the beach; that the dirt path shown in the submitted picture shows a view from the Yosts' property; that they do not have a view of the beach only a view of the sky; that the burden of the Applicant is to show the decision of the Director has aggrieved the Applicant in some way; that they have submitted no proof or given any testimony as to how the decision has aggrieved them; that the Ordinance states the width of a street must be 50-foot in width; that this access is only 20-foot in width; that an alley is only required to be 16-foot in width and is dedicated to vehicular traffic

and only requires a 10-foot setback requirement; that the variance that was previously approved by this Board and overturned by the Court was based on technical issues; that to relocate the dwelling now would require extensive remodeling; that this access is not a principal access to abutting properties; that a definition of a street is not as encompassing as the Applicants argue; that nothing at the Office of the Recorder of Deeds identifies this access as a street; and that there is no precedential value in the case referenced by the Applicants because the issue as to whether the access constituted a street was not raised at that time.

Lawrence Lank, Director, was sworn in and testified by making reference to his decision establishing that the adjoining access way is recorded as a “pedestrian access” on plot book 8 page 87; that the tax maps did not indicate whether the access is a street or walkway or pedestrian access; that on the recorded plot book it is labeled as a “pedestrian access”; that throughout the County there are approximately 20-projects that have similar accesses to the waterfront; that the accesses vary in width from 5-foot to 20-foot; that all of these projects reference these type of paths as walkway, pedestrian accesses and none of the adjacent lots have a required 15-foot setback requirement; that Planning & Zoning has shown pedestrian accesses and bike paths as non-vehicular paths; that if this decision is reversed the County will have to review all other such accesses and determine if they are an access or a street; that he doubts vehicles can use the access; that there are blocks designated on the original plot which are bounded by streets yet the Block A, which includes the parcel in question, appears to include properties on both sides of the access.

In agreement, Glenn Mandalas, stated that it appears from the picture of the neighboring structure that it is only 10-foot from the pedestrian access; and that no variance was found to have been granted for that property.

In rebuttal, Tim Willard, stated that the picture he submitted clearly shows tire tracks on the access.

Mr. Willard and Mr. Mandalas both submitted to the Planning & Zoning Office memorandums in support of their respective clients’ positions prior to the hearing.

Motion made and withdrawn by Mr. Rickard to take the case under advisement.

Mr. Mills stated that he would move that the Board recommend approval to re-consider the testimony heard tonight for Application No. 10928 for the appeal of the Director’s decision. Motion carried 5 – 0.

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

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be **tabled until February 6, 2012**. Motion carried 5 – 0.

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

Case No. 10929 – David Anderson – south of Louisiana Avenue, 420 feet west of North Bayshore Drive.

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

Mrs. Isaacs presented the case. David Anderson, Jamie Anderson and Tim Parker were sworn in and testified requesting a 3.55-foot variance from the required 10-foot side yard setback requirement and a 2-foot variance from the required 10-foot rear yard setback requirement for a proposed dwelling; that the proposed dwelling will have stairs to access the 2nd floor living space; that the second floor will be the living room and kitchen area of the proposed dwelling; that the septic system creates a difficulty in complying with the required setbacks because it creates a small building envelope; that they intend to use the stairs as an emergency exit if needed; that the variance would not be needed if the stairs were to access the first floor of the proposed dwelling; that it will not alter the character of the dwelling; that the property cannot be otherwise developed; that without the variance it would be detrimental to the Applicant by not having an escape route in case of a fire; and that it is the minimum variance to afford relief.

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

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

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 10929 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 location of the septic system;
2. The variance is necessary for the reasonable use of the property;
3. The difficulty was not caused by the Applicant but by nature;
4. The variance sought is the minimum necessary to afford relief; and
5. The variance, if granted, would not alter the character of the neighborhood.

Motion by Mr. Mills, seconded by Mr. Rickard, 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.

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.

Mrs. Isaacs presented the case. Randy Burton, a local builder, was sworn in and testified requesting a 20-foot variance from the required 30-foot front yard setback requirement for a pool

and deck; that the Applicant's original plan was to renovate existing dwelling, however it was not feasible; that the required DNREC building line creates difficulty to make the required setback requirements with the County; that the proposed deck will be 3-foot high with a 4-foot fence around the pool; that the property is unique due to DNREC requirements; that it cannot be built in strict conformity without a variance; that it will not alter the character of the neighborhood; that no sight lines will be diminished by the construction; that there have been numerous variances granted in the area; that the variance will enable reasonable use of the property; that the entire design of the dwelling included the pool and deck area; and that the Homeowner's Association supports the application.

Mr. Rickard questioned whether a pool can be built in the front yard per the Zoning Ordinance: Mr. Lank stated that the front yard may have been determined to be the ocean side since it is an older community.

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

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

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be **left open for clarification from the office staff as to which side of the house is considered the front yard and whether a variance is needed or if there are other issues.** 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. 10931 – Jacqueline Bacher & Patricia Hartman – east of Road 39 (Primehook Road) at the intersection of Front Street and Cedar Street.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Jacqueline Bacher and Patricia Hartman were sworn in and testified requesting a 14-foot variance from the required 30-foot front yard setback requirement for a proposed dwelling and deck; that the property is a corner lot and a narrow lot; that the previous structure further encroached than the proposed structure will; that the existing cesspool had to be removed and they installed a new septic system; that they were previously granted a variance in March 2010; that they were unable to proceed due the need for a new septic system; that the location of the septic system creates a smaller building envelope; that the variance is needed in order to enable reasonable use of the property; that the lot is unique due to size and the septic system narrows the buildable area; that it will not alter the character of the neighborhood; that the lot was not created by the Applicant; and that it is the minimum variance to afford relief.

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. 10931 for the requested variance based on the record made at the public hearing because it meets the standards for a variance. Mr. Mills stated that he believed that location of the septic system and the shape of the lot make this a unique situation.

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. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – 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.

Mrs. Isaacs presented the case. Mark Davidson and Doug Barry were sworn in and testified requesting an 8.43-foot variance from the required 10-foot side yard setback requirement for a proposed addition and a 32.22-foot variance from the required 40-foot front yard setback requirement for an existing structure; that the Applicant has been approved for a Conditional Use to operate a car repair business; that the neighboring property to the south of this property also has an approved Conditional Use; that the property on the north side of the property is the existing Georgetown Speedway; that the existing dwelling was built in the 1960's and is only 7.78-foot from the front yard property line; that the Applicant wishes to maintain the dwelling for use as his office and storage area; that he proposed to build an addition to the rear of the dwelling for his shop; that the proposed addition will measure 30'x 40'; that the proposed addition will be 1.86-foot from the side yard property line, which is the same distance as the existing dwelling; that DelDOT required the Applicant to construct an entrance that could service his property and his neighbor's property which also has a Conditional Use approval; that the entrance must be used by the neighbor if his neighbor were to ever expand his business; that the Applicant was required to install a dumpster pad, a new well, a septic system, and parking for his business; the addition would be constructed so as to keep in line with the character of the existing structure; that the property is unique due to its size and the requirements that must be met to operate his business; and that they submitted standards for granting their variance request.

Alton Stack and Wendy Stack were sworn in and testified in opposition to the application and stated that they own the property to the south of the Applicant's lot; that they do operate a business under a Conditional Use approval from the County; that they also reside on the property and have some concerns for privacy; that they are concerned about the traffic on the property; that they want to know the hours of operation, exactly what type of business he will have; that their fence not be removed or damaged; that they have no intention of expanding their business and do not wish to share a driveway with the Applicant; and that DelDOT is also aware of his concerns and plan to address his issues with the driveway.

Mr. Lank read the stipulations of the Conditional Use that was approved by the County which included that the hours of operation were going to be 7:00 a.m. to 6:00 p.m., Monday through Friday and 7:00 a.m. to 2:00 p.m. on Saturday.

In rebuttal, Mark Davidson, stated that the Applicant will not remove or damage the fence; that they have only paved the shoulder in the right of way; that the Applicant will not access his property through the neighbor's property at all; and that they project to have approximately 5-cars on the premise each day.

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 **tabled until February 6, 2012**. 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.

OLD BUSINESS

Case No. 10918 – Anthony S. Nerlinger – east of Route 1 (Coastal Highway) east of Ocean Road being Lot 84 within Tower Shores development.

A variance from the minimum lot coverage per dwelling and front yard setback requirements.

The Board discussed this case which has been tabled since January 9, 2012.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 10918 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The area is primarily a multi-family structures;
2. The property is unique due to DNREC requirements;
3. The variance will enable reasonable use of the property;
4. The variance if granted will not alter the essential 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 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. 10921 – Steven Royer – south of Route 54, west of Grant Avenue, being Lot 37 within Cape Windsor development.

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

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **denied since it did not meet the standards for granting a variance.**

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.

Meeting Adjourned 10:20 p.m.