



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF JANUARY 9, 2012

The regular meeting of the Sussex County Board of Adjustment was held Monday, January 9, 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. Everett Moore – County Attorney, Mr. James Sharp – Assistant County Attorney, and staff members, Mrs. Susan Isaacs – Chief Zoning Inspector and Mrs. Jennifer Norwood – Recording Secretary.

Mr. Moore made an announcement explaining that the law firm of Moore & Rutt, P.A., had been appointed by the Sussex County Council to provide legal representation for the Board of Adjustment and that he recommended certain minor changes in the procedures before the Board. First, all applications where an attorney is present on behalf of the applicant will be heard first so as to give unrepresented applicants the opportunity to observe the presentation of an application. Second, all votes will be handled on a roll call basis with the members stating their reasons for the vote. Mr. Moore then introduced Mr. Sharp as the attorney from Moore & Rutt who will be handling these hearings.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Revised Agenda with Case No. 10920 – Je T'Aime Restoration, LLC and Case No. 10924 – G. Kevin Chaloupka moved to the beginning of the Agenda. 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 December 19, 2011 as circulated. Motion carried 4 – 0.

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

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Findings of Facts for November 7, 2011 and November 21, 2011. 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.

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

## PUBLIC HEARINGS

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**Case No. 10920 – Je T’Aime Restoration, LLC** – northeast of Road 273 approximately 676 feet southwest of Oranmore Avenue.

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

Mrs. Isaacs presented the case. Norman Barnett, Attorney, was present on behalf of the Applicant, with Lee Ann Wilkinson, Aaron Hood, and Margaret Stossel, who were sworn in and testified requesting a 23-foot variance from the required 40-foot front yard setback requirement for an existing dwelling, a 14.4-foot variance from the required 15-foot side yard setback requirement for an existing dwelling, a 5.2-foot variance from the required 15-foot side yard setback requirement for an existing deck, and a 4.95-foot variance from the required 15-foot side yard setback requirement for an existing screen porch; that the existing dwelling is non-conforming; that the builder obtained a building permit for the deck and screen porch; that the building permit was issued with the incorrect setback requirements; that the deck can encroach 5-foot into the required setback requirement; that the Zoning Inspector made them aware of the encroachment; that the adjacent property is another development; that there is approximately a 20-foot buffer of trees between the development and the property; that it will not alter the character of the neighborhood; that the property is unique since the dwelling is non-conforming; that the variance is needed to enable reasonable use of the property; that it will be a hardship to bring the property into conformity; that it is the minimum variance to afford relief; and that they submitted pictures.

The Board found 5 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. 10920 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The difficulty was not caused by the Applicant;
2. The County Permit Department issued an incorrect permit;
3. The builder relied on the incorrect permit in constructing the deck.

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. 10924 – G. Kevin Chaloupka** – north of Route 16 (Broadkill Road) approximately 400 feet east of Road 236 (Turtle Pond Road).

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A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Shannon Carmean, Attorney, was present on behalf of the Applicant, and represented that Applicant was requesting a 10.7-foot variance from the required 15-foot side yard setback requirement for an existing detached garage; that the detached garage was built in 1986; that the previous owners inherited the property in 2008 from their parents; that a survey done in 2011 showed the encroachment; that it is unique since the structures will be so closely to the side yard line and the detached garage runs parallel with the existing driveway; that it was not created by the Applicant since they inherited the property; that it does not alter the character of the neighborhood since the detached garage has been on the lot since 1986; that it cannot be otherwise developed; that the garage cannot be relocated; that the variance is necessary to enable reasonable use; 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. Mills stated that he would move that the Board recommend approval of Variance Application No. 10924 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The difficulty was not caused by the Applicant;
2. The property is unique due to the circumstances;
3. The variance is necessary for the reasonable use of the property; and
4. The variance, if granted, would not alter the essential character of the neighborhood.

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

**Case No. 10916 – Phyllis Saunders** – northeast of River Road approximately 433 feet east of Point View Road.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Kathy Walker, and Phyllis and William Saunders were sworn in and testified requesting a 11.5-foot variance from the required 40-foot front yard setback requirement for a proposed dwelling; that they originally planned to place a manufactured home on the property until Planning & Zoning advised them a manufactured home is not permitted in MR-Zoning; that the proposed modular dwelling will measure 28' x 52'; that the proposed dwelling will be for her parents; that the property is unique in shape and has a salt marsh across the rear of the property; that the proposed dwelling will be 10-foot from the salt

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marsh line; that the marsh creates the need for the front yard variance request; that the proposed dwelling will not alter the character of the neighborhood; that the property cannot be otherwise developed; that the lot was not created by the Applicant; that it is the minimum variance to afford relief; and that they had looked into all other options before applying for the variance.

The Board found that 3 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 2 letters in opposition to the application, however they stated they mainly objected to a manufactured home, not the variance request.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 10916 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The difficulty was not caused by the Applicant;
2. The property is unique due to the lot shape;
3. The variance sought is the minimum necessary to afford relief; and
4. The variance, if granted, would not alter the essential character of the neighborhood.

Motion by Mr. Mills, seconded by Mr. Rickard, 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. 10917 – Bryan and Jennifer Hibbs** – north of Route 16 (Hickman Road) 1,861 feet west of Route 585 (Woodbridge Road).

A special use exception to operate a daycare facility.

Mrs. Isaacs presented the case. Jennifer and Bryan Hibbs were sworn in and testified requesting a special use exception to operate a daycare facility; that since May 2011 she has cared for 6-children in her home daycare; that she wants to increase her daycare to care for 9-children, that after the required time frame through the State she wants to increase to 12-children; that she will need an employee when she increases to 12-children; that her hours of operation are Monday through Friday, from 7:00 a.m. to 5:00 p.m.; that she has adequate space in her home for the daycare and there is adequate parking; that the backyard is fenced in for a play area; that the property is surrounded by farmland; and that the use does not substantially affect the uses of the adjacent and neighboring properties.

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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. 10917 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. Mills, seconded by Mr. Rickard, 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. 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 requirement.

Mrs. Isaacs presented the case. Anthony Nerlinger was sworn in and testified requesting a 1,260-square-foot variance from the required 7,260-square-foot minimum lot area per dwelling and a 10-foot variance from the required 30-foot front yard setback requirement for a proposed duplex; that he has an application for a Conditional Use to allow a duplex before the Planning & Zoning Commission and the County Council; that the variances he is seeking are similar to other variances granted in the development; that the proposed duplex is the same footprint as the unit next door; that the property is unique since it is surrounded by multi-family units; that the variances will not alter the character of the neighborhood; that he has a contract to purchase the property pending the approvals of this Board and the Planning & Zoning Commission and County Council; that Tower Shores has turned into a multi-family community; that he does not plan to decrease the size of a dune on the property; that he wants to keep existing vegetation as much as possible; that from a practical standpoint it cannot be otherwise developed; that the

history of the development enables reasonable use of the property; that the unit will meet parking requirements; and that he plans to own one of the units.

John Shade was sworn in and testified in support of the application and stated that he has personal knowledge of the development and the proposed building is proposed to have a similar footprint as other units in the development; that DNREC requires such a large setback it creates a hardship to make the County setbacks as well; that they designed a smaller building to better suit the lot; and that the building will meet the height requirement and flood zone requirements.

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Don Hammeke was sworn in and testified in support of the application and stated that he is the current owner of the property, and that the proposed structure will not alter the character of the neighborhood.

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

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be **tabled until January 23, 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.

**Case No. 10919 – Ken Flacco** – north of Route 54, northwest of Canvasback Road, being Lot 97 within Swann Keys development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Darrell Grear was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for a proposed manufactured home and an 8-foot variance from the 10-foot side yard setback requirement for a proposed HVAC unit; that the proposed unit is very typical of other units in the development; that the proposed unit will provide first floor living area for the Applicants; that the Applicants plan to use the home for their retirement; that the proposed footprint is the minimum size needed to have a bedroom and living space on the first floor; that there have been numerous variances granted in the development; that the variance is necessary to enable reasonable use of the property; 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. 10919 for the requested variances based on the record made at the public hearing because it meets the standards for a variance.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried with Mr. Mills opposing the motion that the variance be **granted for the reasons stated**. Motion carried 4-1.

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

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**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.

Mrs. Isaacs presented the case. Steve Royer and Karen Royer were sworn in and testified requesting a 5-foot variance from the required 10-foot north side yard setback requirement for a covered deck, a 5-foot variance from the required 10-foot south side yard setback requirement for a proposed addition and screen porch, a 5-foot variance from the required 20-foot rear yard setback requirement for a proposed addition and covered deck, and an 8-foot variance from the required 20-foot rear yard setback requirement for uncovered steps; that they purchased the property in May 2011; that the proposed additions meet the development's covenants and restrictions; that it will not alter the character of the neighborhood; that since the dwelling already exists on the lot it creates a hardship to meet the required setback requirements; that the proposed additions are similar to other dwellings in the development; that the garage expansion is for additional storage; that the addition will sit on the same footprint as an existing concrete pad; and that the addition does not extend as far as others in the community.

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

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the case be taken under advisement. 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.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until January 23, 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.

**Case No. 10922 – Donald A. and Margaret Dzedzy** – west of Road 348 (Irons Lane) northwest of Seagrass Court with the access thru streets of Seagrass Plantation.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Mark Hart and Frank Miranda were sworn in and testified requesting an 8.2-foot variance from the required 30-foot front yard setback requirement for a proposed dwelling; that a variance was approved for this property in 2008; that the Applicant has been obtaining permits from DNREC since the approval, however did not realize the variance

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approval expired after one year; that the property is unique in size; that the property cannot be otherwise developed due to the septic system; that the existing dwelling is non-conforming and was not created by the Applicant; that it will not alter the character of the neighborhood; that the shed has been removed; that it is the minimum variance to afford relief; and that they are seeking less of a variance than requested and granted in 2008.

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. 10922 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The difficulty was not caused by the Applicant;
2. The property is unique due to the circumstances;
3. There is no possibility that the property can be developed in strict conformity with the Sussex County zoning ordinance;
4. The variance is necessary for the reasonable use of the property; and
5. The variance, if granted, would not alter the essential character of the neighborhood.

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

**Case No. 10923 – Shirley M. Caldwell** – south of Road 462 (Trussum Pond Road) approximately 7,269 feet east of Road 461 (Old Stage Road).

A special use exception to retain a manufactured home for a medical hardship.

Mrs. Isaacs presented the case. Shirley Caldwell was sworn in and testified requesting a special use exception to retain a manufactured home for a medical hardship; that the unit was



previously granted for her father; that her father passed in October 2011; that the unit is now needed for her son; that her son suffers from a certain medical condition creating a medical hardship; that the unit has been on the lot since 1994; and that it does not substantially or adversely affect the 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. 10923 for the requested special use exception, said approval being

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valid for two (2) years, based on the record made at the public hearing and for the following reasons:

1. The manufactured home has been used on the property for a medical hardship for 17 years; and
2. There is no substantial adverse effect to the adjacent properties.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for a period of two (2) years, since it meets the standards for granting a special use exception.** 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. 10902 – Richard and Barbara Leibfried** – north of Long Neck Road, north of Circle Drive, being Lot 45 within Bay City a Mobile Home Park.

A variance from the minimum lot coverage requirement in a mobile home park.

Mrs. Isaacs presented the case which has been recessed since December 12, 2011.

Richard Leibfried and Barbara Leibfried and Ronald Simmons were sworn in and testified requesting a 1,012.15-square-foot variance from the required 35% lot coverage requirement in a mobile home park; that if the new shed is not approved they will make repairs to the existing shed; that the brittle plastic on the existing porch has been removed; that the roof and floor and framing remain; that they would like to extend the enclosed porch and add a deck; that if not approved for the additional square footage they would like to enclose the existing porch; that the park is an old community which makes the lot unique; that they purchased the unit in March 2011; that it was not created by the Applicant since the improvements already exceeded the 35% lot coverage; that it will not alter the character of the neighborhood; that the

improvements meet all required setback requirements; that it will enable reasonable use of the property; that the proposed enclosure has been specifically designed for this property; and that the additional square footage added to the dwelling is only 96 square feet.

Ron Matteo was sworn in and testified in support of the application and stated that he is the President of the Homeowner's Association; that the park has greatly improved over the years; that the park has numerous residents that have made this their permanent residence; and that the owners are satisfied with the close proximity of the lots and that smaller lots require less maintenance.

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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. 10902 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The difficulty was not caused by the Applicant;
2. The property is unique due to the small lot size;
3. The variance is necessary for the reasonable use of the property;
4. The variance sought is the minimum necessary to afford relief; and
5. The variance, if granted, would not alter the essential character of the neighborhood.

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.**  
Motion carried 4 – 0.

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

**Meeting Adjourned 9:30 p.m.**