

MINUTES OF JULY 1, 2013

The regular meeting of the Sussex County Board of Adjustment was held on Monday, July 1, 2013 at 7:00 p.m. in the County Council Chambers, County Administrative 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, Ms. Melissa Thibodeau – Zoning Inspector II, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 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. 11226 – SS-LS-DE, LC d/b/a SS-LS-DE, LLC – southeast of Route 468 (Discount Land Road) approximately 175 feet northeast of Route 13 (Sussex Highway). (Tax Map I.D. 2-32-12.00-63.01)

An application for a special use exception to retain a manufactured home type structure for security purpose for a period of five (5) years.

Ms. Thibodeau presented the case. Gary Trappen was sworn in to testify about the Application. David Hutt, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant is requesting a special use exception to retain a manufactured home type structure for security purposes for a period of five (5) years; that the unit is needed for security for the Laurel Storage Center which is a mini-storage facility; that the unit has been on the Property since 1992; that the Board approved the use in 1992; that the special use exception was not applied for again until 2008 when the Property was sold; that the Board approved the special use exception in 2008; that the current owners purchased the Property in 2012; that the Applicant received a letter from the Planning and Zoning Department advising Applicant to re-apply for the special use exception; that the Application was filed prior to the expiration of the special use exception; that the Property is Zoned C-1 (Commercial); that the surrounding properties are commercially zoned and / or within the Town of Laurel jurisdiction; that there have been break-ins at the facility; that the security is needed to prevent theft; that the use does not substantially adversely affect the adjacent properties; that neighboring properties have developed around the storage center; and that the Applicant has not received any complaints about the use.

Mr. Trappen, under oath, confirmed the statements made by Mr. Hutt. Mr. Trappen testified that the unit is over twenty (20) years old, but has a new roof and has been painted and that the security employee lives on the site.

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. 11226 for a period of five (5) 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. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for the reasons stated and for a period of five (5) years**. Motion carried 5 – 0.

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

Case No. 11227 – Graham Living – at the intersection, south of Chestnut Drive and west of U.S. Route 113, being Lot 32 within Evergreen Acres development. (Tax Map I.D. 2-33-5.00-282.00)

An application for a variance from the front yard setback requirement.

Ms. Thibodeau presented the case. Graham Living was sworn in and testified requesting a variance of 2.9 feet from the forty (40) feet front yard setback requirement for an existing dwelling. Mr. Living testified that the dwelling was built over twenty (20) years ago; that he purchased the Property in 2012; that the Certificate of Compliance has been issued for the dwelling; that the Property is unique in shape; that the difficulty was not created by the Applicant; that the location of the dwelling was in its current location when he purchased the Property; that the variance does not alter the character of the neighborhood; that the variance is the minimum variance necessary to afford relief; that the variance is necessary to enable reasonable use of the Property; and that a portion of the dwelling would have to be removed in order to comply with the setback requirement.

The Board found that one (1) party 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. 11227 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique in shape;
2. The variance is necessary to enable reasonable use of the Property;

3. The difficulty was not created by the Applicant as the dwelling was in its current location when the Applicant purchased the Property;
4. The variance will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance necessary to afford relief; and
6. The variance will not be detrimental to the public welfare.

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

Case No. 11228 – Richard Sank – north of Route 54 (Lighthouse Road) southeast of Blue Teal Drive, being Lot 23, Block C, within Swann Keys development. (Tax Map I.D. 5-33-12.16-424.00)

An application for a variance from the side yard setback requirement.

Ms. Thibodeau presented the case. Richard Sank was sworn in and testified requesting a variance of five (5) feet from the ten (10) feet side yard setback requirement for a proposed addition. Mr. Sank testified that the Property is located in Swann Keys; that he purchased the Property in April 2013 with the existing manufactured home already on the Property; that the dwelling has been in its current location since 1987; that the dwelling was placed prior to the establishment of the ten (10) feet setback requirement; that the existing manufactured home is in need of repair; that he plans to reinforce the existing wall and build an addition on the front and rear of the manufactured home; that the existing shed and the existing deck will be removed; that the prior owner had not obtained a building permit; that there are no steps or HVAC unit on the side of the existing manufactured home that encroach into the setback area; that the difficulty was not created by the Applicant; that the variance, if granted, will not alter the character of the neighborhood; that the proposed addition will be in line with the existing manufactured home; and that the proposed addition could not be built without a variance.

The Board found that one (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 Variance Application No. 11228 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is only forty (40) feet wide which makes it unique;
2. The variance is necessary to enable reasonable use of the Property;

3. The difficulty was not created by the Applicant;
4. The setback requirement changed after the dwelling was placed on the Property;
5. The variance will not alter the essential character of the neighborhood; and
6. The variance sought is the minimum variance necessary 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 5 – 0.

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

Case No. 11229 – Elizabeth Russell – at the intersection of Route 1 (Coastal Highway) and Carolina Street, being part of Lots 5 & 6 within Killens addition development. (Tax Map I.D. 3-34-20.09-168.00)

An application for a variance from the height requirement for a fence on a corner lot.

Ms. Thibodeau presented the case. Elizabeth Russell was sworn in and testified requesting a variance of 3.5 feet from the 3.5 feet height requirement for a fence. Ms. Russell testified that the proposed fence will run along the side yard property line adjacent to Route 1; that the existing cottage was built in the 1870's and moved to this Property in the 1940's; that her family has been visiting the Property since the 1970's; that she purchased the Property in 1998; that when she obtained the building permit she learned of the height requirements for the fence; that the existing trees along the property line are dying; that without the trees or the proposed fence she will lose her sound barrier; that Route 1 has been expanded and a bike lane and sidewalk have been added; that the fence is also needed to provide safety for her family members and tenants; that the fence is needed for full enjoyment of the Property; that the neighbors have no objection to the Application; that there is similar fencing in the area; that the proposed fence will be seven (7) feet tall along the side yard only and three (3) feet tall along the front and rear yards; that the sidewalk and bike path were created after she purchased the Property; and that the proposed fence will not hinder the traffic or block views of the intersection. Ms. Russell submitted pictures and exhibits to the Board for review.

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. 11229 for the requested variance based on the record made at the public hearing and for the following reasons:

1. There is a uniqueness to the Property;
2. The variance is necessary to enable reasonable use of the Property;

3. The difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary 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 5 – 0.

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

Case No. 11230 – ICM of Delaware, Inc. – north of Route 322 approximately 1,400 feet southwest of Route 113 (DuPont Boulevard). (Tax Map I.D. 1-33-6.00-53.09)

An application for a special use exception to renew an asphalt batching plant approval.

Ms. Thibodeau presented the case. Jay Miller was sworn in and testified requesting a special use exception to renew an asphalt batching plant approval. Mr. Miller testified that the asphalt plant has existed on the Property for more than ten (10) years; that the adjacent property has an existing sand plant; that the previous approval expired in 2011; that the Applicant has leased the Property from Tilcon since 2009; that the Applicant was not aware the approval had expired; that he believes the letter for renewal went to the property owner instead of the Applicant; that the Applicant is making improvements to the plant; that the Applicant plans to change over to natural gas; that there have been no complaints from the neighbors; and that the Applicant has a permit from the Department of Natural Resources and Environmental Control and the Applicant is compliant with that permit.

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 No. 11230 for a period of five (5) years 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. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for the reasons stated and for a period of five (5) years**. Motion carried 5 – 0.

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

OLD BUSINESS

Case No. 11223 – Glenn Lebedz & Carol Lebedz – southwest of Second Hole (a.k.a. Bay Hill Drive) and 0.25 miles south of Sussex Pine Road (Road 324) being Lot 3, Block E, within Golf Village Development. (Tax Map I.D. 1-33-2.00-72.00)

An application for a variance from the rear yard setback requirement.

The Board discussed the case, which has been tabled since June 17, 2013.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11223 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The difficulty was not created by the Applicants as the shed was already in place when the Applicants purchased the Property;
3. The variance is necessary to enable reasonable use of the Property;
4. The variance will not alter the essential character of the neighborhood;
5. The variance is not detrimental to public welfare; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 3 – 2.

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

OTHER BUSINESS

Case No. 11156 – Ronald Wroblewski and Lori Wroblewski – north of Route 54 (Lighthouse Road) east of Laws Point Road, being Lot 64, Block E, within Swann Keys development. (Tax Map I.D. 5-33-12.16-267.00)

An application for a variance from the side yard setback requirement.

AMEND APPROVAL OF MINUTES AND FINDING OF FACTS

Mr. Sharp stated that the Planning and Zoning Department reviewed the audio and determined the proposed unit mentioned at the hearing is a residence and not a manufactured home.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the Minutes and the Finding of Facts for Case No. 11156 be **amended to reflect residence and not reference manufactured home as the proposed unit.** Motion carried 5 – 0.

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

Meeting Adjourned 7:55 p.m.