

MINUTES OF JULY 15, 2013

The regular meeting of the Sussex County Board of Adjustment was held on July 15, 2013, 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 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.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes of June 3, 2013 and the Minutes of June 17, 2013 as circulated. Motion carried 5 – 0.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Finding of Facts for June 3, 2013 and for June 17, 2013 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. 11231 – James Shugart & Patricia Shugart – north of Route 54 (Lighthouse Road) east of Canvasback Road, being Lot 16, Block D, Section A, within Swann Keys Development. (Tax Map I.D. 5-33-12.16-407.00)

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

Ms. Thibodeau presented the case. James Shugart was sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board on behalf of the Applicants and stated that the Applicants are requesting a variance of 4.8 feet from the ten (10) feet side yard setback requirement for a proposed dwelling and a variance of 3.6 feet from the ten (10) feet side yard setback requirement for a proposed roof over a doorway, a proposed second-level deck, and a proposed HVAC unit; that the Property is located within the Swann Keys development; that the Applicants purchased the Property in 1987; that the existing manufactured home needs to be replaced; that a lagoon is located in the rear of the Property; that the lot measures forty (40) feet wide by one hundred and one (101) feet deep; that Swann Keys is an older development for singlewide mobile homes; that newer homes are being placed on lots in Swann Keys; that the proposed dwelling will measure twenty four (24) feet four (4) inches by seventy two (72) feet; that the narrow lot will not allow the proposed dwelling to meet the required setback requirements; that a variance is needed on the north side of the Property; that the neighbor on the north side has no objection to the Application; that the lot is unique in size;

that the variance will enable reasonable use of the Property as there have been similar dwellings constructed in the development; that the variances will not alter the character of the neighborhood; that the variances are the minimum variances necessary to afford relief; that there have been over eighty (80) variances granted throughout the development including three (3) variance applications approved on neighboring properties; that most of the variances granted were for side yard variances; and that the difficulty was not created by the Applicants because the lots were laid out by the original developer. Mr. Shugart, under oath, confirmed the testimony of Mr. Fuqua. Mr. Fuqua submitted exhibits for the Board to review.

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

Ms. Thibodeau stated that one (1) letter of support was submitted into the record.

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. 11231 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it is only forty (40) feet wide and is narrow;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants as the Applicants did not create the lot;
4. The variances will not alter the essential character of the neighborhood because other similar variances have been granted in the neighborhood;
5. The variances sought are the minimum variances necessary to afford relief; and
6. The variances requested represent the least modification possible of the regulation at issue.

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

Case No. 11232 – Horace D. Good & Barbara Good – south of Angola Road east of Dogwood Drive, being Lot 25, Block A, within Angola by the Bay development. (Tax Map I.D. 2-34-12.17-57.00)

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

Ms. Thibodeau presented the case. Eugene Hoffman, Real Estate Agent, was sworn in to testify about the Application. Shannon Carmean-Burton, Esquire, presented the case to the Board on behalf of the Applicants and stated that the Applicants are requesting a variance of 0.8 feet from the thirty (30) feet front yard setback requirement for an existing covered porch and that the Applicants live in Pennsylvania and could not attend the hearing. Mrs. Carmean-Burton submitted sworn affidavits from each of the Applicants. Mrs. Carmean-Burton stated that the Applicants purchased the Property on December 1, 1995 and that the survey completed on November 10, 1995 showed no encroachments into the setback area. Mrs. Carmean-Burton submitted a letter from the surveyor stating that there were no errors made on the survey and the structures complied with the Sussex County Zoning Code. Mrs. Carmean-Burton stated that the Certificate of Compliance was issued on May 11, 1993; that the Applicants were unaware of any encroachments; that a survey completed for the sale of the Property showed the encroachment; that the lot is long and narrow which makes it unique in shape; that the difficulty was not created by the Applicants; that the variance will enable reasonable use of the Property; that the variance will not alter the essential character of the neighborhood; that the Homeowners Association supports the Application; that there have been no complaints since the porch has existed; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the variance is the minimum variance necessary to afford relief; and that the shed has been moved into compliance with the Sussex County Zoning Code. Mr. Hoffman, under oath, confirmed the statements made by Mrs. Carmean-Burton.

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. 11232 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 its width;
2. The situation is unique due to the two (2) conflicting surveys and because the County issued a Certificate of Compliance;
3. The variance is necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicants;
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. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11233 – University of Delaware – northwest of County Seat Highway northeast of County Road 444. (Tax Map I.D. 2-31-19.00-6.00)

An application for a special use exception to place two (2) temporary manufactured home type structures for a period of five (5) years.

Ms. Thibodeau presented the case. Mike Wheedleton and Mark Isaacs were sworn in to testify about the Application whereby the Applicant sought a special use exception to place two (2) temporary manufactured home type structures for a period of five (5) years. Mr. Wheedleton testified that the proposed site is the Carvel Campus located on Route 9 west of Sussex Technical High School; that they are renovating the existing laboratory; and that the units are needed to use for the laboratory space during the renovations. Mr. Wheedleton submitted exhibits to the Board. Mr. Wheedleton testified that he is an architect for Davis, Bowen, & Friedel.

Mr. Isaacs testified that he is the Director of the Carvel Campus; that the renovation should take approximately a year and a half; that the laboratory will be used for the Poultry Diagnostic Laboratory for the Delmarva Region; that the laboratory was critical in 2004 during the Avian Influenza outbreak; that the units will only be needed for approximately a year and a half; that the trailers will have no effect on neighbors; that the site is surrounded by buildings owned by the Applicant; that the Applicant owns property across the road; that there is a ditch located on the rear of the Property; that there is a poultry farm nearby; that the parcel is 347 acres in size; and that the surrounding properties are farmland and the use will not substantially affect adversely the surrounding or adjacent property owners.

Mr. Wheedleton testified that an approval of two (2) years would be sufficient.

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 Special Use Exception Application No. 11233 for the requested special use exception for a period of two (2) years based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Workman, and carried unanimously that the special use exception be **granted for the reasons stated for a period of two (2) years**.

Motion carried 5 – 0.

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

Case No. 11234 – Donna M. Berger – north of Route 54 (Lighthouse Road) north of Blue Teal Road, being Lot 8, Block C, within Swann Keys development. (Tax Map I.D. 5-33-12.20-42.00)

An application for variances from the side yard setback requirement.

Ms. Thibodeau presented the case. Charles Shade was sworn in and testified requesting two (2) variances of five (5) feet from the ten (10) feet side yard setback requirement for both sides of the Property for a proposed modular dwelling; that he is the General Manager of Chesapeake Homes; that the previous home did not comply with the required setback requirements; that the Applicant intends to remove the existing home and replace it with a new dwelling; that there have been similar variances granted in the development; that the proposed dwelling has an eight (8) inch overhang; that the lot is narrow; that the variances will enable reasonable use of the Property; that the variances will not alter the character of the neighborhood; that the proposed dwelling will enhance the character of the neighborhood because the existing dilapidated dwelling will be removed and replaced with a new dwelling; that the variances will not impair the uses of adjacent properties; that the variances are not detrimental to the public welfare; and that the variances are the minimum variances necessary 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. 11234 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 its narrowness;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood as there have been similar variances in the neighborhood; and
5. The variances sought are the minimum variances necessary 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 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. 11235 – Lullaby House, Inc. – north of Savannah Road north of North Village Main Boulevard, within Villages of Five Points. (Tax Map I.D. 3-35-12.00-1.13)

An application for a special use exception to operate a daycare facility.

Ms. Thibodeau presented the case. Joseph Gebbia and Sheri Gebbia were sworn in and testified requesting a special use exception to operate a daycare facility and to expand the number of children in an existing daycare facility. Mrs. Gebbia testified that she is one of the owners of Lullaby House, Inc.; that the existing daycare serves children from ages birth to five (5) years of age; that there is a great need for expansion due to a long waiting list for the daycare facility; that the proposed daycare will be located in nearby Units 35 and 37; that the existing daycare is located in Units 11, 13, & 15; that the proposed daycare will be a preschool for sixty (60) children ages three (3) to five (5) years old; that the hours of operation are from 6:00 a.m. to 6:00 p.m., Monday through Friday; that the daycare is closed on major holidays.

Mr. Gebbia testified that the Applicant currently occupies 4,500 square feet and seeks to use an additional 3,000 square feet and that there is adequate parking for both facilities.

Mrs. Gebbia testified that the Applicant seeks to increase the number of children served in the existing daycare at Units 11, 13, and 15; that the Applicant is working with the State of Delaware for all necessary approvals; that only interior remodeling will be completed in the units; that the ceiling is constructed to create a sound barrier from the residential area above the facility; that the existing outdoor area for the proposed daycare will continue to be used as a picnic area; and there will not be a substantial adverse effect to the surrounding neighbors or properties with the proposed daycare; that there have been no complaints from the neighbors; and that the families in the development support the daycare.

The Board found that twenty two (22) parties appeared in support of the Application.

Ms. Thibodeau stated that the office received six (6) letters 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 Special Use Exception Application No. 11235 for the requested special use exception for the proposed daycare facility in Units 35 & 37, and for the additional children for the existing daycare in Units 11, 13, & 15, based on the record made at the public hearing and that the uses do not substantially affect adversely the uses of the 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**. 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. 11236 – John Dykstra – north of Concord Road, north of Cedar Lane, being Lot 10, within Nanticoke Acres development. (Tax Map I.D. 1-32-2.00-17.00)

An application for variances from the side yard setback requirements.

Ms. Thibodeau presented the case. John Dykstra was sworn in and testified requesting a variance of 1.5 feet from the five (5) feet side yard setback requirement for an existing shed and a variance of 0.8 feet from the ten (10) feet side yard setback requirement for an existing dwelling; that he is the former owner of the Property; that he sold the Property on June 25, 2013; that a survey completed for settlement showed the encroachments; that he purchased the Property in 1993; that the Property was developed approximately sixty (60) years ago; that the existing dwelling and the existing pool house / shed were in need of repairs at the time he purchased the Property; that the existing pool house / shed was infested with termites; that he built the existing pool house on the existing concrete pad and a portion of the concrete wall supports the existing pool; that he obtained the required building permits; that there was never any mention of the structures not meeting the setback requirements at that time; that the existing dwelling was not ten (10) feet from the side yard property line; that the septic system and a pond are on the opposite side of the pool; that the Property is unique in shape; that the dwelling is located parallel to the road but the Property is angled; that the variances are necessary to enable reasonable use of the Property; that the variances do not alter the character of the neighborhood; that the variances are not detrimental to the public welfare; that the variances are the minimum variances necessary to afford relief; that there have been no complaints from the neighbors; and that the addition was constructed six (6) inches further from the side yard property line than the existing dwelling. Mr. Dykstra submitted the original survey of the Property to the Board.

The Board found that four (4) 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. 11236 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The location of the house in relation to the property line creates a uniqueness to the Property;
2. The pool house was existing and the Applicant tried to keep the house from the property line in renovating the Property;
3. The variances are necessary to enable reasonable use of the Property;
4. The variances do not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances 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. 11237 – Pamela Grue – north of Route 54 (Lighthouse Road) east of Cleveland Avenue, being Lot 11, Block 4, within Cape Windsor development. (Tax Map I.D. 5-33-20.18-130.00)

An application for variances from the rear yard and side yard setback requirements.

Ms. Thibodeau presented the case. Pamela Grue and Erin Schaeffer were sworn in and testified requesting a variance of five (5) feet from the twenty (20) feet rear yard setback requirement for a proposed porch, a variance of 3.2 feet from the ten (10) feet side yard setback requirement for a proposed dwelling, and a variance of 3.2 feet from the seven (7) feet side yard setback requirement for a proposed HVAC unit. Ms. Schaeffer testified that the Property is located within the Cape Windsor development; that Pamela Grue has owned the Property since 2008; that the existing home is over forty (40) years old and was damaged by Hurricane Sandy; and that the existing home needs to be replaced. Ms. Schaeffer submitted surveys for the Board to review. Ms. Schaeffer testified that the development is a dense residential area; that the lot measures fifty (50) feet by ninety (90) feet; that the proposed dwelling will be placed within the same footprint as the existing dwelling; that the dwelling will be raised to meet flood zone requirements and to prevent the structure and the HVAC unit from being submerged under water; that the rear yard variance allows for off street parking and creates a buffer from the street; that the development prohibits parking on the street; that there have been similar variances granted in the development; that the Homeowners Association does not object to the Application; that the proposed dwelling will be in line with the other dwellings on the street and will be in conformity with the neighborhood; that the Property is narrow in size; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that the difficulty was not created by the Applicant; that the variance will enable reasonable use of the Property; that the variances will not alter the character of the neighborhood; that the dwelling will be placed fifteen (15) feet from the bulkhead like other homes in the neighborhood; that the variances are the minimum variances to afford relief; and that there is a proposed bedroom close to the road and for safety reasons ask that the dwelling be placed further back on the Property.

Ms. Grue, under oath, confirmed the statements made by Ms. Schaeffer.

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

Ms. Thibodeau stated that the office received one (1) letter 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. 11237 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

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

Case No. 11238 – Donald LaVecchia & Elsa LaVecchia – north of Road 362 (Parker House Road) west of Park Circle, being Lot 31, Block 4, within Plantation Park development. (Tax Map I.D. 1-34-16.00-278.01)

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

Mr. Sharp advised the Board that his firm has represented the Applicants in the past and that if the Board had any questions, they should direct them to Vince Robertson, Esquire.

Ms. Thibodeau presented the case. Elsa LaVecchia and Donald LaVecchia were sworn in and testified requesting a variance of one (1) foot from the five (5) feet side yard setback requirement for an existing shed. The Applicants submitted pictures to the Board. Ms. LaVecchia testified that the Applicants purchased the Property in 2005; that the neighbors constantly complain about the Applicants; that there have been violent threats made and the police have been called to the Property; that the Applicants enclosed the Property with a fence; that the fence is needed to provide privacy.

Donald LaVecchia testified that the fence is along the property line on the Applicant's property and is five (5) feet tall at its highest point; that the variance was supposed to be for the fence; that the shed has been moved into compliance; and that a variance is not necessary for the shed.

Patricia Georgarakis, Joan Wallace, and Elizabeth Larkin were sworn in and testified in opposition to the Application. Ms. Larkin testified that the Applicants do not meet the standards

for granting a variance; that the Applicants choose to ignore rules and regulations; and that they are opposed to a variance for the shed.

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

The Board found that three (3) parties appeared in opposition to the Application.

Ms. Thibodeau stated that there were three (3) letters in opposition submitted to the Office of Planning & Zoning.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be **left open to allow the Planning & Zoning staff to verify that the shed is now in compliance. If the Planning & Zoning staff determines that a variance for the shed is necessary, the Applicant may come back for re-hearing.** 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.

REORGANIZATION

Mr. Callaway appointed Ms. Thibodeau as Acting Chairman for the purpose of holding an Election of Officers.

Ms. Thibodeau opened nominations for Chairman.

Motion by Mr. Mills and seconded by Mr. Rickard, to nominate Mr. Callaway as Chairman.

Motion by Mr. Workman and seconded by Mr. Mills that the nominations for Chairman be closed.

Motion was adopted to nominate Mr. Callaway as Chairman with 5 – 0 vote.

Vote for Mr. Callaway, as Chairman, by roll call:

Mr. Workman - yea
Mr. Rickard - yea
Mr. Hudson - yea
Mr. Mills - yea
Mr. Callaway - yea

Ms. Thibodeau opened nominations for Vice-Chairman.

Motion by Mr. Hudson and seconded by Mr. Workman to nominate Mr. Mills for Vice-Chairman.

Motion by Mr. Workman and seconded by Mr. Hudson that the nominations for Vice-Chairman be closed.

Motion was adopted to nominate Mr. Mills as Vice-Chairman with 5 – 0 vote.

Vote for Mr. Mills, as Vice-Chairman, by roll call:

Mr. Workman - yea
Mr. Rickard - yea
Mr. Hudson - yea
Mr. Mills - yea
Mr. Callaway - yea

The meeting was turned over to Mr. Callaway, the re-elected Chairman.

Motion was made by Mr. Mills and seconded by Mr. Rickard to appoint Mr. Lawrence Lank as Secretary to the Board, with 5 – 0 vote.

Vote for Mr. Lank, as Secretary to the Board, by roll call:

Mr. Workman - yea
Mr. Rickard - yea
Mr. Hudson - yea
Mr. Mills - yea
Mr. Callaway - yea

Meeting Adjourned 8:45 p.m.