



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF JULY 2, 2012

The regular meeting of the Sussex County Board of Adjustment was held on Monday, July 2, 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 James Sharp – Assistant County Attorney, and staff members 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.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of June 4, 2012 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Finding of Facts for June 4, 2012. 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. 10996 – Frank McCarthy & Bonnie McCarthy – south of Route 54, northwest of Pine Road, being Lot 40 within Keen-Wik development. (Tax Map I.D. 5-33-19.12-42.00)

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Bonnie McCarthy was sworn in and was present with Susan Gardner, Attorney. Susan Gardner presented the case to the Board and stated that the Applicant is requesting a 1.7-foot variance from the required 10-foot side yard setback requirement for an existing dwelling; that the Applicants purchased the property on October 15, 2011; that a survey completed for settlement showed the encroachment; that the Applicants did not build the existing dwelling; that a Certificate of Compliance was issued on the dwelling; that the Applicants would have to tear down a portion of the dwelling in order to comply with the required setback requirements; that the dwelling was constructed in 1983; that it will not alter the character of the neighborhood; that the Homeowner's Association approves the application; and

that the Applicants request a refund of the filing fee since the Certificate of Compliance had been issued by the Planning & Zoning Department. Ms. McCarthy, under oath, confirmed the statements by Ms. Gardner. The Applicants also submitted pictures in support of the Application.

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

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Mrs. Isaacs stated that the office received 2 letters of support to the application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 10996 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The difficulty was not created by the Applicant;
2. The variance will not alter the character of the neighborhood;
3. The variance will not be detrimental to the public welfare;
4. The variance is the least modification possible of the regulation in issue; and
5. The variance sought is the minimum variance 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. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 10997 – John P. Laursen – corner of Argo's Corner Road and Slaughter Beach Road.
(Tax Map I.D. 2-30-7.00-117.00)

A variance to permit an additional year for reconstruction of commercial structure damaged by fire.

Mrs. Isaacs presented the case. John Laursen was sworn in and was present with Jim Fuqua, Attorney. Mr. Fuqua presented the case to the Board and stated that the Applicant is requesting a 1-year extension variance to reconstruct a commercial use damaged by fire; that the time extension is needed to allow the Applicant more time to decide whether to rebuild the store or to pursue other possibilities; that the store was a non-conforming use of the property which pre-dated the enactment of the Sussex County Zoning Code; that the fire was determined to be an act of arson by the State Fire Marshal; that the Applicant had no insurance on the building; that due to poor economic times he has not yet rebuilt the store; that the circumstances make the situation unique; that the use will not alter the character of the neighborhood; that the Applicant will either rebuild the store or build a residential structure permitted in the GR-Zoning; and that

this is a minimum variance to afford relief. Mr. Laursen, under oath, confirmed the statements by Mr. Fuqua. The Applicant also submitted a packet of information to the Board.

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. 10997 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The circumstances make it unique;
2. The variance will not alter the character of the neighborhood;
3. The variance sought is the minimum variance to afford relief;
4. The difficulty was not created by the Applicant;
5. The property cannot otherwise be developed commercially without the variance.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variance be **granted for a 1-year extension 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. 10998 – Michelle E. McCabe – west of Road 5 (Oak Orchard Road) northeast of Oak Meadow Drive, being Lot 48 within Oak Meadows development. (Tax Map I.D. 2-34-29.00-116.00)

A variance from the side yard and front yard setback requirement for a through lot.

Mrs. Isaacs presented the case. Amy Schrader was sworn in and was present with Doug Marshall, Attorney. Mr. Marshall presented the case to the Board and stated that the Applicant was requesting a 0.7-foot variance from the required 10-foot side yard setback requirement for an existing manufactured home and a 22.8-foot variance from the required 40-foot front yard setback requirement for an existing shed on a through lot; that building permits and Certificates of Compliance were issued for the structures in 1983; that the lot is unique since it a through lot and has two front yard setback requirements; that the two front yard setback requirements create a very small building envelope on a small lot; that there is no access to the property from Route 5; that the rear of the property abuts Route 5 but is classified as a front yard; that the shed does not alter the character of the neighborhood since there are numerous sheds in the area; that a small bowed out portion of the existing manufactured home encroaches within the side yard setback requirement; that the variance request is the minimum variance necessary to afford relief; that the variance, if granted, will not affect the uses of neighboring properties; that the difficulty was not created by the Applicant; and that the variances will enable reasonable use of the property. Ms. Schrader, under oath, confirmed the statements by Mr. Marshall, and added that she has been a realtor in the area for 29 years and is familiar with the area. The Applicant submitted a packet of information, including pictures, to the Board.

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

Mrs. Isaacs stated that the office received 2 letters in support of the application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 10998 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The property is unique since it is a through lot;
2. The variance will enable reasonable use of the property;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the character of the neighborhood;
5. The variance sought is the minimum variance to afford relief; and
6. The requested variance represents the least modification possible of the regulation in 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. Rickard - yea, Mr. Workman –yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 10999 – West Rehoboth Community Land Trust, Inc. – northwest of Hebron Road (Road 273) and being northwest of Norwood Street, 225 feet northeast of Burton Avenue and being Lot 47 and ½ Lot 46 in West Rehoboth Subdivision. (Tax Map I.D. 3-34-13.19-40.00)

A special use exception for a garage/studio apartment.

Mrs. Isaacs presented the case. Beth Doughty, President of the West Rehoboth Community Land Trust, Inc. and Mark Schaeffer, member of the Board of Directors of the West Rehoboth Community Land Trust, Inc. were sworn in and were present. Heidi Gilmore, Esquire, presented the case to the Board and stated that the Applicant is requesting a special use exception for a garage/studio apartment; that the Applicant is hoping to create additional low income housing to the area; that the proposed garage apartment will be 792 square-feet in size; that the existing cottage will remain in place; that the proposed cottage and garage/studio apartment will meet all required setback requirements; that there will be adequate parking on the property; that the use will provide housing for up to 2 families; that the neighborhood supports the application; and that the proposed use will not substantially affect adversely the uses of the adjacent and neighboring properties. Ms. Doughty affirmed Mrs. Gilmore's presentation and testified that the design is compatible with others in the neighborhood. Mr. Schaeffer testified that he has been a real estate agent for thirty (30) years; that he is a former land appraiser; and that he believes that the proposed use will enhance property values in West Rehoboth.

The Board found that 7 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 Special Use Exception Application No. 10999 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 the adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Hudson, 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. 11000 – Robert W. Steffens – east of Road 350 (Railway road) southwest of Oak Street, being Lot 10 within Banks Acres development. (Tax Map I.D. 1-34-12.00-123.00)

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

Mrs. Isaacs presented the case. Manaen Robinson, Attorney, presented the case on behalf of the Applicant requesting a 1.7-foot variance from the required 5-foot side yard setback requirement for a shed, a 1.8-foot variance from the required 30-foot front yard setback requirement for an existing porch, a 3.5-foot variance from the required 10-foot rear yard setback requirement, and a 4.2-foot variance from the required 10-foot side yard setback requirement for an existing detached garage. Mr. Robinson stated that the Applicant purchased the Property in August 2011; that a survey completed for settlement showed encroachments into the setback areas; that the porch was constructed in 1983 and the shed and garage were constructed in 1984; that the variance will enable reasonable use of the property; that to move the structures into compliance would create a hardship; that the garage and the shed both have foundations and are difficult to move; that the difficulty was not created by the Applicant; that the lot is small in size; and that it will not alter the character of the neighborhood as the structures have been in place for a very long time.

Mr. Sharp advised Mr. Robinson that there is a need to have the Applicant present at the hearings for confirmation of the testimony.

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

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to **leave the record open to allow the Applicant to appear and confirm testimony**. 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. 11001 – Michael N. & Susan M. Hamilton – north Road 353 (Burbage Road) south of Bowman Lane, being Lot 11 within Sherwood Acres development. (Tax Map I.D. 1-34-15.00-64.01)

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Manaen Robinson, Attorney, presented on behalf of the Applicants requesting a 1.1-foot variance from the required 5-foot side yard setback requirement for a detached garage and a 0.8-foot variance from the required 10-foot side yard setback requirement for a pump house. Mr. Robinson stated that the Applicants purchased the property in January 2012; that the survey completed for settlement showed the encroachments; that the structures would have to be destroyed in order to comply with the setback requirements; that the lot is narrow in size and a large portion is wooded; that the structures have been on site for approximately 30 years; that the variances will enable reasonable use of the property; that it will not alter the character of the property; that the difficulty was not created by the Applicant as the encroachments existed at the time of the purchase; 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.

Mrs. Isaacs stated that the office received one (1) letter from a neighbor in opposition to the application.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to **leave the record open to allow the Applicant to appear and confirm testimony.**
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. 11002 – Janet Stenner & William Stenner – south of Route 54 (Lighthouse Road) east of Grant Avenue, being Lot 5 within Cape Windsor development. (Tax Map I.D. 5-33-20.14-27.00)

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. William Stenner and Donald Esch were sworn in and testified requesting a 9-foot variance from the required 10-foot side yard setback requirement for an HVAC unit. Mr. Esch testified that he was the builder of the dwelling located on the property; that the Board previously approved a variance for the dwelling in December 2011; that the Applicants were unaware at that time that the location of the HVAC unit would also create need for a variance, and that there are similar issues with both neighboring properties. Mr. Stenner testified that the narrowness of the lot makes it unique; that to move the HVAC unit to the other side would interfere with the parking and be very costly; that the variance will enable reasonable use of the property; that it will not alter the character of the neighborhood; that the location of the HVAC unit enhances the neighborhood; that the difficulty was not created by the Applicant; that it is the minimum variance to afford relief; and that the requested variance represents the least modification of the regulation at issue.

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

Motion by Mr. Hudson, seconded by Mr. Workman, 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.

Mr. Mills stated that the HVAC could have encroached if the dwelling did not encroach.

Mrs. Isaacs stated that the Applicant was not aware he needed to include the HVAC in his first application and that the survey did not show the location of the HVAC, and that she has instructed the staff to ask the Applicant's for more information to prevent further problems.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11002 for the requested variance based on the record made at the public hearing since the Applicant was unaware and the Planning & Zoning department is correcting the issue to prevent this situation.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried that the variance be granted. Motion carried 4 – 1. Mr. Hudson stated that the lot was narrow and similar variances had been granted in the neighborhood.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, and Mr. Callaway – yea; with Mr. Mills – nay since the Applicant did not meet the standards for granting a variance.

Case No. 11003 – Mike Stough & Wanda Stough – northeast of Route 1 (Coastal Highway) northeast of Colonial Lane, being Lot 20 within Colonial East a Mobile Home Park. (Tax Map I.D. 3-34-6.00-335.00 Unit 52900)

A variance from the separation requirement between units in a mobile home park.

Mrs. Isaacs presented the case. Mike Stough and Link Magee were sworn in and testified requesting a 4.2-foot variance from the required 20-foot separation requirement between units in a mobile home park. Mr. Stough testified that the Applicants want to construct an awning over the existing deck; that the awning will enable reasonable use of the property; that there are similar awnings throughout the park; that he did not place the manufactured home on the lot; that he received a variance for their existing deck; that the awning will not exceed the width of the deck; that he chose a silver top awning instead of a temporary awning due to durability concerns; that the park is in support of the application; and that the Applicants will not screen in the awning.

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 denial of Variance Application No. 11003 since the difficulty has been created by the Applicant. The motion denied due to lack of a second.

Motion by Mr. Mills, seconded by Mr. Hudson, 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 July 16, 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. 11004 – Susan Pratzner – west of Route 1 (Coastal Highway) east of Sarah Road, being Lot H-92 within Whispering Pines a Mobile Home Park. (Tax Map I.D. 3-34-5.00-155.00 Unit 19038)

A variance from the separation requirement between units in a mobile home park.

Mrs. Isaacs presented the case. Susan Pratzner was sworn in and testified requesting a 7.3-foot variance from the required 20-foot separation requirement between units in a mobile home park for an existing deck. Ms. Pratzner testified that she purchased the unit in June 2001; that the dwelling had a deck attached to it at the time she purchased the unit; that the deck that was on the unit at that time has deteriorated; that her neighbor, a seasonal resident, offered to construct a new deck for the cost of materials only; that her neighbor also obtained the building permit; that she was not aware of the setback violation until she received a non-compliance letter from Planning & Zoning Office; that the previous deck also encroached into the separation requirement; that the park did not have a survey of her lot; that she obtained a survey needed to apply for the variance; that the new deck is 2.5-feet larger than the previous deck; that it will be a hardship to correct the problem because footers are in place; and that she will provide the builder's address to the Board.

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

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

Motion by Mr. Mills, seconded by Mr. Rickard, 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. Workman, and carried unanimously that the case be **tabled until July 16, 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. 11005 – Dawn E. Walsh – south of Route 1 (Coastal Highway) southeast corner of Bald Eagle road and Fifth Street, being Lots 248, 249, and 250 within Bay Vista development. (Tax Map I.D. 3-34-19.16-72.00)

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. Frances Walsh and Dawn Walsh were sworn in and testified requesting a 0.8-foot variance from the required 20-foot rear yard setback requirement for an existing attached garage and addition. Mr. Walsh testified that he was the primary builder on the site; that plans were submitted to the Sussex County Building Code Department; that they obtained the building permit in January 2009; that the building plans were stamped as code compliant; that they believed the stamp showed compliance of all County Codes; that they applied for a second building permit after the original permit expired; that they based the construction off of the original plans submitted and approved in January 2009; that they were unaware of the encroachment until they received a non-compliance letter from the Planning & Zoning Department; that the property is unique in shape and that the original dwelling was built in the 1960's; that the property is undersized; that the variance will not alter the character of the neighborhood as the addition fits with the neighborhood; that to bring the structure into compliance would be very costly as they would have to tear down the structure; that it is the minimum variance to afford relief; that they did not construct the porch on the front of the dwelling; that the variance sought is the least modification of the regulation at issue.

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. 11005 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The variance will enable reasonable use of the property;
2. The variance will not alter the character of the neighborhood;
3. The variance sought is the minimum variance to afford relief;
4. The requested variance represents the least modification possible of the regulation in issue; and
5. The variance will not impair the uses of neighboring properties and will not endanger public welfare.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried that the variance be granted since it meets the standards for granting a variance. 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.

Meeting Adjourned 9:05 p.m.