

MINUTES OF JULY 20, 2015

The regular meeting of the Sussex County Board of Adjustment was held on Monday, July 20, 2015, 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 Dale 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. Janelle Cornwell – Planning and Zoning Manager, and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

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 and Findings of Fact for June 8, 2015 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. 11604 – Mark Yoder & Polly Yoder – seek a variance to place a multi-sectional manufactured home that is more than five (5) years old (Section 115-209A(1)(h) of the Sussex County Zoning Ordinance). The property is located on the north side of Hickman Rd. approximately 453 feet east of Farm Lane. 911 Address: None Available. Zoning District: AR-1. Tax Map No. 5-30-3.00-2.02.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Kevin Schroeder was sworn in to testify about the Application.

Mr. Mills raised the question if the request should be a variance or a special use exception application.

The Board discussed with Mr. Sharp and Ms. Cornwell whether the Application could be heard as proposed or if it needed to be amended.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to **leave the case open until August 3, 2015 for counsel and the Planning and Zoning staff to determine whether the request should be a variance or special use exception application.** 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. 11605 – James S. Sturgill – seeks a special use exception for the use of a manufactured home for a farm business use on a farm that is less than ten (10) acres for a period not to exceed five (5) years (Section 115-21A(5) and 115-23A of the Sussex County Zoning Ordinance). The property is located on the east side of Wingate Road approximately 884 feet north of Omar Road. 911 Address: None Available. Zoning District AR-1. Tax Map No.: 1-34-10.00-62.09.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter in opposition to the Application and one (1) letter of concern to the Application and had not received any correspondence in support of the Application. She also stated that a variance would be required in the future if the Applicant plans to use the building as a residence. This application is only for the use of the manufactured home as a farm business.

James Sturgill was sworn in and testified requesting a special use exception for the use of a manufactured home for a farm business use on a farm that is less than ten (10) acres for a period not to exceed five (5) years; that he purchased the Property, which is located near his family; that he plans to use the Property for a farm and a residence; that the unit is a 1993 double-wide manufactured home; that the unit was previously used as a sales office; that there are 30 manufactured homes within a square mile of the Property; that he intends to create an orchard on the Property; that he plans to use the unit as a temperature controlled nursery for seedlings; that the unit does not have the appearance of a typical manufactured home; that there are numerous manufactured homes in the area, both single-wide and double-wide; that the unit will not be seen from the road; that the unit will not substantially adversely affect the uses of the neighboring and adjacent properties; that he currently lives with his in-laws on the adjacent property; that he plans to renovate the unit in the future and move into the unit; that the Property consists of over 7 acres; and that he also plans to continue farming the Property. The Applicant submitted pictures of nearby manufactured homes and an aerial photograph of the area.

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. 11605 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 adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Rickard, and carried unanimously that the special use exception be **granted a period of five (5) years and for the reasons stated**. 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. 11606 – John Born & Kim Born – seek variances from the side yard and rear yard setback requirements (Section 115-42B and 115-185F of the Sussex County Zoning Ordinance). The property is located on the southeast side of Canvasback Road approximately 578 feet north of Swann Drive. 911 Address: 36982 Canvasback Road, Selbyville. Zoning District GR. Tax Map No.: 5-33-12.16-408.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Kim Born and Adam Rones were sworn in and testified requesting a variance of 3.7 feet from the ten (10) feet side yard setback requirement for a proposed deck and porch, a variance of 8.3 feet from the ten (10) feet side yard setback requirement for a proposed HVAC unit, a variance of 5 feet from the ten (10) feet side yard setback requirement for a proposed dwelling, a variance of 1.6 feet from the five (5) feet rear yard setback requirement for an existing shed, a variance of 3.7 feet from the five (5) feet side yard setback requirement for an existing shed, a variance of 5.5 feet from the ten (10) feet side yard setback requirement for a proposed landing, and a variance of 1.5 feet from the ten (10) feet side yard setback requirement for a proposed dwelling.

Mr. Rones testified that the Property is located in Swann Keys; that the Property is unique because the community was originally designed as a mobile home park for singlewide mobile homes and has evolved into a community with larger dwellings; that the Applicants purchased the Property in 2014 and did not create the lot size; that the Applicants plan to replace the existing manufactured home with a two-story dwelling measuring 2,015 square feet; that the proposed dwelling is similar to other dwellings in the development and will not alter the essential character of the neighborhood; that other similar variances have been granted in Swann Keys and along this road; that the shed was located on the Property at the time the Applicants purchased the Property; that the Applicants intend to keep the shed; that the shed cannot be moved into compliance; that the HVAC unit is being placed on the same side of the Property as other similar units in the development; that the front of the Property will be used for parking; that there will be no parking underneath the house; that the rear of the dwelling will be in line with other dwellings in the development; and that the dwelling on the lot to the north of the Property is already developed with a house.

The Board found that two (2) 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. 11606 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The variances are necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty was not created by the Applicants;
5. The variances will not alter the essential character of the neighborhood;
6. The variances sought are the minimum variances necessary to afford relief; and
7. The variances represent the least modifications of the regulations 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. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11607 – James R. Applebaum and Brenda L. Applebaum – seek variances from the side yard setback requirements (Section 115-42B and 115-185F of the Sussex County Zoning Ordinance). The property is located on the northwest side of Blue Bill Drive approximately 1125 feet north of Swann Drive. 911 Address: 37037 Blue Bill Drive, Selbyville. Zoning District: GR. Tax Map No. 5-33-12.16-165.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter in opposition to the Application and had not received any correspondence in support of the Application.

James Applebaum was sworn in to testify about the Application. Manaen Robinson, Esquire, presented the case to the Board on behalf of the Applicants.

Mr. Robinson stated that the Applicants are requesting a variance of 4.5 feet from the five (5) feet side yard setback requirement for an existing shed, a variance of 7.2 feet from the ten (10) feet side yard setback requirement for an existing landing and steps, and a variance of 8 feet from the ten (10) feet side yard setback requirement for an existing HVAC unit; that the Applicants purchased the Property on February 16, 2001; that the improvements already existed on the Property at that time; that the Applicants were unaware of any encroachments at the time of purchase; that a recent survey completed for settlement showed the encroachments; that the narrow fifty (50) feet wide lot is unique in size; that the existing manufactured home was placed on the Property in 1988 in the same location as the previous manufactured home located thereon; that the landing, steps, and shed have been in their current location since at least 2001; that the HVAC was

replaced and elevated by the Applicants; that the shed cannot be moved into compliance because it would likely fall over; that the Property cannot otherwise be developed; that the variances are necessary to enable reasonable use of the Property; that the need for the variances was not created by the Applicants; that the variances will not alter the character of the neighborhood; that the variances do not impair the uses of neighboring and adjacent properties; and that the variances are the minimum variances necessary to afford relief.

Mr. Applebaum, under oath, confirmed the statements made by Mr. Robinson. Mr. Applebaum testified that portion of the rear yard is located in the lagoon which limits the buildable area of the Property.

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. 11607 for the requested variances based on the record made at the public hearing and for the reasons stated:

1. The Property is 50 feet by 110 feet which is unique in size;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
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. 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. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11608 – Allan Myers DE, Inc. (formerly ICM of Delaware, Inc.) – seeks a special use exception to continue operating an asphalt batching recycling plant for a period of five (5) years (Section 115-23A & 115-210A(1) of the Sussex County Zoning Ordinance). The property is located on the west side of Coverdale Road, approximately 1908 feet north of Hastings Road. 911 Address: None Available. Zoning District: AR-1. Tax Map No.: 2-31-9.00-2.01.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Thomas Rousan was sworn in and testified requesting a special use exception to continue operating an asphalt batching recycling plant for a period of five (5) years; that the plant is

currently not in operation and has not been used in two (2) years; that the Applicant plans to use it again within the next year; that, due to less work, the plant has not been used; that the Applicant has operated on this site since 1995; that the Applicant maintains the Property regularly and could be back in operation within a week if needed; that the use does not substantially adversely affect the surrounding and neighboring properties; that the plant will re-open when the demand for the product increases; that all permits have been kept up to date; that the stormwater management pond is maintained twice a year; that the Applicant meets with officials from the Department of Natural Resources and Environmental Control (“DNREC”) for site walk-throughs; that the Applicant keeps the Property maintained; that there are an existing mulch business, sand pit, and concrete plant in the area; that the plant cannot be seen from the road; that a large berm, trees, and a gate are at the entrance; and that the Applicant is requesting approval for a five (5) year period.

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. 11608 for the requested special use exception for a period of five (5) years based on the record made at the public hearing because the use does not substantially adversely affect the uses of neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of five (5) years and 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. 11609 – Martha Pratt – seeks variances from the side yard and rear yard setback requirements (Section 115-42B of the Sussex County Zoning Ordinance). The property is located on the south side of Bowman Lane, approximately 157 feet east of West Sherwood Drive within the Sherwood Acres Subdivision. 911 Address: 34640 Bowman Lane, Frankford. Zoning District: GR. Tax Map No.: 1-34-15.00-63.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Martha Pratt was sworn in and testified requesting a variance of 3.1 feet from the ten (10) feet rear yard setback requirement and a variance of 4.1 feet from the (10) feet side yard setback requirement for an existing detached garage; that she recently moved and put the Property up for sale; that a survey completed for settlement showed the encroachments; that she was never aware of the encroachments prior to the recent survey; that the detached garage was on the Property when she purchased it years ago; that a Certificate of Compliance was issued in 1994 for the detached garage; that the Property is narrow; that it would be an exceptional practical difficulty to move the

detached garage into compliance; that the adjacent properties are developed; that the variances do not alter the character of the neighborhood; that the exceptional practical difficulty was not created by the Applicant; and that the variances are the minimum variances needed to afford relief.

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. 11609 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is narrow which makes it unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical 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. 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. Rickard – yea, Mr. Workman – yea, and Mr. Callaway - yea.

Case No. 11610 – Nassau Feed & Grain Inc. – seeks a variance for two (2) wall signs (Section 115-159.5 A(5) of the Sussex County Zoning Ordinance). The property is located on the east side of Coastal Highway & on the west side of Nassau Road, approximately 519 feet north of the intersection of said roads. 911 Address: None Available. Zoning District: C-1. Tax Map No.: 3-34-5.00-88.00

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Dale McCalister and Timanu Thompson were sworn in and testified requesting a variance to place two (2) wall signs. Mr. McCalister testified that the signs are for the proposed mini storage facility; that the Property is located under the Nassau Bridge which makes the Property unique; that the Property is not easily seen from Route One (Coastal Highway); that the Property will be used for a mini storage facility; that the road is elevated adjacent to the Property and is one of the few elevated roads in Sussex County; that the proposed three-story building is a single use facility; that a multiple use facility, such as a shopping center, would allow multiple signs; that the entrance to the Property is from Nassau Road; that the walls of the building are 6,720 square feet and 4,860 square feet; that the proposed four (4) feet high letters on the side of the building are needed to be

visible from Route One; that the variances requested are the minimum size variances needed in order to be seen from Route One; that the signage consists of approximately 1.2% of one wall and 6% of the other wall; that other than a small directional sign at the entrance there will be no other signage on the Property; that the existing billboard will not block the proposed sign or building; and that the exceptional practical difficulty was not created by the Applicant.

Jim Maguire was sworn in and testified in opposition to the Application and testified that he could not see the pictures of the proposed signs; and that, after he reviewed the pictures, he had no objection to the Application.

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. 11610 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The elevation of Route One (Coastal Highway) makes the Property unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical 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. 11611 – 2 B's Investments, LLC – seeks variances from the side yard and rear yard setback requirements (Section 115-82B of the Sussex County Zoning Ordinance). The property is located on the north side of Lewes Georgetown Highway (Route 9) approximately 1767 feet west of Coastal Highway. 911 Address: 32413 Lewes Georgetown Highway, Lewes. Zoning District: C-1. Tax Map No.: 3-34-5.00-122.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

John Bateman and Wient Jenkins were sworn in and testified requesting a variance of 2.8 feet from the five (5) feet rear yard setback requirement and a variance of 4 feet from the five (5) feet side yard setback requirement for a proposed fire escape.

Ms. Cornwell stated that the Applicant originally asked for additional variances under the incorrect assumption that the setback requirements were ten (10) feet but the setback requirements are only five (5) feet; and that the Application has been adjusted to reflect the correct variances needed (e.g. 2.8 feet from the rear yard and 4 feet from the side yard).

Mr. Bateman testified that the Fire Marshal is requiring the Applicant to place a fire escape on the existing building; that the Property has a unique shape as it is pie-shaped; that the Property currently has a dwelling with parking and a billboard located thereon; that the existing structure will remain on the Property; that the fire escape was not required at the time the building was constructed; that the fire escape will help protect the public welfare; that the variances are necessary to afford relief; that the fire escape will provide safe exit from the building in the event of fire; that the existing building will be used for office space and storage bays; that the structure would otherwise comply with setback requirements if not for the fire escape; that there is no other place to place the fire escape; that the location of the proposed fire escape is the most logical place to place it; and that the adjacent properties are also zoned commercial.

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. 11611 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is pie shaped which makes it unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical 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. 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.

The meeting adjourned at 8:33 p.m.