

## **MINUTES OF JUNE 16, 2014**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 16, 2014, 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 Mr. Lawrence Lank – Director of Planning and Zoning, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

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

### **PUBLIC HEARINGS**

**Case No. 11404 – Gary Broadway and Cheryl Broadway** – north of Road 312 (River Road) 570 feet west of Route 5 (Oak Orchard Road). (911 Address: 32561 River Road, Millsboro, Delaware) (Tax Map I.D. 2-34-34.12-7.00)

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

Mr. Lank 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.

Gary Broadway was sworn in to testify about the Application. Manaen Robinson, Esquire, presented the case to the Board on behalf of the Applicant.

Mr. Robinson stated that the Applicants are requesting a variance of 34.5 feet from the forty (40) feet front yard setback requirement for an existing deck and steps, a variance of 22.2 feet from the forty (40) feet front yard setback requirement for an existing dwelling, a variance of 7.9 feet from the ten (10) feet side yard setback requirement for an existing dwelling, and a variance of 3.7 feet from the ten (10) feet rear yard setback requirement for an existing detached garage; that the Applicants purchased the Property on April 11, 2014; that the survey completed for settlement showed the encroachments; that the existing dwelling, front deck, steps, and garage encroach into the setback areas; that the existing dwelling was built in 1949 and the detached garage was built in the 1973; that the deck was built in 2010; that the Applicants would need to remove the structures in order to comply with the setback requirements; that the Property is unique since the dwelling is non-conforming; that the variances will enable reasonable use of the Property; that the difficulty was not created by the Applicants; that the variances will not alter the character of the neighborhood; that there are numerous non-conforming structures in the area; that the

variances will not impair the uses of neighboring and adjacent properties; and that the variances are the minimum variances to afford relief.

Mr. Broadway, under oath, confirmed the statements made by Mr. Robinson.

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. 11404 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The development of the Property and the surrounding properties make the Property unique;
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 difficulty was not created by the Applicants;
5. The variances will not alter the character of the neighborhood;
6. The variances requested are not detrimental to the public welfare; and
7. 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. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11405 – Brian D. Trumbull & Betty Jane Trumbull** – north of Route 54 (Lighthouse Road) and being east of Blue Teal Road approximately 822 feet north of Swann Drive and being Lot 21 in Swann Keys Subdivision. (911 Address: 37022 Blue Teal Road, Selbyville, Delaware) (Tax Map I.D. 5-33-12.16-495.00)

An application for variances from the side yard setback requirement.

Mr. Lank 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.

Brian Trumbull was sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits and pictures for the Board to review.

Mr. Tomasetti stated that the Applicants were requesting a variance of 7.8 feet from the ten (10) feet side yard setback requirement and a variance of 5.6 feet from the ten (10) feet side yard setback requirement for existing landings with steps; that the previous owner was granted a variance by this Board in 2003 for the existing dwelling; that the survey provided at that previous hearing did not show the landings and steps which grant access to the dwelling; that the encroachments were discovered by a survey recently completed for settlement; that the landing and steps have existed on the lot for ten (10) years; that the lot measures only forty (40) feet wide which makes it unique in size; that the difficulty was not created by the Applicants; that the variances will not alter the character of the neighborhood; that the variances represent the minimum variances necessary to allow access to the dwelling; and that the variances will enable reasonable use of the Property.

Mr. Trumbull, under oath, confirmed the statements made by Mr. Tomasetti.

Mr. Tomasetti stated that a Certificate of Compliance was issued.

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. 11405 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 size;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood;
5. The variances sought are the minimum variances necessary to afford relief; and
6. The variances represent the least modifications 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. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11406 – Joseph Meyer** – south of Road 277 (Angola Road) and being south of Woodland Circle 200 feet west of Sycamore Drive and being Lot 46 Block T within Angola-By-The-Bay. (911 Address: 33567 Woodland Circle, Lewes, Delaware) (Tax Map I.D. 2-34-11.20-340.00)

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

Mr. Lank 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.

Joseph Meyer was sworn in to testify about the Application. Jonathan Horner, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Horner stated that the Applicant is requesting a variance of 0.6 feet from the ten (10) feet side yard setback requirement for an existing dwelling; that the dwelling was built in 1986; that the Applicant purchased the Property in 2008; that a Certificate of Compliance was issued; that a recent survey showed the encroachments; that the Applicant was not aware of the encroachment when he purchased the Property; that the encroachments have made title to the Property unmarketable; that the variance is necessary to enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the variance will not alter the character of the neighborhood; that the dwelling will not impair the uses of neighboring properties; and that the variance is the least modification possible of the regulation at issue.

Mr. Meyer, under oath, confirmed the statements made by Mr. Horner. Mr. Meyer testified that the shed in the rear will not be moved off of the Property but the shed will be moved into compliance with the Sussex County Zoning Code.

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. 11406 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is narrow in width and further narrows towards the rear of the Property 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 house was located on the Property when the Applicant purchased the Property;
5. The variance will not alter the essential character of the neighborhood;
6. The variance sought is the minimum variance necessary to afford relief; and
7. The variance represents the least modification of the regulation at issue.

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. 11407 – Arlene Weisman** – south of Road 277 (Angola Road) and being west of Bridgeway Drive West 300 feet north of Bridgeway Drive East and being Lot 24 Block W Section 5 within Angola-By-The-Bay. (911 Address: 23284 Bridgeway Drive West, Lewes, Delaware) (Tax Map I.D. 2-34-17.08-6.00)

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

Mr. Lank 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.

Arlene Weisman was sworn in and testified requesting a variance of 2.4 feet from the twenty (20) feet rear yard setback requirement for a proposed screen porch and a variance of 0.5 feet from the ten (10) feet side yard setback requirement for an existing dwelling; that she purchased the Property in October 2013; that the dwelling was built in 1976; that the proposed screen porch will measure eight (8) feet by ten (10) feet; that she was not aware the dwelling encroached until she had a survey completed; that the angle of the rear property line makes it difficult to comply with the setback requirements; that the existing dwelling was built at an angle on the Property; that the difficulty was not created by the Applicant; that the neighbors have no objection to the Application; that the rear yard is adjacent to a common area; that if she screened in her existing deck, she would need a variance so she prefers to have a porch as proposed because the location of the proposed screen porch will be accessed through her existing kitchen; that the variance is necessary to enable reasonable use of the Property; that the variances will not alter the character of the neighborhood; that the use will not impair the uses of the neighboring and adjacent properties; and that the variances requested 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. Mills stated that he would move that the Board recommend approval of Variance Application No. 11407 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 the location of the existing dwelling and the unusual shape of the lot;
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;
5. The variances will not be detrimental to the public welfare; and
6. The variances sought are the minimum variances 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 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. 11408 – George Porter** – south of Road 312 (River Road) 0.3 mile east of Road 312A (Layton Davis Road). (911 Address: 32054 River Road, Millsboro, Delaware) (Tax Map I.D. 2-34-34.11-33.00)

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

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

George Porter was sworn in and testified requesting a variance of 30.5 feet from the forty (40) feet front yard setback requirement for a proposed shed and a variance of two (2) feet from the five (5) feet from the side yard setback requirement for a proposed shed; that the existing shed was built by his grandfather in 1938; that the existing shed does not protect stored items from the weather; that he plans to replace the shed; that the proposed shed will measure ten (10) feet by sixteen (16) feet; that the proposed shed will be placed in the front yard in line with his neighbor's garage; that the proposed shed will have cedar shake siding to match the dwelling; that the proposed shed will not alter the character of the neighborhood as it will simply replace the older shed; that the new shed will be an improvement; that the difficulty was not created by the Applicant; that the shed cannot be placed in the rear yard due to the sloping yard; that the shed would also block the neighbor's and his view of the river; that the shed would have to be on pilings if placed in the rear yard; that the proposed location also keeps the shed from encroaching on existing sewer lines, a well, and existing trees; that the variances are necessary to enable reasonable use of the Property; that the variances are the minimum variances necessary to afford relief; that the proposed shed will be placed in the shaded area shown on the survey submitted by the Applicant; and that the proposed shed will be on a concrete foundation and will have electricity. Mr. Porter submitted pictures for the Board to review.

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. 11408 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 sloped rear yard and location of the existing shed;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The original shed was not placed by the Applicant;
5. The variances will not alter the essential character of the neighborhood;
6. The variances will not be detrimental to the public welfare; and

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

**Case No. 11409 – Voyd W. Harmon & Betty J. Harmon** – northeast of Road 310A (Warwick Road) 0.5 mile southeast of Route 24 (John J. Williams Highway). (911 Address: 28307 Warwick Road, Millsboro, Delaware) (Tax Map I.D. 2-34-33.00-51.00)

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

Mr. Lank 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.

Teresa Harmon and Brad Whaley, of the Sussex County Community Development Department (“the Department”) were sworn in and testified requesting a variance of 5.6 feet from the forty (40) feet front yard setback requirement for an existing addition.

Mr. Whaley testified that he is the Director of the Department; that the Department helped the Applicants obtain financing for the construction of an addition to their home; that the Property is unique because the dwelling was constructed prior to the enactment of the Sussex County Zoning Code; that the existing dwelling does not conform with the Zoning Code; that the Delaware Department of Transportation (“DelDOT”) extended the easement on the Property; that the Applicants were unaware of the encroachment until receiving notice from the Planning and Zoning Department; that the structure has the appearance of meeting the required setbacks; that the builder was not aware of the encroachment; that the non-conforming dwelling and the DelDOT easement make the Property unique; that the variance will enable reasonable use of the Property; that the variance will not alter the character of the neighborhood as the area consists of similar single family homes; that the use is not detrimental to the public welfare; that the variance will not impair the uses or development of adjacent and neighboring properties; that the difficulty was not created by the Applicants; that the Department directed the construction of the addition; that the variance is the minimum variance necessary to afford relief; that the variance represents the least modification of the regulation at issue; that the contractor obtained a permit for the construction of the addition on the side of the house; that the encroachment was discovered after the addition was build; and that the addition does not protrude further into the front yard setback area more than the original dwelling.

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. 11409 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The non-conforming dwelling and easement make the Property unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants;
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 requested represents the least modification of the regulation at issue.

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

**Case No. 11410 – Judith Skinner** – southeast of Route 36 (Shawnee Road) 1,200 feet northeast of Route 620 (Abbotts Pond Road). (911 Address: 16758 Shawnee Place, Milford, Delaware) (Tax Map I.D. 1-30-6.00-5.00)

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

Mr. Lank 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.

Judith Skinner and Deborah Case were sworn in and testified requesting a special use exception to operate a daycare facility. Ms. Case testified that the daycare will be on her mother's property which is 2.8 acres; that the Property is wide and deep; that a residence is located on the Property with a building located in the rear; that the existing building was once used as a small nursing home; that she wants to use the building for a daycare; that there is adequate parking available; that trees are located on the sides of the Property; that the building is a good distance from neighboring properties; that the neighbors do not object to the Application; that she will operate the daycare; that her mother lives on the Property; that her hours of operation are Monday through Friday from 7:00 a.m. to 5:00 p.m.; that the ages of the children range from birth to twelve (12) years old; that she plans to care for twelve (12) children; that she currently runs a daycare in the building now; that the second approval will be for the other side of the building; that she plans to operate two (2) separate daycares on the Property with children ages birth to three (3) years old on one side and the older children on the opposite side; that there will be twelve (12) children on each side; that the current daycare is operated in Unit 16758B and she obtained a special use



exception for that daycare; that the new daycare will be located in Unit 16758A; that the use does not substantially adversely affect the surrounding and neighboring properties; and that she has not received any complaints about her daycare from neighbors.

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. 11410 for the requested special use exception based on the record made at the public hearing because the uses does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted 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. 11411 – Beeram Singh** – northwest of Road 436 (Curley Drive) across from Road 439 (English Road). (911 Address: 32492 Curley Drive, Millsboro, Delaware) (Tax Map I.D. 2-32-21.00-6.25)

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

Mr. Lank 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.

Donald Miller was sworn in and testified requesting a variance of 1.9 feet from the fifty (50) feet side yard setback requirement for an existing poultry house; that Beeram Singh and Dhanpaul Raghunandan are brothers-in-law and have been business partners; that Mr. Singh and Mr. Raghunandan operated four (4) poultry houses; that Mr. Singh and Mr. Raghunandan wish to separate their business; that Mr. Singh is selling his interest in two (2) poultry houses and the Property to Mr. Raghunandan; that the Property will be combined with adjacent lands owned by Mr. Raghunandan; that the survey completed to combine the parcels showed that the western most poultry house was too close to the side property line; that the poultry houses appear to have been laid out improperly; that the existing poultry houses are over ten (10) years old; that the variance is necessary to enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the neighboring property is tilled farmland; that there is no dwelling on the Property; that the poultry house does not alter the character of the neighborhood; and that the variance requested is the minimum variance to afford relief.

Peggy Parkinson was sworn in and testified in opposition to the Application and testified that she was told by the Planning and Zoning Office the Applicant was building a new poultry house; and that she has no objection to the Application for the existing poultry houses.

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

The Board found that two (2) parties appeared in opposition to the Application, however withdrew their opposition after hearing the case.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11411 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The situation is unique due to the improper placement of the poultry houses years ago;
2. The variance is necessary to enable reasonable use of the Property;
3. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
4. The difficulty was not created by the Applicant;
5. The builder or surveyor laid out the location of the poultry houses;
6. The variance will not alter the essential character of the neighborhood;
7. The variance sought is the minimum variance necessary to afford relief; and
8. The variance requested 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. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11412 – Lynne Betts** – southwest of Road 297 (Oak Orchard Road) and being northwest of Oak Meadow Drive 1,100 feet southwest of Road 297 (Oak Orchard Road) and being Lot 15 and ½ Lot 16 within Oak Meadows Subdivision. (911 Address: 27522 Oak Meadow Drive, Millsboro, Delaware) (Tax Map I.D. 2-34-29.00-84.00)

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

Mr. Lank 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.

Lynne Betts was sworn in and testified requesting a variance of two (2) feet from the thirty (30) feet front yard setback requirement for an existing dwelling; that her aunt and uncle purchased the Property in 1983; that the portion of the dwelling encroaching is a screen porch; that the

Property was appraised in 2006; that numerous additions have been made to the dwelling over time and permits were obtained for those improvements; that there is a fire hydrant in the front yard and that sewer lines have been installed; that she was not aware of the encroachment until a recent survey showed the encroachment; that it would be a hardship to bring the dwelling into compliance with the Sussex County Zoning Code; that the variance will enable reasonable use of the Property; that the use is not detrimental to the public welfare; that the variance does not alter the character of the neighborhood; that the difficulty was not created by the Applicant; that the Property is being sold to a young couple; and that the variance requested is the minimum variance to afford relief.

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. Mills stated that he would move that the Board recommend approval of Variance Application No. 11412 for the requested variance based on the record made at the public hearing and for the following reasons:

1. There is uniqueness to the Property since it has existed for quite some time;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The variance is necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood;
6. The variance will not be detrimental to public welfare; and
7. The variance sought is the minimum variance necessary to afford relief.

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

**Meeting Adjourned 8:30 p.m.**