

MINUTES OF JUNE 22, 2015

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 22, 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 Mr. 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. Workman, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 11589 – Mark Meckes and Edith Meckes – seek a special use exception for a private garage for more than four (4) automobiles (Section 115-23C(1) and 115-4 of the Sussex County Zoning Ordinance). The property is located on the south side of Jay Patch Road approximately 277 feet southeast of Pepper Road. 911 Address: None Available. Zoning District: AR-1. Tax Map: 5-33-9.00-52.07.

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.

Mark Meckes was sworn in to testify about the Application. Chad Meredith, Esquire, presented the case to the Board on behalf of the Applicants.

Mr. Meredith stated that the Applicants are requesting a special use exception for a private garage for more than four (4) automobiles; that the Applicants have a home nearby and do not plan to place a dwelling on the Property; that the proposed detached garage will be the only structure on the Property; that the Property is over one (1) acre in size; that the garage will look like a barn; that a neighboring property to the east has a similar structure thereon; that the Applicants plan to store classic cars, enclosed trailers, boats, and other personal items in the garage; that the garage will only be used to store personal items and none of the items stored will be used for business purposes; that the proposed garage will have a second floor where they plan to store furniture; that the Property is surrounded by trees and the trees buffer the Property from neighboring lands; and that the proposed garage will fit in with the character of the neighborhood and zoning district.

Mr. Meckes, under oath, confirmed the statements made by Mr. Meredith. Mr. Meckes testified that there will not be any bathrooms in the garage; that the Applicants live approximately 1.5 miles away from this property; that he keeps trailers for his classic cars and intends to store them in the garage; and that he does not intend to put a dwelling on the Property but does not rule out doing so in the future.

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 Application No. 11589 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 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. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11590 – George N. Belolan & Camille J. Belolan – seek variances from the rear yard setback requirement (Section 115-25C of the Sussex County Zoning Ordinance). The property is located on the east side of Angola Road West approximately 702 feet south of Angola Road. 911 Address: 22865 Angola Road West, Lewes. Zoning District AR-1. Tax Map: 2-34-11.16-73.00.

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.

Camille Belolan was sworn in to testify about the Application. Bill Schab, Esquire, presented the case to the Board on behalf of the Applicants and submitted pictures for the Board to review.

Mr. Schab stated that the Applicants are requesting a variance of 9.1 feet from the twenty (20) feet rear yard setback requirement for a set of existing steps and a variance of 6.1 feet from the twenty (20) feet rear yard setback requirement for an existing deck; that the Property is located in Angola by the Bay; that the previous owner purchased the Property in 1996 and built the dwelling; that they sold the Property in 2009 and were unaware of any encroachments; that the Applicants purchased the Property in 2014; that a survey completed for settlement showed the encroachments; that the lot is small as it is only 50 feet by 100 feet; that the Property cannot be developed in strict conformity without removing the stairs to the deck and the deck; that the Applicants did not build the deck, therefore the difficulty was not created by the Applicants; that the variances will not alter the essential character of the neighborhood; that the deck is adjacent to the common area; that the Homeowners Association has no objection to the Application; that the

variances are the minimum variances to afford relief; and that removal of the deck would create an undue financial and practical hardship to the Applicants which would adversely affect the aesthetics of the home.

Ms. Belolan, under oath, confirmed the statements made by Mr. Schab. Ms. Belolan testified that there is a large common area to the rear of the yard; and that she could not easily bring the deck 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. 11590 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 as it is only 50 feet by 100 feet;
2. The variances are necessary to enable 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;
5. The variances sought are the minimum variances necessary to afford relief; and
6. 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. 11591 – Christine M. Murphy, Successor Trustee – seeks variances from the front yard and rear yard setback requirements (Section 115-25(C) of the Sussex County Zoning Ordinance). The property is located on the south side of Marina Drive East approximately 760 feet south of Woodland Circle within Angola by the Bay. 911 Address: 23597 Marina Drive East, Lewes. Zoning District: AR-1. Tax Map: 2-34-17.08-146.00.

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.

Colleen Conaty was sworn in to testify about the Application. Bill Schab, Esquire, presented the case to the Board on behalf of the Applicant.

Mr. Schab stated that the Applicant is requesting a variance of 1.2 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 8.4 feet from the twenty (20) feet rear yard setback requirement for an existing deck, and a variance of 18.4 feet from the

twenty (20) feet rear yard setback requirement for an existing deck; that the Trust owns the Property; that Ms. Conaty is the daughter of the trustee; that the Property is being sold and the survey completed for settlement showed the encroachments; that the sale of the Property is pending the approval of this application; that the Property was purchased in 1973 by Ms. Conaty's parents; that they placed the modular dwelling on the Property in the mid-1970s; that the additions to the dwelling were also constructed in the 1970's; that all structures on the Property have been there since that time; that the Property was placed in a trust in 1995; that Ms. Conaty's mother passed away in 2013; that the trust directs that the Property must be sold; that the shed has been removed from the Property; that the Property is a unique pie shape; that the shape of the lot makes it difficult to place a modest-sized dwelling; that the existing septic system and need for parking dictated the placement of the dwelling; that the Property is adjacent to the common area; that the Property cannot be developed in strict conformity without moving the existing dwelling and removing the deck at a large expense; that the previous owners and the Applicant were unaware of the encroachments; that the variances will not alter the essential character of the neighborhood; and that the variances requested are the minimum variances necessary to afford relief.

Ms. Conaty, under oath, confirmed the statements made by Mr. Schab. Ms. Conaty testified that she was surprised to learn of the encroachments.

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. 11592 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is only 43 feet wide and pie shaped making 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;
5. The variances sought are the minimum variances necessary to afford relief; and
6. 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. 11592 – Raymond Westrod & Ann Hirs Westrod – seek a variance from the rear yard setback requirement for a pool (Section 115-185D of the Sussex County Zoning Ordinance). The property is located on the west side of Kashmir Lane, south of Dry Brook Drive within Cedar

Valley Subdivision. 911 Address: 35548 Kashmir Lane, Rehoboth Beach. Zoning District GR.
Tax Map: 3-34-12.00-768.00.

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

Ann Westrod was sworn in to testify about the Application. Bill Schab, Esquire, presented the case to the Board on behalf of the Applicants and submitted pictures for the Board to review.

Mr. Schab stated that the Applicants are requesting a variance of 0.7 feet from the six (6) feet rear yard setback requirement for an existing in-ground pool; that the Applicants purchased the Property in 2014; that a survey completed for settlement showed the encroachment; that the pool was built in 2003; that the Certificate of Compliance was issued for the pool; that to bring the pool into compliance would result in a massive renovation of the back yard, at a large expense; and that the Applicants did not install the pool.

Ms. Westrod, under oath, confirmed the statements made by Mr. Schab. Ms. Westrod testified that there is community property to the rear of the Applicants' property; that the community area is approximately twenty (20) feet wide; that the neighbors have no objection to the Application; and that the variance requested is the minimum variance 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. 11592 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 as it is small;
2. The exceptional practical difficulty was not created by the Applicants;
3. The variances will not alter the essential character of the neighborhood;
4. The variances sought are the minimum variances necessary to afford relief; and
5. The variances represent the least modifications of the regulations 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. 11593 – Thomas W. Stork, Jr., Terry L. Stork, Barry C. Shenk & Robin D. Shenk
– seek a variance from the front yard setback requirement (Section 115-42B of the Sussex County

Zoning Ordinance). The property is located on the east side of Branch Road, southwest of Autumn Road. 911 Address: 26073 Branch Road, Millsboro. Zoning District GR. Tax Map: 2-34-23.00-145.00.

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.

Barry Sherk was sworn in to testify about the Application. Bill Schab, Esquire, presented the case to the Board on behalf of the Applicants and submitted pictures for the Board to review.

Mr. Schab stated that the Applicants are requesting a variance of 2.3 feet from the thirty (30) feet front yard setback requirement for an existing dwelling; that the Applicants purchased Lot 37 and Lot 38 in 2003; that mobile homes and various outbuildings were located on the properties at that time; that the homes have since been replaced; that a survey completed to reconfigure the lot line between Lots 37 and 38 showed the encroachments; that the shed on Lot 38 will be moved into compliance; that the pool and large shed on Lot 37 have been removed; that the Property is unique because it is pie-shaped and is located on a curve; that existing septic systems in the rear yard and the unique shape of the lots create a unique situation; that the house had to be placed so as it would not sit on top of the septic system; that the lot lines between Lots 37 and 38 had to be moved so that the septic system for each parcel would be located entirely on the lot being serviced by the system; that the dwelling is located on a permanent foundation; that it would be very expensive to move the house; that Mr. Sherk was the general contractor and measured for the placement of the modular dwelling; that the variance will not alter the character of the neighborhood; that the dwelling was placed in 2008; and that the variance is the minimum variance necessary to afford relief.

Mr. Sherk, under oath, affirmed the statements made by Mr. Schab. Mr. Sherk testified that measured from the road and not the property line; that the error could not be easily corrected; that a Certificate of Compliance was issued for the dwelling; and that the adjacent Branch Road is not fully paved.

The Board found that three (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 approval of Variance Application No. 11593 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The 72.32 foot wide lot and the curved shape of the property line make 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 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 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. 11594 – Tenly’s Home Repair – seeks variances from the rear yard and side yard setback requirements (Section 115-25C of the Sussex County Zoning Ordinance). The property is located on the west side of Tyler Avenue approximately 221 feet south of Lincoln Drive. 911 Address: 38758 Tyler Avenue, Selbyville. Zoning District AR-1. Tax Map: 5-33-20.14-37.00.

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.

Doug Tenly was sworn in and testified requesting a variance of five (5) feet from the twenty (20) feet rear yard setback requirement for a proposed porch and deck, a variance of 8.2 feet from the ten (10) feet side yard setback requirement for a proposed HVAC, a variance of 9 feet from the ten (10) feet side yard setback requirement for a proposed outdoor shower, and a variance of 5 feet from the ten (10) feet side yard setback requirement for a proposed dwelling; that he is the builder for the Applicant; that the lot measures approximately 50 feet by 90 feet which makes the Property unique; that the side yard variance for the proposed dwelling, HVAC, and outside shower allow room on the opposite side of the dwelling for parking; that the variances will not alter the character of the neighborhood; that the proposed dwelling will be located in a location similar to other dwellings in the development; that the difficulty has not been created by the Applicant; that the development does not permit parking on the street; that there have been numerous variances issued in the development; that the variances requested are the minimum variances to afford relief; that the Property will be developed in a similar fashion as three other homes nearby which were recently placed; and that the home will be 7.2 feet from Tyler Avenue so as to be able to provide parking in the front yard as well.

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. 11594 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property measures 50 feet by 88 feet which makes it 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 Applicant due to the small size of the lot;
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 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. 11595 – Marilyn Hernandez – seeks a special use exception to operate a daycare facility (Section 115-23C(5) of the Sussex County Zoning Ordinance). The property is located south of Rust Lane approximately 1500 feet east of North Union Crush Road. 911 Address: None Available. Zoning District AR-1. Tax Map: 1-30-6.00-58.00.

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.

Marilyn Hernandez was sworn in and testified requesting a special use exception to operate a daycare facility; that she currently operates a small daycare caring for six (6) children; that she wants to expand and care for an additional six (6) children; that her hours of operation are Monday through Friday from 6:00 a.m. to 5:00 p.m.; that she cares for children aged six (6) months to five (5) years old; that she has a fenced in area for the playground; that she has adequate parking with a horseshoe driveway; that she will have one (1) employee; that she has operated a daycare facility since December 2012; that she has had no issues or complaints from her neighbors; that the use does not substantially adversely affect the neighborhood; that she will have a total of twelve (12) children; and that her neighborhood is very rural as there are active farms nearby.

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. 11595 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 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. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 11596 – John David Amos – seeks a variance from the maximum square footage requirement for a garage / studio apartment (Section 115-40C of the Sussex County Zoning Ordinance). The property is located on the south side of Cannon Street, approximately 452 feet east of Forest Drive within the Orchard Manor Subdivision. 911 Address: 28251 Cannon Street, Millsboro. Zoning District GR. Tax Map: 2-34-35.05-18.00.

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.

David Amos was sworn in and testified requesting a variance of 375 square feet from the 800 square feet maximum allowable square footage requirement for a garage / studio apartment; that he purchased the Property in November 2012; that the existing garage already had an apartment at the time he acquired the Property; that he was granted a special use exception for garage / studio apartment in September 2014 by the Board; that he planned to use an existing custom spiral staircase for the apartment; that there is a knee wall on the second floor which limits some of the usable space of the apartment; that the Planning and Zoning Office determined the staircase would not be included in the square footage for the apartment; that the Building Code Department determined the staircase must be included in the square footage of the apartment; that he was also planning to expand the living area; that there is an existing external staircase he would like to keep for a fire escape; that the request for 375 square feet will allow for additional square footage on the first floor; that the variance will not alter the character of the neighborhood; that the exterior of the building will not change; that he has a tenant in the existing dwelling; that the apartment will have living space on the first and second floor of the existing detached garage; that he may not be able to use the custom staircase since it may not meet the building code requirements; that, when he applied for the special use exception, he did not think the staircase was part of the 800 square feet calculation for determining the size of the apartment; that he intends to convert some storage space on the first floor to additional living space; that the apartment would be two floors with a kitchen on the first floor and bedrooms on the second floor; that he needed the variance for the staircase and now he has decided to add the additional living room; that the building is 20 feet by 30 feet; that the second floor is 16.2 feet by 28.5 feet; that the first floor of the apartment is 11 feet by 28.5 feet; that there is no new living space being added to the second floor; that there is a portion of the first floor which will not be used for an apartment and that space will consist of approximately 66 square feet.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the hearing **be left open until the July 6, 2015 meeting for the Applicant to provide the exact square**

footage needed for the variance and allow more time for the Applicant to prepare his case.
Motion carried 5 – 0.

OLD BUSINESS

Case No. 11584 – Michael Kelly – seeks variances from the front yard, side yard, and rear yard setbacks (Section 115-25C of the Sussex County Zoning Ordinance). The property is located on the west side of Tyler Avenue approximately 370 feet south of Lincoln Drive. 911 Address: 38772 Tyler Avenue, Selbyville. Zoning District AR-1. Tax Map: 5-33-20.14-39.00.

Mr. Rickard stated that he had listened to the hearing held on June 8, 2015 and reviewed the public record.

The Board discussed the case, which has been tabled since the June 8, 2015.

Mr. Mills stated that he would move that the Board recommend approval in part and denial in part of Variance Application No. 11584. Mr. Mills moved that the requested side and rear yard variances for the existing structures be approved based on the record made at the public hearing for the following reasons:

1. The exceptional practical difficulty was not created by the Applicant;
2. The variances are necessary to enable reasonable use of the Property, and
3. The variances are minimum variances necessary to afford relief.

As part of his motion, Mr. Mills moved that the variance for the proposed garage be denied based on the record made at the public hearing and for the following reasons:

1. The exceptional practical difficulty related to the garage is being created by the Applicant;
2. The situation is not more unique than other properties in the development;
3. The variance for the garage is not necessary to enable reasonable use of the Property;
4. The variance for the garage will alter the essential character of the neighborhood, since there are no other garages in the development with front yard variances.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that **the side and rear yard variances be granted for the existing structures on the Property and the front variance for the proposed garage be denied.** 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. 11587 – James McIntire – seeks a variance from the front yard setback (Section 115-25C of the Sussex County Zoning Ordinance). The property is located on the north side of Harbor Road Extended and northwest of Cedar Road. 911 Address: 19 Harbor Road, Rehoboth Beach. Zoning District AR-1. Tax Map: 3-34-14.05-22.00.

Mr. Rickard stated that he had listened to the hearing held on June 8, 2015.

The Board re-opened the hearing that was left open on June 8, 2015 and called for the Applicant.

The Applicant did not appear before the Board to present his Application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be **denied due to lack of representation to support the application and because the Applicant failed to meet the standards for granting a variance.** 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. 11588 – Clear Channel Outdoors, Inc. – seeks a special use exception to place an off-premise sign, and seeks a variances from the maximum square footage and maximum height requirements for an off-premise sign (Section 115-80C, 115-210(3)(6), 115-159.5 B(3), and 115-159.5(C) of the Sussex County Zoning Ordinance). The property is located on the west side of Route One (Coastal Hwy.) approximately 846 feet north of Willow Creek Road. 911 Address: 16218 Coastal Highway, Lewes. Zoning District C-1. Tax Map: 2-35-23.00-52.01.

Mr. Workman and Mr. Callaway stated they would like more time to review the information submitted at the hearing held on June 8, 2015.

Motion by Mr. Workman, seconded by Mr. Rickard, and carried unanimously that the case be **tabled until July 6, 2015.** 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.

Meeting Adjourned 9:06 p.m.