

MINUTES OF JUNE 3, 2013

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 3, 2013, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with Mr. James Sharp – Assistant County Attorney, and staff members, Mr. Lawrence Lank – Director of Planning & Zoning, Ms. Melissa Thibodeau – Zoning Inspector II, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda with the Approval of Minutes for May 20, 2013 being removed, and to hear the Old Business prior to Case No. 11216 – Allen Harim Foods, LLC. 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. 11215 – Bo Bilobran & Michael Moutzalias – west of Route 1 (Coastal Highway) south of Bayberry Road, being Lot 3, Block K, within Middlesex Beach development. (Tax Map I.D. 1-34-17.16-47.00)

An application for a special use exception for a seasonal produce stand for a period of five (5) years.

Ms. Thibodeau presented the case. Steven Bilobran and Michael Moutzalias were sworn in and testified requesting a special use exception for a seasonal produce stand for a period of five (5) years. Mr. Bilobran testified that the Property is zoned B-1, Neighborhood Business; that the temporary produce stand will be a free-standing, wagon-style stand; that the Applicant has a lease for the Property until September 1, 2013, at which time the stand will be removed; that he reached out to Middlesex Beach Homeowners Association to inform them of his plans; that there will not be a tent structure on the Property; that there is an existing parking area; that the Delaware Department of Transportation (“DelDOT”) has approved the use of the site for the produce stand; that the Property can hold fourteen (14) parking spaces in a gravel parking area; that the Applicants expect mostly foot and bike traffic associated with the stand; that setback requirements will be met; that the trash will be removed from the site daily; that the structures can be removed within twenty four (24) hours in the event of severe weather; that the wagons can be secured during an unexpected storm; that the Applicants are seeking approval for one (1) year; that the proposed produce stand is a low impact business compared to what the Applicants could put on the Property; that the Applicants plan to have two (2) employees on site at all times; that there will not be portable toilets on site but the employees will have the ability to leave the Property for needed breaks; that he plans to designate the parking area with posts and nautical rope; that the produce stand will not have a negative effect to the surrounding businesses; that

there are three other businesses in the area including a donut shop, a realtor's office, and an attorney's office; that there will be no additional signage; that the stand will be open seven (7) days per week from 8:00 a.m. to 8:00 p.m.; that the Applicant will not light the area but will run temporary electric to the stand; that the Applicants have operated produce stands for over twenty (20) years; and that a refrigerated truck used to store produce overnight will not stay on the site. Mr. Bilobran submitted pictures for the Board to review.

Cathy Dryden was sworn in and testified in opposition to the Application. Ms. Dryden testified that she owns an adjacent property; that she believes traveling to the Property by foot is dangerous; that there is no designated parking area; that she is concerned patrons will park on her property; that in August 2012, a yard sale was held on this site and cars were parked on the side of Route 1; that there are signs to prohibit parking, however, it does not stop people from parking on the side of the road; that there are plenty of produce stands in the area; that she feels this use is not a permitted use on the Property; that the Property is subject to the rules of Middlesex Beach; and that Middlesex Beach requires permanent toilets be installed on the Property.

Bruce Schoonover was sworn in and testified in opposition to the Application. Mr. Schoonover testified that he has lived in the area since 1980 and has served on the Homeowners Association throughout the years; that his property is west of the site; that Middlesex Beach is a unique development; that pedestrian traffic has always been a large concern; that there are five (5) designated crosswalks in place to gain access to the beach; and that he does not believe the produce stand is a permissible use.

Mr. Biloban testified that the barbeque service noted on the survey was a typographical error and there will not be a barbeque stand on the Property.

Mr. Schoonover testified that the produce stand does not meet the special use exception standard because the proposed location of the stand will have an adverse effect to the surrounding properties; that the parking is designed so that cars will have to back out onto Bayberry Road, which is owned by the Middlesex Beach Homeowners Association; that there are regular walkers on Bayberry Road throughout the day; that businesses on Bridge Road have had to reconfigure entrances and parking to prevent backing out on the road; that he submitted a letter to the Board on May 24, 2013; that he would have less concerns if the parking access was limited by ropes; that he has concerns about sanitation because Middlesex Beach bans portable toilets; and that the Applicants have addressed his concerns about trash.

Eileen Waxman was sworn in and testified in opposition to the Application. Ms. Waxman testified that the roads in the development are twenty five (25) feet wide on average which is barely wide enough for two (2) cars; that there is no parking permitted on the roads in the development; that the commercial lots have access from Route 1; that they have put up fences in the past to prevent access to their roads; that the roads in the development are dead end streets; that cars backing out of this property will have to cross over the pedestrian crosswalk;

that this is a great safety concern; that the Property was used as a real estate office ten (10) years ago; that she has concerns about the trash and sanitary issues; that she would rather see the approval for this stand be granted for only one (1) year; and that her other concerns have been addressed but she is very concerned about the vehicles backing out onto Bayberry Lane. Ms. Waxman submitted a booklet to the Board for review.

Jeff Waxman was sworn in and testified in opposition to the Application. Mr. Waxman testified that past actions are a good predictor of future issues; that he was concerned about inconsistencies in the Application; that the Applicant stated to the Homeowners Association he was seeking a one year approval; that the Application states he is requesting a five (5) year approval; that he wants to know who enforces the promises made tonight are met; and that he would support an approval for a one (1) year period.

In rebuttal, Steve Bilobran, testified that he has no objection to a one (1) year approval; that the other businesses on this site always had head on parking; and that the State right-of-way limits the parking on the Property.

The Board found that one (1) party appeared in support of the Application.

Ms. Thibodeau stated that the Office of Planning & Zoning received one (1) letter in support of the Application.

The Board found that eleven (11) parties appeared in opposition to the Application.

Ms. Thibodeau stated that the Office of Planning & Zoning received twelve (12) letters in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception No. 11215 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. Rickard, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for the reasons stated for a period of one (1) year**.
Motion carried 4 – 1.

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

OLD BUSINESS

Case No. 11197 – Colonial East Community, LLC & Colonial East Limited Partnership – northeast of Route 1 (Coastal Highway) 0.25 miles northwest of Road 276 (Wolf Neck Road) within Colonial East Mobile Home Estates. (Tax Map I.D. 3-34-6.00-335.00 & 335.01)

An application for a variance from the required separation distance between manufactured homes and other structures within a mobile home park and a variance from the permitted lot coverage within a mobile home park.

The Board discussed the case which has been tabled since May 20, 2013. Mr. Lank advised the Board that the proposal is similar to a blanket variance previously issued for Bay City; that the blank variance issued for Bay City reduced the number of variance applications; and that this community is distinguishable from Cape Windsor because the lots in Colonial East are leased lots whereas the lots in Cape Windsor are fee simple lots.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11197 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The age of the mobile home park creates a unique situation;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Ordinance;
3. The variances are necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicant;
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 blanket variances would provide uniformity to the park.

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

Case No. 11203 – Gautamkumar I. Brahmhatt – south of Route 534 (Tharp Road) corner of Elm Street and being approximately 800 feet west of Road 535 (Middleford Road). (Tax Map I.D. 3-31-6.00-270.00)

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

The Board discussed the case which has been tabled since May 20, 2013.

Mr. Rickard stated that he would move that the Board recommend approval in part and denial in part of Variance Application No. 11203. Mr. Rickard moved that the variance of 3.7 feet for the existing above-ground pool and attached deck be approved based on the record made at the public hearing and for the following reasons:

1. The Property is unique since the pool and deck already existed at the time the Applicant purchased the Property;
2. The variance is necessary to enable reasonable use of the Property;
3. The 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 to afford relief.

As part of his Motion, Mr. Rickard, stated that the variance of five (5) feet for the shed be denied based on the record made at the public hearing and for the following reason:

1. The difficulty has been created by the Applicant.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the variance of 3.7 feet and denied for the variance of 5.0 feet for the reasons stated**. Motion carried 4 – 1.

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

PUBLIC HEARINGS

Case No. 11216 – Allen Harim Foods, LLC – west of Road 331 (Iron Branch Road) and southeast of Iron Branch and the Town of Millsboro. (Tax Map I.D. 2-33-5.00-14.00, 15.00, & 16.00)

An application for a special use exception for a potentially hazardous use (poultry processing facility).

Ms. Thibodeau presented the case. Mr. Hudson recused himself from participating in this hearing due to a conflict of interest.

James Quinton and John Shahan were sworn in to testify on behalf of the Applicant. Gene Bayard, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant is requesting a special use exception for a potentially hazardous use (poultry processing facility); and that the Property is zoned HI-1 Heavy Industrial District but the Applicant needs approval from the Board because the use is defined as a potentially hazardous use.

Mr. Quinton testified that the Applicant plans to renovate the existing Pinnacle Foods Facility into a state of the art poultry slaughter, cut-up and cooking operation; that the Applicant is holding a public meeting on June 17, 2013 to help answer questions the residents may have; that live poultry will be brought to the facility; that all live poultry will be housed in a ventilated holding shed; that the holding shed will be cleaned regularly to avoid manure build-up; that no trucks will go through the Town of Millsboro; that the live receiving area is enclosed; that dust and odor controls will be put into place; that the plant will produce packaged and cooked products; that the use will not be a rendering plant; that rendering plants process feathers and other by-products; that offal by-products will be loaded directly to trucks in an enclosed building and shipped daily to an off-site rendering facility; that trucks will leave every three (3) hours; that an estimated forty seven (47) trucks will come in and out of the site each day.

Mr. Shahan testified that the site was used for cucumber pickling since 1972 or 1972; that trucks related to the pickle plant came in and out of the Property; that the Property has 107 acres of which thirteen (13) acres are wooded and eleven (11) acres are marshlands; that the woods and marshlands will not be disturbed and that they provide buffers to the Property; that the Property has approximately eight three (83) usable acres; that the Applicant plans to plant additional trees along Iron Branch Road; that the plant will be properly ventilated; that the wastewater treatment system will be constructed pursuant to the rules of the Delaware Department of Natural Resources and Environmental Control (DNREC); that most dust related issues will be during the construction for remodeling; that after construction the site will be stabilized by either the building, pavement and vegetation; that the plant will be hidden from neighboring residential areas; that trailer parking will be provided mostly at the rear of the site away from any residential areas; that forklift operations and unloading will be conducted inside the proposed new building to contain noise and dust; that refrigerated trailers will be parked near the current shipping dock surrounded by a landscape buffer; that a landscape buffer will be planted along County Road 331 to help buffer noise and odor; that truck traffic will have a designated truck route; that the traffic design will be subject to approval from DelDOT; that the Applicant has numerous permits to obtain from other agencies prior to beginning construction such as permits for air quality systems, wastewater discharge, water allocation, and stormwater management; that wastewater discharge will be reduced from the current permit used by the pickle plant; that a nearby concrete plant has operated in the area since before the 1960's; that the current M&T Bank has offices in a large complex that was built in 1973; that Suburban Propane has been in the area since 1973; that there have been numerous residential homes and developments built since the existence of the plant; that the Wharton's Bluff community was built around 2000; and that Possum Point was developed prior to 1953.

Mr. Bayard stated that the area has a fifty (50) year history of heavy industrial use; and that the permitting agencies are the best places to address the environmental concerns.

Mr. Quinton testified that there will be two (2) shifts of employees per day, Monday thru Friday, with the occasional Saturday shift and that the building where trucks receive waste is enclosed.

Ed Kee, Secretary of Agriculture, was sworn in and testified in support of the Application. Secretary Kee testified that the use is a great economic opportunity for Sussex County; that the plant will create 700 jobs including approximately 75-100 management and engineering jobs; that the use will support local chicken and grain farmers; that the proposed modern facility will be environmentally sound; that DNREC looks forward to reviewing the permit applications; that he hopes that the Applicant will meet or exceed the requirements set forth by the State agencies; that the Applicant has five (5) facilities in South Korea; that he has visited the two (2) poultry facilities in South Korea and found that the plants were modern and impressive; that he believes the Applicant will be a good neighbor; that the State of Delaware will see that the Applicant complies with any and all requirements; that the community will not notice any difference than the previous use; that the Applicant will make a \$10 million to \$15 million upgrade to the wastewater system; that the State of Delaware will hold the Applicant to a high standard; and that the public will have an opportunity to comment during the permitting process.

Dorothy LeCates was sworn in and testified in opposition to the Application. Ms. LeCates testified that she has lived in the Possum Point area for forty two (42) years; that she is concerned about her existing well, air quality and the increase in traffic the plant will have on her property; that she found the odor from the pickle plant pleasant and is concerned for the odor this plant will produce; that she is concerned how the lighting from the plant will affect her neighborhood; and that this area is a heavily industrialized area.

Lou Dolski was sworn in and testified in opposition to the Application. Mr. Dolski testified that it is premature for this Board to approve this use without the Applicant obtaining all the other agency approvals; that he is concerned about the effect the plant will have on existing wells; that he disputes the proposed truck route; that the pickle plant did not follow the same route; and that he has concerns about the effect on air, water, and transportation.

Wayne Morris was sworn in and testified in opposition to the Application. Mr. Morris testified that he has lived in the Possum Point area his entire life; that the pickle plant had an adverse effect on the existing wells because the plant installed shallow wells which caused wells in Possum Point to run dry; that he feels the trucks will not follow the required truck route; and that the traffic is heavy on this road, since the tourists have all learned the back roads.

Ken Haynes was sworn in and testified in opposition to the Application. Mr. Haynes testified that he is a long term resident of Possum Point; that he is concerned with what chemicals will be used by the proposed plant; that he is concerned for chemical spills into the

nearby waterways; that he is concerned about storm water management and about the traffic impact; and that the trucks will have a large impact on traffic.

Diane Daley was sworn in and testified in opposition to the Application. Mr. Daley testified that she is a resident of Wharton's Bluff; that she is concerned about the odor and dust from the live haul trucks coming to the site will have on the neighborhood; that the roads cannot support the truck traffic; that there are schools in the area; that the traffic does not obey the speed limits that there is not a current restriction to truck traffic on this road; and that there is an odor from the existing poultry plant over four (4) miles away.

Rich Frohm was sworn in and testified in opposition to the Application. Mr. Frohm testified that he is a resident in Wharton's Bluff; that he purchased his property two (2) years ago and was not aware of the existing poultry plant on Route 24; that the odor and noise from that plant is disturbing; that he is concerned for his property value; that he has concerns about the environment, noise, disposal of waste, and traffic as well; and that he also feels the Applicant should receive other agencies approvals prior to the approval of this Application.

Mary Jane Deckler was sworn in and testified in opposition to the Application. Ms. Deckler testified that she is concerned about the potential hazardous use; that she has concerns for water, air, river and traffic in the area; that the pickle plants wastewater system failed at one point and created an issue; and that traffic problems plague the area.

Craig Havener was sworn in and testified in opposition to the Application. Mr. Havener testified that he is a builder of twenty three (23) lots in Wharton's Bluff; that he is not opposed to more jobs; that he has concerns on how this use will integrate with the existing community; that he wants to know who will regulate the plant and ensure the requirements are being met; that the change in use will be an increase in shifts, odor, and truck traffic; that the hours of operation are subject to change based on the demand; and that the increased traffic will impact the surrounding properties.

Dorothy LeCates testified that the Board should look at the statistics of traffic incidents on Iron Branch Road; and that there has been at least one (1) death per year.

Wayne Morris asked if the Applicant could process on the site only and kill the birds at another location.

In rebuttal, Gene Bayard, stated that this is an industrial area; that the use does not substantially adversely affect the neighborhood or the adjacent properties; that the use was established over forty (40) years ago; that the Applicant still has a rigorous permit process to complete prior to operation; and that the concerns the opposition has will be addressed throughout the permitting process.

James Quinton testified that the Applicant cannot slaughter elsewhere and process at this location; that it is not economically feasible and would create additional truck traffic; that the odor from the plant smells like cooked chicken; that the plant will not have the same odor as the rendering plant in the area; that the truckers are employees and there will be disciplinary action if the proposed truck route is not obeyed.

Gene Bayard stated that DNREC is responsible for controlling the odor from the plant.

Secretary Kee testified that there will be approximately 75 to 100 management jobs at the site; that there will be approximately 600 manufacturing positions; and that the jobs will be sourced locally.

John Shahan testified that there will probably be a reduction in lighting in the rear of the Property and no increased lighting elsewhere on the Property; and that a water line from the Town of Millsboro does not currently serve the site.

The Board found that one (1) party appeared in support of the Application.

The Board found that twenty four (24) parties appeared in opposition to the Application.

Ms. Thibodeau stated that the Office of Planning & Zoning received eleven (11) letters in opposition to the Application.

Ms. Thibodeau stated that Office of Planning & Zoning received two (2) letters with concerns about the Application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be tabled until June 17, 2013. Motion carried 4 – 0.

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

Meeting Adjourned 10:24 p.m.