



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF JUNE 4, 2012

The regular meeting of the Sussex County Board of Adjustment was held Monday, June 4, 2012, at 7:00 p.m. in the County Council Chambers, County Administrative 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. Dean Malloy – Zoning Inspector, III and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of May 21, 2012 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Finding of Facts of May 7, 2012. Motion carried 5 – 0.

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

### PUBLIC HEARINGS

**Case No. 10982 – Wells Fargo Bank National Association, as Trustee** – northeast of Road 296A (Short Road) approximately 600 feet east of Road 292A (Rust Road). (Tax Map I.D. 2-34-4.00-10.11)

A variance from the front yard setback requirement.

Mr. Malloy presented the case. Adam Gerber, Attorney, was present on behalf of the Applicant, with Shawn Tull, who was sworn in and testified requesting a 6.5-foot variance from the required 40-foot front yard setback requirement for an existing dwelling and a 13.7-foot variance from the required 40-foot front yard setback requirement for an existing front porch; that the Applicant obtained title to the property through a foreclosure; that the Applicant is now trying to sell the property; that a survey done for settlement showed that the dwelling and porch

encroached on the front yard setback; that the original structure was a manufactured home which was placed on the property in 1977; that an addition was constructed in 1994; that the Certificate of Compliance was issued in 1994; that the variance will enable reasonable use of the property; that the difficulty was not created by the Applicant; that it will not alter the character of the neighborhood; that it is the minimum variance to afford relief; that to bring the structure into compliance would be very costly and unrealistic; that the structure does not have the appearance of a manufactured home; that the unique circumstance is that the manufactured home was placed and then expanded upon; and that the Applicant submitted exhibits for the Board's review.

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. 10982 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The property is unique since a manufactured home was placed in 1977;
2. The variance will enable reasonable use of the property;
3. The difficulty was not created by the Applicant;
4. The variance, if granted, will not alter the character of the neighborhood;
5. The variance is the minimum variance to afford relief; and
6. The variance represents the least modification possible.

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

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

**Case No. 10983 – Donna Lee Schurman, Trustee of the Alphonso E. Stevens, Trust** – west of Road 594 (Webb Farm Road) approximately 2,006 feet north of Road 630 (Century Farm Road).(Tax Map I.D. 1-30-12.00-2.00)

A special use exception to retain a manufactured home on less than five (5) acres.

Mr. Malloy presented the case. Heidi Gilmore, Attorney, was present on behalf of the Applicant, Donna Lee Schurman, Trustee. Ms. Schurman's sister Gladys Passwaters was also present. Ms. Passwaters was sworn in and testified requesting a special use exception to retain a manufactured home on less than five (5) acres; that Ms. Schurman's father owned the property; that he is deceased and his daughters want to subdivide the property; that the manufactured home has been on the property since 1973; that at that time the manufactured home was permitted and was code compliant; that the proposed subdivision creates the need for the special use exception; that Gladys Passwaters lives in the manufactured home and will inherit the property from her father's estate; that the adjacent property was sold from the estate and the new owners have no objection to the application; and that the use will have no adverse affect to the neighboring or adjacent properties.

The Board found that 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. 10983 for the requested special use exception based on the record

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made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

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

**Case No. 10984 – James & Kathleen Cordner** – south of Road 277 (Angola Road) northwest of Holly Court, being Lot 5 within Angola by the Bay development. (Tax Map I.D. 2-34-11.20-369.00)

A variance from the rear yard setback requirement.

Mr. Malloy presented the case. James Cordner was sworn in and testified requesting a 9.2-foot variance from the required 20-foot rear yard setback requirement for a proposed screen porch; that he was granted a variance in 2005 to construct an addition; that due to the existing septic system the addition could not be built to the full width of the existing dwelling; that they are now connected to County Sewer; that since the septic system is no longer needed they would like to construct a screen porch and square off the existing dwelling; that the addition cannot be built in compliance with the setback requirements; that the property measures 50' x 100' making it unique in shape; that the rear of the property is adjacent to a common area; that it will not alter the character of the neighborhood; and that the existing shed has been moved into compliance.

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

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously to take the case under advisement. Motion carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Workman stated that he would move that the Board recommend denial of Variance Application No. 10984 for the requested variance based on the record made at the public hearing, since the Applicant did not meet the standards for granting a variance.

Motion by Mr. Workman, seconded by Mr. Rickard, and carried unanimously that the variance be **denied since it did not meet the standards for granting a variance.** 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.

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**Case No. 10985 – Jay Staniszewski** – east of Road 42 (South Union Church Road) approximately 770 feet north of Road 609 (Smith Haven Road).(Tax Map I.D. 2-30-30.00-17.00)

A special use exception to place a multi-sectional manufactured home that is more than five (5) years old.

Mr. Malloy presented the case. Jay Staniszewski was sworn in and testified requesting a special use exception for a manufactured home that is more than five (5) years old; that he owns a 7.35-acre parcel and wants to relocate his manufactured home to that property; that the unit is a 1999 model double-wide; that he can no longer afford the lot rent in the mobile home community; that he used to work for the community and lived on the lot at a discounted rate but he no longer works for the community; that he has had a septic system designed for the proposed location; that there are other manufactured homes near the Property; that a farmhouse is located across the street; that woods are adjacent to one side of the Property; and that the use will not substantially adversely affect the surrounding properties.

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. 10985 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 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. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 10986 – Wilbert D. Lawson & Margaret Lawson** – north of Route 634 (Meadow Brook Lane) southeast of Haven Lake Avenue, being Lot 10 & part of Lot 11 within Lakewood development. (Tax Map I.D. 1-30-3.06-29.00)

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

Mr. Malloy presented the case. Wilbert Lawson was sworn in and testified requesting a 0.8-foot variance from the required 30-foot front yard setback requirement for an existing dwelling and 1.6-foot variance from the required 5-foot side yard setback requirement for an existing shed; that he purchased the property in 2009; that the house was built in 1995 and the shed was built in 2005; that a recent survey showed the encroachment when he tried to obtain a building permit for a proposed addition; that the road curves around the Property and the house is angled on the lot; that a Certificate of Compliance has been issued on both the dwelling and the shed; that he did not place the shed or construct the dwelling; that the shed is on a concrete slab and cannot be moved into compliance; that the adjacent lot is vacant; that the difficulty was not created by the Applicant; that it will not alter the character of the neighborhood; that the variance will enable reasonable use of the property; that it is the minimum variance to afford relief; and that he submitted pictures.

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. 10986 for the requested variance based on the record made at the public hearing and for the following reasons;

1. The property is unique because it is a corner lot;
2. The difficulty was not created by the Applicant as the prior owner constructed the structures and obtained a certificate of compliance;
3. The variance will not alter the character of the neighborhood;
4. The variance is necessary to enable reasonable use of the property; and
5. The variance sought is the minimum variance 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. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 10987 – Laura K. Myers** – south of Road 331 (Iron Branch Road) east of 2<sup>nd</sup> Street, being Lot 13 within Riverview development. (Tax Map I.D. 1-33-17.00-33.00)

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

Mr. Malloy presented the case. Laura Myers was sworn in and testified requesting a 4.7-foot variance from the required 10-foot side yard setback requirement and a 17.05-foot variance from the required 30-foot front yard setback requirement for a proposed addition and a 2.73-foot variance from the required 5-foot rear yard setback requirement for an existing shed; that her lot is narrow as it measures 60' x 122'; that her septic system is in the rear of the existing dwelling; that the well is on the opposite side of the proposed addition; that the existing dwelling was built in the 1930's; that the proposed addition will enable reasonable use for her family of five (5); that the existing dwelling is 650-square-foot; that the position of the dwelling makes it impossible to add onto the dwelling without a variance; that it will not alter the character of the

neighborhood; that the property is the second lot from the end of the dead end street; that the existing shed was originally 3 sheds combined as one; that they have removed a portion of the shed that was actually on her neighbor's property; and that this is the minimum variance to afford relief.

Ronald Myers was sworn in and testified in support of the application and stated that he is the Applicant's father; and that the proposed addition will enable reasonable use of the property for his daughter's family.

The Board found that 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. 10987 for the requested variances based on the record made at the public hearing and the for the following reasons;

1. The variance will not alter the character of the neighborhood;
2. The variance is necessary to enable reasonable use of the property;
3. The variance is the minimum variance to afford relief.
4. The variance is the least modification possible of the regulation in issue;
5. The variance will not adversely affect the uses of adjacent properties;
6. The variance will not be detrimental to the public welfare.

Motion by Mr. Rickard, seconded by Mr. Mills, 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. 10988 – Ron Wilkens** – north of Route 5 (Indian Mission Road) north of Salt Grass Road, being Lot 304 within Stonewater Creek development. (Tax Map I.D. 2-34-17.00-679.00)

A variance from the front yard setback requirement.

Mr. Malloy presented the case. Ron Wilkens was sworn in and testified requesting a 10-foot variance from the required 30-foot front yard setback requirement for a proposed dwelling; that he has been a builder in the community since 2006; that a drainage ditch is located on the Property; that the drainage ditch impacts the building envelope on this property; that they are not permitted to alter the drainage ditch in any way; that the ditch creates a uniqueness to the property; that the proposed dwelling will not alter the character of the neighborhood; that the initial site plan of the development did not show the drainage ditch; that the owners wish to construct a one-story dwelling due to their age; that a two (2) story model would fit within the building envelope; that the drainage ditch impacts 3 other lots in the development; that the proposed dwelling fits with the character of the neighborhood; and he submitted a copy of the site plan.

Michele Vitiello was sworn in and testified in opposition to the application and stated that he lives across the street from the proposed dwelling; that in order to construct a deck without a variance on his property, he turned the dwelling to better fit on the lot; that he is concerned the variance will set a precedent; and that he is concerned for the existing front yard swale and what type of drainage problems this will create by moving the dwelling forward on the lot.

In rebuttal, Ron Wilkens, stated that the existing front yard swale cannot be altered; that they considered turning the dwelling on the lot, however they feel it will alter the character of the neighborhood; and that they will lose the aesthetic appeal by turning the dwelling on the lot.

In rebuttal, Michele Vitiello, showed the Board pictures of the Property on his phone.

In rebuttal, Ron Wilkens, stated that Gemcraft Homes did not create the development; and that there are no drainage issues in the development that he is aware of.

The Board found that 3-parties appeared in support of the application.

The Board found that 1-party appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Rickard stated that he would move the Board recommend denial of Variance Application No. 10988 for the requested variance based on the record made at the public hearing and for the following reasons;

1. The property can be otherwise developed;
2. The dwelling can be turned to comply with the required setback requirements;
3. The development is an approved RPC and the developer should have addressed the drainage ditch concerns at the time of development.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried that the variance be **denied for the reasons stated**. Motion carried 4 – 1.

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

**Case No. 10989 – Carla Ann Yngve & Kurt Yngve** – southwest of Route 1 (Coastal Highway) north of Bayview Avenue, being Lot D-12 within Seabreeze development.(Tax Map I.D. 3-34-20.13-214.00)

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

Mr. Malloy presented the case. Matt Dotterer and Carla Ann Yngve were sworn in and testified requesting a 4.08-foot variance from the required 30-foot front yard setback requirement and a 1.1-foot variance from the required 10-foot side yard setback requirement for an existing dwelling and a proposed porch with an overhang. Mr. Dotterer testified that the existing structure was constructed in 1962; that the proposed addition will enhance the value of the dwelling; that the Homeowner's Association approves of the application; that the proposed construction will bring the existing dwelling into hurricane code; that the property borders the canal; that the proposed addition will not block any neighbor's views; that the proposed garage will meet the required setback requirements; that the Homeowner's Association had a 26.5-foot height requirement; that the Applicant is building on top of the existing first floor; that nothing will be built past the existing steps; that the proposed addition does not alter the character of the neighborhood; and that the proposed porch will not extend the width of the dwelling as shown in previous drawing. Ms. Yngve testified that to comply with the required setback requirements the addition would have to be offset from the first floor by 1-foot; and that the property is unique in the fact that the existing structure is non-conforming. The Applicant submitted pictures and a survey.

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

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 10989 for the requested variance based on the record made at the public hearing and for the following reasons;

1. The property has unique physical circumstances;
2. The property cannot be otherwise developed;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the character of the neighborhood;
5. The variance is the minimum variance to afford relief.

Motion by Mr. Hudson, seconded by Mr. Mills, 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. 10990 – John E. Willis** – west of Road 350 (Railway Road), being Lot 3 within Banksville Park development. (Tax Map I.D. 1-34-12.00-60.00)

A variance from the side yard setback requirement.

Mr. Malloy presented the case. John Shockley was sworn in and testified requesting a 3.6-foot variance from the required 10-foot side yard setback requirement for a proposed attached garage with an overhang; that he is the brother-in-law of the Applicant; that the Applicant has removed the existing detached garage and intends to place a new garage on the property to store his automobiles, a recreational RV or a boat; that the proposed attached garage will be less of an encroachment into the setback area than the previous detached garage; that the



dwelling and existing detached garage already existed when his brother purchased the property in 1998; that the variance, if granted, will improve the character of the neighborhood since it will provide inside storage for Applicant's vehicles; that the garage will be built to closely match the décor of the dwelling; that the existing location of the dwelling creates a unique situation; that the property cannot be otherwise developed; that the variance enables reasonable use of the property; and that it will not alter the character of the neighborhood. Mr. Shockley submitted pictures of the Property to the Board.

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

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 10990 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 placement of the existing dwelling;
2. The difficulty was not created by the Applicant;
3. The variance will not alter the character of the neighborhood;
4. The variance will enable reasonable use of the property;
5. The variance sought is the minimum variance to afford relief.

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

**Case No. 10991 – Mike Cummings** – north of Road 26 (Atlantic Avenue) east of Grants Avenue, northeast of Waterside Circle, being Lot 35 within The Inlet at Pine Grove development. (Tax Map I.D. 1-34-12.00-2736.00)

A variance from the front yard setback requirement.

Mr. Sharp stated to the Board that the Applicant has been a client in the past and wanted to advise the Board if it was a conflict they may want to defer to Vince Robertson.

Mr. Malloy presented the case. Michael Cummings and Charles Obst were sworn in and testified requesting a 9.75-foot variance from the required 30-foot front yard setback requirement for a proposed addition. Mr. Cummings testified that the property is unique in shape since the road is on 3-sides of the property; that the existing dwelling has no windows on that side; that the proposed addition will add light and storage to the existing dwelling; that the proposed addition will not be detrimental to adjacent properties; that it will not alter the character of the neighborhood; that it is the minimum variance to afford relief. Mr. Obst testified that he plans to retire here and he will need the extra living and storage space; that he has owned the property for 3-years. The Applicant submitted pictures of the Property to the Board.

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. 10991 for the requested variance based on the record made at the public hearing and for the following reasons;

1. The property is unique in shape;
2. The variance will not alter the character of the neighborhood;
3. The variance will not be detrimental to adjacent properties;
4. The variance is the minimum variance to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

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

### **OLD BUSINESS**

**Case No. 10974 – Connie Lyons** – west of Route 13A (Bridgeville Highway) south of Garden Lane, being Lot 88 within Green Acres development. (Tax Map I.D. 3-31-3.00-262.00)

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

Mr. Malloy presented the case. Marlin Morgan and Connie Lyons were sworn in and testified requesting a 6.1-foot variance from the required 10-foot side yard setback requirement for an existing screen porch, a 4.6-foot variance from the required 5-foot rear yard setback requirement for an existing shed, and a 6.4-foot variance from the required 10-foot side yard setback requirement for an existing deck; that this case was left open on May 21, 2012 to allow them to prepare their case; that the property is narrow in size and measures 50'x 150'; that the unique shape makes it difficult to conform to the required setback requirements; that the difficulty was created by the builder; that the variance will not be detrimental to the adjacent properties; that the builder was not aware the setback requirement changed when a roof was added to the existing deck; that the neighboring unit is the same distance from the property line as the screen porch addition; that the variance is the minimum variance to afford relief; that the variance will not alter the character of the neighborhood. The Applicants submitted pictures in support of their Application.

The Board found that 2-parties appeared in support of the application.

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

Mr. Workman stated that he would move that the Board recommend approval of Variance Application No. 10974 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 the narrowness of the lot;

2. The difficulty was not created by the Applicant;
3. The variance will enable reasonable use of the property;
4. The variance will not alter the character of the neighborhood;
5. The variance is the minimum variance to afford relief.

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

**Meeting Adjourned 9:30 p.m.**