



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF MARCH 19, 2012

The regular meeting of the Sussex County Board of Adjustment was held Monday, March 19, 2012, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:05 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, Mrs. Susan Isaacs – Chief Zoning Inspector, and Mrs. Jennifer Norwood – Recording Secretary.

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

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously to approve the Minutes of March 5, 2012 as circulated. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Finding of Facts of December 12, 2011, December 19, 2011, February 6, 2012 and February 20, 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. 10950 – Stephen W. Yarmola** – east of Route 24 (John J. Williams Highway) west of White Pine Drive, being Lot 74 within Pines at Long Neck development.

A variance from the wetlands setback requirement.

Mrs. Isaacs presented the case. William Schab, Attorney, was present on behalf of the Applicant, with Stephen Yarmola, who was sworn in and testified requesting an 8-foot variance from the required 20-foot setback requirement from wetlands for an existing detached garage; that the Applicant recently purchased the property; that a survey done for settlement showed the encroachment; that a survey done in 2000 showed the structure in compliance; that the previous owner added on to the existing structure; that a Certificate of Compliance has never been issued for the addition; that the property is adjacent to wetlands and requires a 20-foot setback

requirement; that had the wetlands not been adjacent to the Property, a smaller setback requirement would be necessary; that the Applicant purchased the property for the garage; that the garage would have to be torn down to comply; that the property is unique in shape as the rear of the property is narrower than the front of the lot; that the variance will enable reasonable use of the property; that the Homeowner's Association supports the Application and neighbors have no objection to the Application; that it was not created by the Applicant and the Applicant was unaware of the problem at the time he purchased the Property; that it will not alter the character of the neighborhood; and that it is the minimum variance to afford relief. The Applicant submitted a picture to the Board of the Property.

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. Rickard stated that he would move that the Board recommend approval of Variance Application No. 10950 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 Wetland setback requirement;
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; and
5. 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.

**Case No. 10951 – Rebecca D. Furr** – south of Route 1 (Coastal Highway) south of Basin Street, being Lots 112 thru 114 within Bay Vista development.

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. William Schab, Attorney, was present on behalf of the Applicant, with Rebecca Furr, who was sworn in and testified requesting an 11.3-foot variance from the required 20-foot rear yard setback requirement for an existing screen porch; that the dwelling was built in the early 1960's prior to the enactment of the Sussex County Zoning Code and is non-conforming; that the previous owner obtained a building permit in 1985 to construct the screen porch but was not required to provide a survey at that time so the encroachment was not discovered at that time; that a Certificate of Compliance has never been issued for the porch; that the Applicant purchased the Property in July 2011; that a survey completed for that transaction showed the encroachment; that it was not created by the Applicant; that the property is unique since it is non-conforming; that it will not alter the character of the neighborhood; that it would be expensive to renovate the porch; that the neighbors have no objection to the

Application; and that it is the minimum variance to afford relief. The Applicant submitted pictures of the Property.

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

Mr. Rickard stated that he would move the Board recommend approval of Variance Application No. 10951 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The variance will enable reasonable use of the property;
2. The difficulty was not created by the Applicant;
3. The variance, if granted, will not alter the character of the neighborhood;
4. The variance is the minimum variance to afford relief; and
5. The Applicant would suffer an extreme hardship if required to move the porch.

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.

**Case No. 10952 – Thomas W. Huff and Melinda L. Huff** – south of Road 88 (Cave Neck Road) approximately 400 feet west of Front Street .

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. William Schab, Attorney, was present on behalf of the Applicant, with Thomas Huff, who was sworn in and testified requesting a 15.7-foot variance from the required 20-foot rear yard setback requirement for an existing detached garage; that the Applicants purchased the property in June 2005; that the Applicants had a survey completed at that time and the survey showed the encroachment, but the encroachment was never pointed out at that time; that Applicants have moved to Massachusetts and must sell the Property; that when the encroachment was pointed out a contract of sale for the Property was terminated; that the Applicants immediately applied for the variance; that another potential sale of the Property is contingent on the approval of the variance; that the Applicant did not build the detached garage; and that the adjacent property owner has no objection to the application. The Applicants submitted pictures of the Property.

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

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 10952 for the requested variance based on the record made at the public hearings and for the following reasons:

1. The difficulty was not created by the Applicant;
2. The variance will enable reasonable use of the property;
3. The variance, if granted will not alter the character of the neighborhood; and
4. The variance 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. Mills – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

**Case No. 10953 – Tanger Outlets** – north of Route 1 (Coastal Highway) northwest of Holland Glade Road, within Tanger Outlets.

A variance for two (2) additional wall signs.

Mrs. Isaacs presented the case. Matt Phillips and Cheryl Hideon were sworn in and testified requesting a variance for two (2) additional wall signs for a proposed Chipotle Restaurant; that the proposed restaurant will be located within the existing parking lot of the Tanger Outlet Center and surrounded by three existing buildings; that the additional signage will enhance visibility and is necessary so that the public can see the building; that each sign will measure 23.5-square-feet in size; that there is similar signage throughout the Tanger Outlet facility; that the variance will not alter the character of the neighborhood; that the variance will enable reasonable use of the property; that the property is unique since it is surrounded by other buildings and the site is situated within a shopping center; and that it is the minimum variance to afford relief.

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 Variance Application No. 10953 for the requested variance based on the record made at the public hearings and for the following reasons:

1. The property is unique;
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; and
5. The variance is the minimum variance 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.

**Case No. 10954 – Bayshore Inc.** – north of Road 358 (Sandy Cove Road) northeast of Rabbit Road, being Lot 101 within Bayshore Mobile Home Park.

A variance from the separation requirement between units in a mobile home park and the maximum allowable lot coverage in a mobile home park.

Mrs. Isaacs presented the case. Brett Cox was sworn in and testified requesting a 2-foot variance from the required 20-foot separation requirement between units in a mobile home park from a proposed manufactured home and an existing deck, a 5-foot variance from the required 20-foot separation requirement between units in a mobile home park from a proposed manufactured home, addition and shed, and a 188-square-foot variance from the required 35% maximum allowable lot coverage in a mobile home park; that he has a tenant that wants to place a new manufactured home on Lot 101 which has been vacant for years; that the existing manufactured home on Lot 102 has been on the lot since the 1970's and is only a couple of feet from the lot line; that the existing deck on Lot 100 creates the need for a variance on the other side of the proposed unit; that most of the units in the park are 5-foot from side property line to allow room for decks and sheds; that the variance request allows the park to keep a uniformed look throughout the park; that the proposed unit measures 14'x 70'; that the length of the unit allows the unit to meet the front and rear yard setback requirements; that the proposed deck will be 8-foot wide which is consistent with other decks in the neighborhood; that the unit could comply if they did not construct a deck; that a variance would be needed to put a shed on the Property; that the park was created in the 1960's making the property unique; that the variance will enable reasonable use of the property; that it will not alter the character of the neighborhood; and that it is the minimum variance 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. 10954 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The lots are narrow which creates uniqueness;
2. The variance will enable reasonable use of the property;
3. The variance, if granted will not alter the character of the neighborhood;
4. The difficulty was not created by the Applicant; and
5. The variance is the minimum variance to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, to grant the variance and carried with Mr. Rickard, Mr. Workman, and Mr. Callaway opposing the motion and that the variance be **denied since it can be otherwise developed and that the difficulty was created by the Applicant.** Motion carried 3 – 2.

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

**Case No. 10955 – Samaida Sprogell** – east of Road 374 (Blackwater Road) east of Whispering Lane, being Lot 101 within Hidden Acres II development.

A special use exception to operate a daycare facility.

Mrs. Isaacs presented the case. Samaida Sprogell was sworn in and testified requesting a special use exception to operate a daycare facility; that she has operated a daycare since 1984; that she wants to increase the number of children serviced at the daycare from 9 to 14; the her hours of operation are 7:30 a.m. to 5:30 p.m., Monday through Friday; that the backyard is fenced in; that she will hire one (1) additional employee; that the Office of Child Safety inspects at least once a year; and that the neighbors have no objection to the Application.

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. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 10955 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. 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. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

**Case No. 10956 – Scott Stumpf** – south of Route 1 (Coastal Highway) southeast of Center Avenue, being Lot D57 within Sea Air Mobile Home Park.

A variance from the separation requirement between units in a mobile home park.

Mrs. Isaacs presented the case. Scott Stumpf was sworn in and testified requesting a 10-foot variance from the required 20-foot separation requirement between units in a mobile home park; that he placed a unit on the last available lot in Sea Air Mobile Home Park; that he would like to construct a porch on the unit; that the neighbor's unit is on the lot line; that the steps on the neighbor's unit are on his lot; that the lot is unique in size and since the neighbor's unit is on the lot line; that the deck would otherwise meet the setback requirements had the neighbor's unit and steps not encroached into the setback area; that most of the homes in the park have porches similar to the one proposed herein; that it was not created by the Applicant; that the variance will enable reasonable use of the property; that it will not alter the character of the neighborhood since there are numerous porches in the park; that it is the minimum variance to afford relief; and that a blanket variance granted for the park included the neighbor's steps.

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

Motion by Mr. Workman, seconded by Mr. Mills, and carried unanimously that the case be **tabled until April 2, 2012**. Motion carried 5 – 0.

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

**Meeting Adjourned 8:10 p.m.**