

## MINUTES OF MARCH 24, 2014

The regular meeting of the Sussex County Board of Adjustment was held on Monday, March 24, 2014, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

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

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

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes for January 13, 2014 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes and Finding of Facts for January 27, 2014 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes and Finding of Facts for February 3, 2014 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Finding of Facts for February 17, 2014 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. 11346 – Service Glass Co. Inc.** – southwest corner of Delaware Route 20 (Stein Highway) and Sussex County Road 556 (Figgs Road) and being west of Seaford, Delaware. (Tax Map I.D. 5-31-12.00-43.00)

An application for a special use exception to retain a manufactured home type structure for a business.

Mr. Sharp advised the Board that his firm has represented the Applicant in the past and that if the Board had any questions, they should direct them to Vince Robertson, Esquire.

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

Michelle Booth was sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Fuqua stated that the Applicant is requesting a special use exception to retain a manufactured home type structure for a business; that the Property is located west of Seaford; that the business has operated at this site for twenty-five (25) years; that the unit was placed on the lot in 2006 due to flooding issues and on an emergency basis; that the flood actually flooded the large commercial building; that the Board approved a special use exception in 2009 for the same unit; that the approval expired March 4, 2014; that the Application was submitted prior to the expiration of the previous approval; that the Applicant leases the Property and is not able to construct a permanent structure; that the Applicant also leases a portion of the existing warehouse on the Property; that there are other commercial properties in the area including Penco which is a large commercial business; that the unit was anchored and skirted as stipulated at the 2009 hearing; that there have been no changes made to the Property or the area since the prior approval; that the Applicant is a successful business; that the use does not substantially adversely affect the surrounding and adjacent properties; and that the Applicant seeks a five (5) year renewal of the special use exception.

Ms. Booth, under oath, confirmed the statements of Mr. Fuqua as being true and correct.

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. 11346 for the requested special use exception for a period of five (5) years based on the record made at the public hearing and because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of five (5) years for the reasons stated.** Motion carried 5 – 0.

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

**Case No. 11347 – Sharon F. Bailor** – southeast of Beaver Dam Road (Road 385) approximately 318 feet southwest of Central Avenue (Route 84) and south of Ocean View. (Tax Map I.D. 1-34-16.00-36.03)

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

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

Elizabeth Evans-Truitt was sworn in to testify about the Application. Shannon Carmean Burton, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits and a signed affidavit from the Applicant for the Board to review.

Mrs. Burton stated that the Applicant was requesting a variance of 0.1 feet from the five (5) feet rear yard setback requirement for an existing accessory building; that the Applicant's father purchased the Property in 2005 and he passed away in 2012; that the Applicant entered into a contract to sell the Property and that the buyer obtained a survey of the Property; that the survey showed that an accessory building was located in the setback area; that the accessory building was on the Property at the time of the purchase; that the accessory building cannot be relocated due to its poor condition; that the Applicant was not aware of the encroachment until a survey completed for settlement showed the encroachment; that the Property has a unique jagged shape; that the difficulty was not created by the Applicant; that the variance is necessary to enable reasonable use of the Property; that the accessory building will not alter the character of the neighborhood; that the accessory building is not detrimental to the public welfare; that the Property cannot be brought into strict conformity with the Sussex County Zoning Code; that the variance requested is the minimum variance to afford relief; and that the variance is the least modification of the regulation at issue. Ms. Truitt, the realtor for the Applicant, under oath, confirmed the statements made by Mrs. Burton.

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

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11347 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is jagged in shape making it unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The non-conforming structure was in its current location prior to the Applicant or her father acquiring the Property;
5. The variance will not alter the essential character of the neighborhood;
6. The variance sought is the minimum variance necessary to afford relief; and
7. The variance represents the least modification of the regulation at issue.

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

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

**Case No. 11348 – Maria Victoria Mazzella** – north of Road 472 (Phillips Hill Road) approximately 620 feet west of Road 436 (Pusey’s Road). (Tax Map I.D. 1-33-22.00-2.01)

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

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

Maria Mazzella and Mario Laz were sworn in and testified requesting a special use exception to place a multi-sectional home that is more than five (5) years old. The Board found that Mr. Laz testified that he would translate for the Applicant; that the Applicant’s brother would like to move his 1999 double-wide manufactured home to the Property; that the Property is approved for a septic system; that the Property is 2.6 acres in size; that the Applicant’s brother will care for the Property; that the Property is vacant and not farmed; that the manufactured home is in good condition; that the unit will be on a block foundation; that the closest home is over 300 feet away; that there are not many homes in the neighborhood; that the unit will be placed towards the rear of the Property; and that they can provide pictures for the Board to review.

Mr. Lank advised the Board that the lot may have been created prior to 1997.

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

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously to **leave the hearing open to allow the Applicant to submit pictures of the manufactured home and to allow the staff to verify the date the parcel was created since the lot width is less than 150 feet wide.** 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. 11349 – L.C. Homes** – northeast corner of Grove Estate Road and north of Cedar Grove Road and 1,900 feet southwest of Plantation Road (Road 275). (Tax Map I.D. 3-34-12.00-872.00)

A special use exception to place a manufactured home type structure for a business (sales office).

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

Bo Britt was sworn in and testified requesting a special use exception to place a manufactured home type structure for a business (sales office); that the Applicant plans to use the unit for approximately six (6) to eight (8) months while they are constructing a model home on an adjacent lot; that once the model home is complete the unit will be removed; that they hope the model home will be constructed within four (4) to five (5) months; that the unit will be placed on Lot 1 for sales in a new twenty-five (25) lot subdivision; that the unit measures twelve (12) feet by fifty-six (56) feet; that there will be a deck and handicap ramp constructed; that there is adequate parking available; that they currently use the unit at another job site; that the unit is a standard office type manufactured home; that he feels approval for one (1) year is sufficient; and that the manufactured home type structure will have no effect on the neighborhood. Mr. Britt submitted an exhibit for the Board to 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 Special Use Exception Application No. 11349 for the requested special use exception for a period of one (1) year based on the record made at the public hearing and because the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for a period of one (1) year 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. 11350 – Anthony Crivella** – northwest of Hebron Street (Road 273) across from Canal Crossing Road and 700 feet northeast of Burton Avenue and being Lot 88 and part of 89 within West Rehoboth Subdivision. (Tax Map I.D. 3-34-13.20-8.00)

An application for variances from the side yard setback requirement.

Mr. Sharp advised the Board that his firm has represented the Applicant in the past and that if the Board had any questions, they should direct them to Vince Robertson, Esquire.

Mr. Lank presented the case and stated that the Office of Planning and Zoning received eight (8) letters and emails in support of the Application and had not received any correspondence in opposition to the Application.

Anthony Crivella was sworn in and testified requesting a variance of 1.4 feet from the ten (10) feet side yard setback requirement and a variance of 0.2 feet from the ten (10) feet side yard setback requirement for an existing accessory structure larger than 600 square-feet, and a variance

of 0.4 feet from the ten (10) feet side yard setback requirement for an existing dwelling; that he has owned the Property for eight (8) or nine (9) years; that he contracted with DeShields Construction to build a detached garage measuring thirty (30) feet by thirty-five (35) feet; that after construction the detached garage measured 30.1 feet by 36 feet; that he filed for a variance immediately after discovering the encroachment; that the dwelling was relocated to the Property in February 2013 from another property; that the Property was clearly marked for the mason to place the dwelling; that he does not know why the dwelling was not placed in compliance; that the difficulty was not created by the Applicant; that the Property is unique since the neighboring property has an approved Conditional Use to store beach equipment; and that the surrounding properties are non-conforming and have encroachments. Mr. Crivella requested additional time to prepare for his presentation.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to leave the case open and allow the Applicant more time to prepare and call him back up at the end of the public hearings. Motion carried 5 – 0.

At the end of the public hearings, the Chairman referred back to this case. Anthony Crivella came back before the Board and testified that his property is narrow in size which makes it unique; that the Property cannot otherwise be developed; that neighboring properties have smaller setback requirements; that he relied on the contractor to build within the setbacks; that the variance will enable reasonable use of the Property; that the difficulty was not created by him; that the variances will not alter the character of the neighborhood; that his neighbors have homes closer to the property lines than what he is proposing; that the neighbors support the Application; and that the variances are the least modifications of the regulations at issue.

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. 11350 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it is narrow;
2. The variances are necessary to enable reasonable use of the Property;
3. The Applicant relied on others to set the structures on the Property in compliance with the setback requirements;
4. The difficulty was not created by the Applicant;
5. The variances will not alter the essential character of the neighborhood;
6. The variances will not be detrimental to the public welfare; and
7. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 11351 – Robin Wright** – southeast of Road 285 (Beaver Dam Road) 1,900 feet southwest of Road 287 (Kendale Road). (Tax Map I.D. 2-34-6.00-11.01).

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

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

Mr. Sharp advised the Board that his firm represented the Applicant in the past and that if the Board had any questions, those questions should be directed to Vince Robertson, Esquire.

Robin Wright was sworn in and testified requesting a special use exception to operate a daycare facility; that she has operated a daycare on this Property since 1998; that she has gradually increased its size over time; that she currently cares for thirty-five (35) children; that she is requesting to care for up to two-hundred (200) children; that the ages of children are six (6) weeks to twelve (12) years old; that her hours of operation are Monday through Friday, 6:00 a.m. to 6:00 p.m.; that there is adequate parking on the Property; that she cannot currently care for that many children without adding on to the facility; that she has no plans to care for two-hundred (200) children on the Property; that realistically she plans to care for approximately fifty-five (55) children; that the facility has had a positive effect to the neighborhood; that there is a fenced in playground; that family lives next door and the other neighbor rents his home; that the use does not substantially adversely affect the neighborhood; and that the Property is approximately one (1) acre in size.

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

The Board found that no persons appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11351 for the requested special use exception for a daycare facility of up to two-hundred (200) children based on the record made at the public hearing and because the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for two-hundred (200) children and for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 11352 – Bo Bilobran & Michael Moutzalias** – west of Coastal Highway and south of Bay Berry Road in Middlesex Beach. (Tax Map I.D. 1-34-17.16-47.00)

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

Mr. Lank presented the case and stated that the Office of Planning and Zoning had received one (1) letter in support of the Application; that several letters of support were submitted with the Application, and that the office had not received any correspondence in opposition to the Application.

Steven Bilobran was sworn in and testified requesting a special use exception for a produce stand for a period of five (5) years; that last year the Board approved the produce stand for a period of one (1) year; that after meeting with the neighbors regarding any concerns this year the Applicants plan to create a walkway behind the parking lot; that the stand will be moved further into the lot and will still meet setback requirements; that the parking area has been in place for thirty (30) years and the owner does not want to move the parking area; that there were no problems with the parking and traffic last year; that most traffic to the stand is pedestrian and bike traffic; that the trash is removed daily; that the structures can be removed quickly in case of inclement weather; that they plan to have a small shed placed on the Property for additional storage; and that the use has not substantially adversely affected the surrounding or adjacent properties.

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

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

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11352 for the requested special use exception for a period of five (5) years based on the record made at the public hearing and because the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for a period of five (5) years based on 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. 11353 – Custom Siding Inc.** – south of Route 54 (Lighthouse Road) and being east of Cleveland Avenue 1,000 feet south of Lincoln Drive and being Lot 20 Block 4 within Cape Windsor Subdivision. (Tax Map I.D. 5-33-20.18-121.00)

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



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

Charles Hayes was sworn in and testified requesting a variance of five (5) feet from the ten (10) feet side yard setback requirement for a proposed dwelling, a variance of eight (8) feet from the ten (10) feet side yard setback requirement for a proposed HVAC unit, and a variance of seven (7) feet from the ten (10) feet from the side yard requirement for a gas tank. Mr. Hayes testified that the existing 1969 manufactured home will be replaced with a proposed dwelling; that the proposed dwelling will be five (5) feet from the side property line to keep consistent with the neighborhood; that the existing manufactured home was only approximately one (1) foot to four (4) feet from the side property line; that the Property is located in the Cape Windsor development; that the Property is a corner lot; that Cape Windsor approves a five (5) foot setback from the side property line; that the variance will allow for parking on the Property; that the Property measures fifty (50) feet by ninety (90) feet; that the Property is unique and narrow; that the Property cannot otherwise be developed; that the variances are necessary to enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the variances will not alter the essential character of the neighborhood; that 95% of the neighborhood has a five (5) feet setback; that the variance is not detrimental to the public welfare; that the variances sought are the minimum variances to afford relief; that the variances requested are the least modifications necessary of the regulations at issue; that there will not be a shed on the Property; that the proposed dwelling will be two (2) stories tall; that the Property is located in the flood zone; and that the HVAC unit cannot be located elsewhere due to the canal and a proposed attached garage.

The Board found that two (2) parties appeared in support of the Application.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11353 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its size;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the 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. 11354 – Deborah Lopresti** – north of Route 54 (Lighthouse Road) and being northwest of Bluebill Drive, 1,580 feet north of Swann Drive and being Lot 55 Block G within Swann Keys Development. (Tax Map I.D. 5-33-12.16-174.00)

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

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

John Stark was sworn in and testified requesting a variance of four (4) feet from the ten (10) feet side yard setback requirement for a proposed manufactured home and a variance of 7.2 feet from the ten (10) feet side yard setback requirement for a proposed HVAC unit and platform. Mr. Stark testified that he is a construction manager for Atlantis Homes; that the Applicant's husband has passed away; that the Applicant wants to replace her existing twelve (12) foot wide manufactured home with a sixteen (16) feet by seventy-four (74) feet manufactured home; that the lot is narrow and adjacent to a lagoon; that the proposed unit will be placed within the same footprint as the existing unit; that the Applicant does not want to remove a tree her husband planted on the lot so the dwelling is proposed to be placed away from the tree; that the proposed unit encroaches less into the setback area than the existing unit; that the development has a mix of single-wide and double-wide homes; that the variances will not alter the character of the neighborhood; that the Property extends into the lagoon; that the Property experiences flooding problems so building near the rear yard setback area is not desirable.

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

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

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11354 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;
2. The variances are necessary to enable reasonable use of the Property;
3. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
4. The difficulty was not created by the Applicant;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances necessary to afford relief.

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

**Case No. 11355 – Jim Emrich & Wendy Emrich** – northwest of Sussex County Road 530 (Old Meadow Road) 356 feet and north of Wilkinson Drive. (Tax Map I.D. 2-31-12.00-71.00)

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

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

Steve Adkins of Steven Adkins Land Surveying LLC was sworn in and testified requesting a variance of 9.7 feet from the forty (40) feet front yard setback requirement for an existing shed. Mr. Adkins testified that he is a surveyor and surveyed the Property for a proposed settlement; that two (2) sheds are located on the Property; that he contacted the Office of Planning and Zoning to see if a variance had been approved for the sheds; that a prior variance was granted only for one of the sheds; that, when he learned of the need for the variance, he immediately applied for the variance; that the Property severely slopes to the rear of the shed; that the Property is adjacent to the Nanticoke River; that the previous owner placed the shed; that he believes the septic system also prevents the shed from being moved into compliance; and that a significant portion of the rear yard is under water due to the river.

Mr. Lank advised the Board that a variance was approved for the other shed in 2008.

Mr. Adkins testified that the shed subject of this application appears to have been on the Property since before 2008; and that the shed cannot be moved to the rear yard. Mr. Adkins submitted pictures for the Board to review.

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

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

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11355 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 partially covered by water;
2. The Property has a limited buildable area due to the neighboring river and location of the septic system;

3. The variance is necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicants;
5. The Applicants did not place the shed on the Property;
6. The variance will not be detrimental to the public welfare;
7. The variance will not alter the essential character of the neighborhood; and
8. The variance sought is the minimum variance necessary to afford relief.

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

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

**Meeting Adjourned 9:02 p.m.**