

MINUTES OF MARCH 4, 2013

The regular meeting of the Sussex County Board of Adjustment was held on Monday, March 4, 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 – Planning & Zoning Director and Mrs. Jennifer Norwood – Recording Secretary.

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

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

PUBLIC HEARINGS

Case No. 11164 – Francis Clamer & Debbie Clamer – south of Road 358 (Sandy Cove Road) approximately 1,480 feet west of Road 357 (Cedar Neck Road). (Tax Map I.D. 1-34-9.00-413.00)

An application for a variance from the front yard, side yard, and rear yard setback requirement.

Mr. Lank presented the case. Debbie Clamer was sworn in and testified requesting a variance of 18 feet from the 30 feet front yard setback requirement, a variance of 4.2 feet from the 10 feet side yard setback requirement and a variance of 7.7 feet from the 10 feet rear yard setback requirement for a proposed dwelling. Ms. Clamer testified that the existing dwelling on the Property was relocated to the Property by the previous owner; that the existing dwelling is non-conforming and was built in the 1940s; that she plans to demolish the existing dwelling and replace it with a modular dwelling; that they plan to use the existing footers and foundation from the existing dwelling for the new dwelling; that the proposed dwelling would be larger on the east side of the Property; that the Property is irregular in shape and the Applicants are limited in what they can do with the lot; that a ten (10) feet water easement runs along the front property line; that the proposed location of the dwelling will keep the dwelling a safe distance from the road; that the Property is located adjacent to a curve in the road and drivers have driven into their yard; that the proposed steps and deck will be located on the east side of the Property; that the existing crawlspace will not remain; that the neighbors have all replaced manufactured homes with modular dwellings; that the variances will enable reasonable use of the Property; that the variances will not alter the character of the neighborhood; that the use will not be detrimental to public welfare; and that the proposed dwelling will be twenty-six (26) feet wide.

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

Mr. Lank stated that the Office of Planning & Zoning did not receive any correspondence in reference to this case.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11164 for the requested variances based on the record made at the public hearings and for the following reasons:

1. The Property is unique due to its triangular shape;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary 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. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11165 – Iris Downing – southwest corner of Road 213 (North Old State Street) and Wild Cherry Street. (Tax Map I.D. 2-30-26.20-19.00)

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

Mr. Lank presented the case. Iris Downing was sworn in and testified requesting a special use exception to operate a daycare facility; that she purchased the Property in 2012 and seeks to renovate it; that she plans to care for twelve (12) pre-school age children; that her hours of operation will be Monday through Friday, 6:00 a.m. to 6:00 p.m.; that there is adequate parking available; that she owns the adjacent property, which is also a daycare facility; that she has operated a daycare for thirteen (13) years in the area; that the use will not have an adverse effect to the adjacent properties; that the use will improve the neighborhood; and that she will apply for all state agency approvals.

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

Mr. Lank stated that the Office of Planning & Zoning did not receive any correspondence in reference to this case.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception No. 11165 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. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 11167 – Mary Esposito – northwest of Route 24 (John J Williams Highway) 1,275 feet southwest of Route 22 (Long Neck Road), being Lot 16 on Timber Circle within Timber Acres, a Mobile Home Park. (Tax Map I.D. 2-34-23.00-263.00 Unit 41070)

An application for a variance from the separation requirement between units in a mobile home park.

Mr. Lank presented the case. Mary Esposito and Edward Davidson were sworn in and testified requesting a variance of 3.6 feet from the 20 feet separation requirement between units, from the unit on Lot 15, and a variance of 2.6 feet from the 20 feet separation requirement between units from the existing deck on Lot 15 in a mobile home park. Ms. Esposito testified that the neighboring property (Lot 15) has a unit which is two (2) feet too close to her property and creates the need for the variance; that the unit on the neighboring property has been damaged recently and may be removed from the park; that she leased the Property (Lot 16) in August 2012; that she placed a manufactured home on the Property in August 2012; that manufactured home on the Property is 26 feet wide; that the previous manufactured home on the Property was a singlewide home; that the manufactured home on Lot 15 is aligned crookedly on the lot; that the installer obtained the permit for the placement of the unit; and that the Zoning Inspector made them aware of the encroachment.

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. 11167 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique since the neighboring unit is not parallel with the lot line and that the neighboring unit will be removed;
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; and
5. The variances sought are the minimum variances necessary 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. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 11168 – The Home of the Brave Foundation, Inc. – east of Road 633 (Griffith Lake Drive) approximately 440 feet north of Road 620 (Abbotts Pond Road). (Tax Map I.D. 1-30-2.00-13.20)

An application for a special use exception for a women’s veteran facility.

Mr. Lank read an email received by the Office of Planning & Zoning into the record which opposed the Application.

Mr. Lank presented the case. Linda Boone, Chair of the Board of Directors of the Home of the Brave Foundation was sworn in and testified requesting a special use exception for a women’s veteran facility. Ms. Boone testified that the Home of the Brave has serviced the area since 1992; that female veterans make up five percent (5%) of the nation’s homeless veterans; that residents of Home of the Brave must meet certain qualifications in order to reside in the shelter; that the qualifications include: that the resident be honorably discharged from the military, that the veteran must meet the homeless standard, that the veteran must be open to living in a group environment; that residents are admitted as space is made available; that one in five female veterans experience Military Sexual Trauma; that one in five female veterans suffer from Post-Traumatic Stress Disorder, which leads to increased substance abuse and homelessness; that one in five of post-September 11 female veterans are unemployed; that the Home of the Brave is a nonprofit organization founded by eight Vietnam combat veterans; that the average stay at the Home of the Brave is approximately six (6) to nine (9) months; that the maximum stay is twenty four (24); that the average age of the veterans participating in the program has been from 51 to 61 years of age; that the majority of the veterans coming to the program has been due to economic situations; that veterans have to be clean and sober for a minimum of thirty (30) days before they can apply for admission to the program; that the goal is to discharge the veterans to permanent housing and to eliminate the barriers which led them to homelessness; that veterans sign a contract when entering the program and agree to and must follow the rules in order to stay in the program; that residents who fail to follow the rules are discharged from the facility; that they currently have a sixty seven percent (67%) success rate; that case plans are developed for each resident; that the Home of the Brave is a transitional living facility, not a shelter; that the majority of the residents are Delaware residents; that twelve (12) of the fifteen (15) residents at the Applicant’s other location are Delaware residents; that

residents are regularly drug tested; that they do not accept any applicants, with potential or high probability of criminal activity; that the facility will have staff coverage 24 hours a day, 7 days a week; that the residents are required to adhere to curfew schedules, signing in and out, performing assigned daily chores, and working on individual plans to move them to independent living; that the facility would not lead to a drop in property values of adjacent properties; that the proposed location has been vacant for over a year and has not been maintained; that the Home of the Brave has high standards for appearance and maintenance of their properties; that some repairs and renovations have already been made to the home; that once they obtain approval from the Board a plan for major renovations will be implemented which will include the construction of a larger septic system, a fire safety system, a new water heater, landscape improvements, and bathroom renovation; that there is no empirical evidence that supports a theory that property values will be decreased; that a recent study from Dr. Kevin Gillen from the University of Pennsylvania showed that in two-thirds of the cases the impact of subsidized housing in Delaware was neutral or positive because of the design of the house and its management of the facility; that a study in Philadelphia showed that property values increased by 6.8% when a well-run homeless facility was in the neighborhood; that financial audits have met and often exceeded national nonprofit benchmarks; that the Board of Directors meets monthly to review the management of the facility and its finances; that in 2012 they had over 250 cash contributors and an additional 300 supporters who donated food and housing items; that there will not be a roadside sign on the Property, only a sign on the front door noting visitors need an appointment; that they are trying to limit visitor access and will require that visitors made an appointment; that the visitor policy will differ from the Applicant's other location on Sharps Road; that all donations will be accepted at the Sharps Road location; that they will provide contact numbers for the neighbors to report concerns and ask questions; that they welcome a neighborhood representative to be a part of the Women's Program Advisory Committee which provides advice to the Board of Directors; that most residents need help finding employment; that residents are transported to appointments and for shopping by the Applicant via the Applicant's van; that collocating genders is not permitted by the Veterans Association; that a maximum of six (6) adult women will stay at the home; that the staff is familiar with dealing with children; that the Applicant wants to review how many children would be able to live in residence and what services would be provided to those children; that the number of children is unknown at this time; that large activities will not be held at this location; and that the facility on Sharps Road has been open since May 1996 and there have been no problems.

Ms. Boone submitted a packet of exhibits regarding the Application to the Board.

Mike Rowe was sworn in and testified in support of the Application. Mr. Rowe testified that he works for People's Place and is the program director for the veteran's outreach program; that the proposal will help homeless veteran women and their children; that most homeless female veterans are homeless due to their economic situation; that the Applicant helps individuals get back on their feet; that women veterans have more trouble finding housing and jobs; that People's Place provides transportation for the veterans; that female veterans may have

been victim of Military Sexual Trauma and that the Applicant provides those veterans with the help they need to improve their lives, not just a place to stay; and that fire and police services would serve the residence in the same way as if the house was used as a single family residence.

Robert Clauser was sworn in and testified in support of the Application. Mr. Clauser testified that he serves as a commissioner for the Delaware Department of Veteran's Affairs; that this Property has been vacant and in need of serious repair; that after inspecting the site and realizing the number of bedrooms available it was decided to be an ideal location for the Home of the Brave; that the house has five (5) bedrooms and 4 ½ bathrooms; that our veterans are sent to war and come home to no support; that urban areas do not work for this type of facility; that there are no services to help the veterans in the urban area; and that someone just built a house across the street from the other Home of the Brave location for \$750,000.00.

Albert Weir was sworn in and testified in support of the Application. Mr. Weir testified that he is with the State Commission of Veteran Affairs, and that the veteran organizations support this Application.

Mark Gaglione, Amanda Gaglione, and David Murphy were sworn in to testify in opposition to the Application. Tim Willard, Esquire, appeared on their behalf and stated that his clients are opposed to the location of the facility; that the use will substantially adversely affect the neighboring and adjacent properties; that the neighbors are concerned about the vagueness of the Application; that the neighbors are concerned about the effect of including children in the facility; that the Applicant has presented that residents will receive outpatient care from the Department of Veteran's Affairs; that a transitional home is not clearly defined in the Planning & Zoning Ordinance; that the Application has been submitted as a special use exception for a convalescent home; that this use is not a convalescent home because there is no regular nursing care being provided on the Property; that a similar application was granted in the Bridgeville area where children would also be residing but there were major differences in that application from this Application; that the Bridgeville home was located on a large piece of property just outside the town of Bridgeville; that the home was located a good distance from the road and that permanent and full-time nursing staff would be located on site; that there is no evidence to the age of the children that may stay at the home with their mothers; that there is a big difference to a transitional home when children are involved; that the proposed location is in a tightly knit residential neighborhood several miles outside of Milford; that the email read at the beginning of the hearing well-articulated concerns of neighbors; that fire and police services are located miles away from the residence; that there is no public transportation in the area; that the opposition feels the transitional home should be located within town limits; that there would be more services available in a town setting; that the increased number of people living in the home will increase the traffic, trash, septic and well use; that there is a potential of six (6) families living on a property designed for single-family residence; that most transitional homes in this region are located in or near town centers; that property values in the area will decrease due to the location of the proposed transitional housing; that he does not have any evidence to support the claim that

the property values will decrease; and that it is difficult to prove substantial adverse affect to the neighborhood when it hasn't happened yet.

Mr. Willard presented to the Board a packet of exhibits and a petition of sixty six (66) individuals who oppose the Application.

Amanda Gaglione testified that she supports the cause and has veteran family members; that she and her husband purchased property in this area for a quiet place to live and raise their children; that her children like to play outside and she has concerns the home will bring more strangers to the area; that her children have expressed concerns about the home as well; that there is no sidewalk in the area and it could create some safety concerns; that it was stated that women could not collocate on the Sharp Road property with the men, which concerns her because she has three (3) sons; that there are other homes in the Milford area she feels are much better suited for this use; that the other homes are in town and also near parks; that she spoke with a realtor who told her that property values will decrease due to the placement of the transitional facility; that the effect to property values can be determined since most transitional homes are in an urban area and not near a neighborhood like hers; that she has concerns about increased traffic; that her home is right next door to the facility; that she has four (4) bedrooms in her house; that the Applicant's property foreclosed on and sat vacant for some time; that her husband and other neighbor mowed the lawn; that some areas of the Applicant's dwelling was in disrepair from the prior owner; that the dwelling has private water and septic and is concerned how this will affect her well and septic; that she does not know if she shares an aquifer with the Property; and that she confirmed the statements by Mr. Willard.

David Murphy testified that he lives across the street from the proposed veterans home; that the use will alter the character of the quiet country atmosphere; that there will be increased traffic to the area due to the facility; that the density of the home from a single-family to a multi-family use concerns him; that there are no businesses located near the Property; that he wants to know who will supervise the children and what credentials the staff have; that he is concerned about unsupervised children being on his property; that there are many questions about the facility which have not been answered; that lights from vehicles moving in and out of the Property flash into his bedroom; that there is nothing in the neighborhood for the children; that he feels the home should be within walking distance of schools, parks, stores and hospitals; that he is a former code enforcement officer; that he has experienced with homeless shelters that have overcrowding problems; that the existence of the veteran's home will dissuade potential purchasers from buying neighboring properties; that he would still object to the Application even if children were not allowed to live on the Property; that he has concerns about the effect of the facility on septic and well; that the Fire Marshal will require major renovations to the structure if this Application was approved; and that he feels the use will substantially adversely affect the neighboring and adjacent properties.

Mark Gaglione testified that he is opposed to a shelter for both adults and children; that he has not found any neighbors that support this Application; that he agrees with his neighbors as to the reasons he opposes the Application; that a common sense approach dictates the affect a shelter will have for property values; that he feels it is easy to support a shelter when it is not in your neighborhood; that he lives fifty (50) feet from the proposed facility; and that he is a veteran.

Vernon Hood and Janna Hood were sworn in and testified in opposition to the Application. Janna Hood testified that they own the property adjacent to the proposed shelter; that she is concerned about the effect of a larger septic system being placed on the Property because it would require a distance of 100 feet from neighboring wells; and that the lots are only 150 feet wide.

Vernon Hood testified that he designs septic systems and feels the Property is not large enough to support a septic system needed for that amount of people; that the septic will need to be 150 feet from the well.

Janna Hood testified that DNREC approves systems based on the number of bedrooms.

Vernon Hood testified that the location is very different from the Sharps Road location and the neighborhood is very different; and that they feel this is the wrong location for the shelter.

Tim Willard submitted proposed Finding of Facts for denying the Application.

Karen Temple was sworn in and testified in opposition to the Application and stated that she volunteers at a homeless shelter in Dover; that a 67% success rate is not successful; that she is concerned for the veterans that are not successful; that where will the veterans go that do not successfully follow the rules; that she questions whether there are enough women veterans who are homeless to fill the facility; and that helping veterans does not make it a higher quality shelter.

Dorothy Doneker was sworn in and testified in opposition to the Application and stated that she lives nearby; that she is concerned for the veterans with addictions and the possible increase in crime to the area; that her son is an addict; that addicts with the best intentions still have trouble overcoming their addictions; that they will steal from their own families; and that this is not a good area for this shelter.

In rebuttal, James Stolvey was sworn in and testified in support of the Application and testified that he is the contractor for the Applicant; that the existing septic system is non-conforming; that the septic can be replaced in the same area as the existing septic and will not encroach on the neighbor's well; that he questions how Mr. Murphy could be receiving lights

from vehicles in his bedroom when the house has been vacant for over a year; that he has no objection to Home of the Brave residents and would welcome them to his neighborhood; that the only construction done at this point has been work needed for the sale of the home in the event the shelter is denied; and that he does not see how the use will substantially adversely affect the uses of neighboring and adjacent properties.

In rebuttal, Linda Boone, stated that their investors, Department of Veteran Affairs and Housing and Urban Development monitor the facilities; that they would not receive grants if they house more veterans than approved for; that residents failing drug tests are relocated rather than put out on the street; and that they were aware a special use exception approval was needed prior to the purchase of the Property.

The Board found that twenty six (26) parties appeared in support of the Application.

The Board found that twenty six (26) parties appeared in opposition to the Application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be **tabled until March 18, 2013**. 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. 11169 – Chris Tawa – east of Texas Avenue 200 feet southeast of Bay Shore Drive. (Tax Map I.D. 2-35-3.12-81.00)

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

Mr. Lank presented the case. Chris Tawa and Laurie Bronstein were sworn in and testified requesting a variance of 5 feet from the 10 feet rear yard setback requirement for an existing screen porch and roof top deck. Mr. Tawa testified that he purchased the Property in 2003; that the existing deck and screen porch were constructed by the previous owner; that a variance was approved in 2000; that he constructed the roof top deck and added extra support to the existing screen porch and stairs to the roof top deck to create an observation area; that he was not aware a building permit was necessary for such minor construction; that the observation deck has the same dimensions as the porch below; that the encroachment was discovered by a survey completed for settlement; that there are vacant lots on each side of his property; that the variance will not alter the character of the neighborhood; that the variance is needed to enable reasonable use of the Property as he will be unable to sell his house without the variance; that there are other similar structures in the neighborhood; that neighbors have not expressed any concerns to him about the deck; and that he has since obtained a building permit for the work completed in 2003. Mr. Tawa submitted pictures of the Property to the Board.

Ms. Bronstein testified that Mr. Tawa did not build the screen porch.

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. 11169 for the requested variance based on the record made at the public hearing and for the following reasons:

1. There are unique physical circumstances to the Property;
2. The variance sought is the minimum variance necessary to afford relief;
3. The variance will not alter the essential character of the neighborhood.

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.

OLD BUSINESS

Case No. 11137 – J & Y Parker Family, L.P. – northeast of Route 113 (DuPont Boulevard) west of Road 83 (Mitchell Road) (A thru lot). (Tax Map I.D. 2-33-5.00-98.00)

An application for a special use exception to place a billboard and variances from the required square footage, maximum height requirement, and the required setback from a dwelling.

A request for reconsideration.

Mr. Lank stated that all the Board members had received the request for reconsideration.

The Board members stated they had read the letter.

Mr. Rickard stated that he would move that the Board recommend denial of the request for reconsideration since the Applicant has the right to appeal the Board's decision through Superior Court.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the request for reconsideration be **denied based on the reasons stated**. Motion carried 5 – 0.

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

Case No. 10997 – John P. Laursen – corner of Argo’s Corner Road and Slaughter Beach Road.
(Tax Map I.D. 2-30-7.00-117.00)

An application for a variance to permit an additional year for reconstruction of commercial use damaged by fire.

A request for a one (1) year time extension.

Mr. Lank read the Applicant’s letter requesting a one (1) year time extension.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the request for a time extension be **granted for a period of one (1) year**. Motion carried 5 – 0.

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

Meeting Adjourned 10:05 p.m.