



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF MARCH 5, 2012

The regular meeting of the Sussex County Board of Adjustment was held Monday, March 5, 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. Brent Workman, Mr. Jeff Hudson, Mr. John Mills, and Mr. Norman Rickard, with James Sharp, Assistant County Attorney, and staff members, Mrs. Susan Isaacs- Chief Zoning Inspector, and Ms. Kelly Passwaters- 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. Hudson, seconded by Mr. Workman, and carried unanimously to approve the Minutes of 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. 10948 – Paul Getzel-** east of Road 243 (Donovan's Road) approximately 247 feet south of Road 244 (Wilson Road).

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Shannon Carmean, Attorney, testified on behalf of the Applicant requesting a 1.5-foot variance from the required 10-foot side yard setback requirement; that the dwelling has been on the Property at its present location since 1969, a few months after the enactment of the Sussex County Zoning Code; that the dwelling was inspected by a field check in 1974; that Shanise Godwin obtained an interest in the Property in 2011 from her great grandmother and subsequently entered into a contract to sell the Property to Paul Getzel; that a survey obtained by Mr. Getzel showed an encroachment; that the lot is unique in shape since the lot is long and narrow; that the property was purchased by Mr. Getzel in January 2012; that the home cannot be brought into compliance without moving the structure; and that the previous owner inherited the property. Ms. Carmean submitted an affidavit from Ms. Godwin confirming the contents of her presentation.

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. 10948 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 its narrowness;
2. The variance will enable reasonable use of the property;
3. The variance, if granted, will not alter the essential character of the neighborhood;
4. The variance is the minimum variance to afford relief;
5. The need for the variance was not created by the Applicant.

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. 10949 – Jeffrey P. Ott & Edward P. Ott-** east of Route 24 (John J. Williams Highway) west of Long Neck Circle, being Lot 115 within Pines at Long Neck development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Elizabeth Soucek, Attorney, testified on behalf of the applicant requesting a 0.3-foot variance from the required 10-foot side yard setback requirement for an existing dwelling; that a survey that was done in 2001 indicated the dwelling was in compliance; that a new survey was provided that indicates the dwelling has an encroachment; that the lot is unique in shape since it is small and narrow; that the lot is only 65 feet by 125 feet in size; that a Certificate of Compliance was issued in 2001; that the manufactured home is on permanent foundation and would cause a hardship to move it; that the plumbing is on the side of the dwelling that the encroachment is on; and that the Otts purchased the property in January 2012.

Linda Fisher was sworn in and testified that the survey done in 2001 indicated the manufactured home was in compliance; that there have been no complaints from neighbors; that she represents the Seller who is now in a nursing home; and that the Seller believed the dwelling to be in compliance until the recent survey.

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

Mrs. Isaacs stated the office received 1-letter in opposition to the application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 10949 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 width of the lot;
2. The variance will enable reasonable use of the property;
3. The variance, if granted, will not alter the essential character of the neighborhood; and
4. The variance is the minimum variance to afford relief.
5. The need for the variance was not created by the Applicant.

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.

### **OLD BUSINESS**

**Case No. 10941 – Margaret D. Gorman, Trustee-** south of Road 351 (Club House Road) approximately 145.87 feet east of Bird Haven Street being Tract D within Rogers Haven development.

A special use exception to operate a daycare facility.

Mr. Mills stated that he listened to the hearing and reviewed the materials for the case.

The Board discussed the case which has been tabled since February 20, 2012.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 10941 for the requested special use exception based on the record made at the public hearing and for the following reasons:

1. The special use exception would 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 the reasons stated**. Motion carried 5 – 0.

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

**Case No. 10946 – John McMahan-** northeast of Road 619 (Old Shawnee Road) south of Turtle Hill Road, being Lot 35 within The Holly's development.

A variance from the front yard setback requirement.

The Board discussed the case which has been tabled since February 20, 2012.

Mr. Rickard stated that he would move that the Board recommend approval of the Variance Application No. 10946 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 enables reasonable use of the property;
3. The difficulty was not created by the applicant;
4. The variance is the minimum to afford relief and
5. The variance, if granted, would not alter the essential character of the neighborhood.

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

**Case No. 10937 – Fontana Residence Trust-** east of Route 1 (Coastal Highway) northeast of Seaside Drive, being Lot 11 within Bethany Village development.

A variance from the maximum height requirement and or appealing the staff's decision to reject a certificate of compliance.

Mr. Rickard recused himself from voting on this Application.

The Board discussed the case which has been tabled since February 6, 2012.

Mr. Mills stated that he would move that the Board recommend approval of the Variance Application No. 10937 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The height of the structure is the same as the previous structure which had been approved in 1994;
3. The variance will enable reasonable use of the property;
4. The difficulty was not created by the applicant as nature created the drainage problems on the structure;
5. The variance, if granted, will not alter the character of the neighborhood; and
6. The variance is the minimum variance to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

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

Due to the fact the Board approved the Variance Application, the Board determined that the Applicant's appeal of the decision of the Planning & Zoning Department to deny a Certificate of Compliance was moot.

**Case No. 10939 – Anthony & Penny Rovillard-** east of Road 48 (Hollyville Road) 1,655 feet north of Road 302 (Avalon Road).

A special use exception to operate a daycare facility.

The Board discussed the case which has been tabled since February 6, 2012.

Mr. Mills stated that he would move that the Board recommend approval of the Special Use Application No. 10939 for twelve (12) kids only for the requested special use exception based on the record made at the public hearing and for the following reasons:

1. Twelve (12) children at the daycare would not substantially affect adversely the uses of adjacent and neighboring properties but fifty three (53) children at the daycare would substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a daycare facility serving up to twelve (12) children only**. 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.

### **ADDITIONAL BUSINESS**

The Board also discussed the Supreme Court Decision of the Board of Adjustment v. Verleysen & Kotowski.

The Board discussed the process of the Public Hearings when attorneys are present and decided that if an applicant identifies an attorney on their application, the applicant's application will be moved to the top of the agenda. This change in procedure will not enable applicants who are represented to have their applications heard at an earlier meeting of the Board. Rather, it will enable those applicants to have their applications heard earlier in the meeting of the Board at which the application is

scheduled to be heard. For example, if the applicant is scheduled to be heard last on the agenda but has identified an attorney on the application, the application will be heard earlier in the meeting. The Board directed the Office of Planning & Zoning to schedule future agendas in accordance with the Board's decision.

**Meeting adjourned at 8:20 p.m.**