

MINUTES OF MARCH 7, 2016

The regular meeting of the Sussex County Board of Adjustment was held on Monday, March 7, 2016, at 7:00 p.m. in the County Council Chambers, County Administrative Building, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. Brent Workman, and Mr. Norman Rickard. Mr. John Mills was absent. Also in attendance were Mr. James Sharp – Assistant County Attorney, and staff members, Ms. Janelle Cornwell – Planning and Zoning Manager, and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 4 – 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. 11728 – The Joshua M. Freeman Foundation – seeks a special use exception to place a temporary manufactured home type structure for offices (Section 115-32A and 115-210A(1) of the Sussex County Zoning Code). The property is located on the south side of Lakeview Drive in Americana Bayside. 911 Address: 31750 Lakeview Drive, Selbyville. Zoning District: MR-RPC. Tax Map No.: 5-33-19.00-36.01.

Ms. Cornwell 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 Marsh, Patty Grimes, and Robin Spagenberg were sworn in and testified requesting a special use exception to place a temporary manufactured home type structure for offices.

Mr. Marsh testified that the unit will be used for temporary production office for the Freeman Stage events; that the structure will be placed to behind the stage and production staff, performers, and performer staff will use the unit; that there will be bathrooms and changing rooms available for the performers; that the Applicant has received approval for the construction of a permanent stage on the Property; that the unit be used as a construction trailer during the construction of the new stage; that a future fundraising event is planned to offset the cost of the new stage; that the unit will be used as a production office for approximately 2 to 3 years before construction of the new stage begins; that the unit will be away from all residences; that the unit will be isolated and shielded from view of the residents; that the unit has the appearance of a residence which will blend in with the area; that the unit will be primarily used May through September for the production office; that the unit will be used minimally during the off season; that the Applicant feels the five (5) year period will be adequate time; that the Applicant has

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advised all residents in Americana Bayside at a homeowners association meeting of the proposed temporary manufactured home office; that there will be no additional traffic to the area due to the unit; that there is adequate parking already on site; and that the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Mr. Marsh submitted exhibits 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. 11728 for the requested special use exception for a period of five (5) years based on the record made at the public hearing because the uses does not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for a period of five (5) years and for the reasons stated.** Motion carried 4 – 0.

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

Case No. 11729 – Leslie Dick and Lisa Dick – seek a variance from the side yard setback requirement (Section 115-25C of the Sussex County Zoning Code). The property is located on the east side of Lewis Road approximately 962 feet north of Millsboro Highway. 911 Address: 29819 Lewis Road, Millsboro. Zoning District: AR-1. Tax Map No.: 1-33-20.00-17.04.

Ms. Cornwell 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 has represented the Applicant in the past and that if the Board had any questions, they should direct them to Vince Robertson, Esquire.

Leslie Dick was sworn in and testified requesting a variance of 12.7 feet from the fifteen (15) feet side yard setback requirement for a proposed addition to an existing detached garage; that the proposed addition is to store a new motorhome he recently purchased and an enclosed trailer he owns; that the tree to the rear of the existing garage has been removed to allow room the proposed addition; that there is an existing tree line between his proposed addition and the adjacent neighbor's property; that an existing well and fence prevent him from adding onto the opposite side of the garage; that it would be extremely difficult to maneuver the motorhome between the existing dwelling and existing detached garage; that the existing fence and garage create a uniqueness to the Property; that the Property cannot otherwise be developed due to the close proximity to the existing dwelling; that the difficulty was not created by him since he needs proper shelter for his new motorhome; that the variance will not alter the character of the neighborhood; that the use will not be detrimental to the public welfare; that the variance requested is the minimum variance necessary to afford relief; and that he has lived on the Property since 1994.

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Mr. Rickard suggested that the Applicant could build a second detached garage under 600 square feet to the rear of the Property and comply with the five (5) feet side yard and five (5) feet rear yard setback requirements for an accessory structure under 600 square feet.

Mr. Dick stated that he had not considered that as an option.

Mr. Dick submitted a letter of support into the record

Peter Deklerow was sworn in and testified in opposition to the Application and testified that he is the neighbor on the adjacent property affected by the variance; that he feels the proposed building will further destroy the existing trees; that the Applicants have already shaved portions of the trees that hung over the property line; that the proposed building would affect the root system of the existing trees; that once the trees are destroyed he would be stuck with a building on 2.3 feet from his property line; and that the wildlife living in the trees would be affected.

Jeannette Taylor was sworn in and testified in opposition to the Application and testified that she lives two (2) doors down from the Property; that she is concerned the trees will be destroyed; that she benefits from the trees blocking wind and providing some privacy to the area; and that the approval of this variance would set a precedent.

In rebuttal, Mr. Dick testified that the existing garage is approximately seventeen (17) feet from the property line; and that he would create a gravel drive to access the second detached garage.

In rebuttal, Mr. Deklerow asked how close to the property line could the driveway be.

Mr. Rickard stated that a driveway could go to the property line.

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

The Board found that two (2) parties appeared in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend denial of Variance Application No. 11729 for the requested variance based on the record made at the public hearing since the exceptional practical difficulty is being created by the Applicant and that the Property can otherwise be developed in strict conformity with the Sussex County Zoning Code.

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

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

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Case No. 11730 – Michael Healy and Betty Healy – seek a variance from the side yard setbacks (Section 115-42B and 115-185F of the Sussex County Zoning Code). The property is located on the west side of Hudson Road approximately 1,382 feet south of Log Cabin Hill Road. 911 Address: 18186 Hudson Road, Milton. Zoning District: GR. Tax Map No.: 2-35-26.00-59.03 and 49.00.

Ms. Cornwell 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 has represented the Applicant in the past and that if the Board had any questions, they should direct them to Vince Robertson, Esquire.

Michael Healy was sworn in and testified requesting a variance of 7.7 feet from the forty (40) feet front yard setback requirement and a variance of 1.1 feet from the five (5) feet side yard setback requirement for an existing detached carport; that he purchased the Property in 2002; that the carport was placed on the Property in 1992; that a Certificate of Compliance was issued for the carport in 1992; that he recently combined two (2) parcels and the survey showed the encroachment; that the exceptional practical difficulty was not created by the Applicants; that the variances do not alter the character of the neighborhood; that the variances are the minimum variances to afford relief; that the Property cannot otherwise be developed; that he recently replaced the manufactured home on the Property; that he does not want to remove the existing carport; and that the carport cannot be moved into compliance without destroying the carport.

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. 11730 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The combining of two (2) parcels into one (1) and that the Certificate of Compliance was issued in 1992 makes this property unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical 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. Hudson, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 11731 – Robert Betts – seeks a variance from the side yard setback requirement (Section 115-25C of the Sussex County Zoning Code). The property is located on the west side of Mustang

Run in Sugar Maple Farms Subdivision. 911 Address: 7668 Mustang Run, Milford. Zoning District: AR-1. Tax Map No.: 3-30-16.00-79.00.

Ms. Cornwell 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.

Robert Betts was sworn in and testified requesting a variance of seven (7) feet from the fifteen (15) feet side yard setback requirement for an existing dwelling; that the rear of the Property has multiple lot pins; that he is the builder and the owner of the Property; that, when determining the location of the dwelling, an error was made in identifying the correct pin; that the front corner of the attached garage is the only portion encroaching into the setback requirement; that the difficulty was not created by the Applicant; that the Applicant did not set the pins to indicate the boundaries of the Property; that the use is not detrimental to the public welfare; that the variance will not alter the character of the neighborhood; that the variance requested is the minimum variance to afford relief; that the dwelling was built in 2015; that the encroachment was discovered when the final survey was completed after construction; that, if a portion of the garage was removed to bring the Property into compliance, the structure would not meet the homeowners association requirements for a two car garage; that it would be an extreme hardship to bring the dwelling into compliance; that the variance will not adversely affect the neighboring and adjacent properties; that the adjacent neighbor has no objection to the Application; that the Property was not created in a similar size and design as the lot to the rear of the Property which is unusual; that he believed the lot to be significantly wider than it actually is; that Route One and its right-of-way is adjacent to the Property; and that he has been a builder in the area for twenty-five (25) years and has never needed a variance before.

James Malley was sworn in and testified in opposition to the Application and testified that he is the President of Sugar Maple Farms Inc.; that the Applicant should remove the dwelling or bring it into compliance with the Sussex County Zoning Code; that approximately 31 lots out of 66 lots have been developed; that he lives on Lot 28; and that the Applicant should have had the Property staked out professionally prior to building the dwelling.

Theodore Cormier was sworn in and testified in opposition to the Application and testified that he owns Lot 10; that the Applicant should have followed the covenants of the community; that the Applicant should have had the surveyor locate the pins for the lot prior to building the home; that a portion of the garage cannot be removed since then the structure would not meet the Homeowners Association's requirements; that the entire structure must be moved to bring it into the compliance; and that the homeowners association approved the plans of the dwelling.

In rebuttal, Robert Betts testified that the homeowners association requires a two (2) car attached garage; that the dwelling is an average size home for that area; that he has built three (3) other dwellings in this development; that there are different board members on the homeowners association since his submittal that was approved; and that he made a mistake when measuring.

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In rebuttal, James Malley testified that no plot plan was submitted to show the proposed location of the dwelling; and he confirmed that the homeowners association approved the proposed plans.

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

The Board found that two (2) parties appeared in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be **tabled until March 21, 2016**. Motion carried 4 – 0.

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

Case No. 11733 – Kenneth A. Hubley and Priscilla M. Hubley – seek a variance from the front yard setback requirement (Section 115-25C of the Sussex County Zoning Code). The property is located on the south side of Bayview West in Bayview Estates. 911 Address: 39016 Bayview West, Selbyville. Zoning District: AR-1. Tax Map No.: 5-33-19.00-207.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received a petition with eight (8) signatures in support of the Application and a letter of support from the Homeowners Association and had not received any correspondence in opposition to the Application.

Kenneth Hubley was sworn in and testified requesting a variance of five (5) feet from the thirty (30) feet front yard setback requirement for a proposed addition; that he is the owner of the Property; that the lot is undersized which limits the space available for an addition; that the Property is smaller than other lots in the development; that the Property is narrow; that the Property cannot otherwise be developed; that the canal is at the rear of the Property; that the Applicants are retired and plan to move to the Property permanently; that a second story addition is not feasible; that the existing interior of the dwelling does not allow for steps to be added to construct a second story addition or place the addition at a different location; that the proposed addition will be used as a master bedroom and walk-in closet; that the difficulty was not created by the Applicants; that the variance will not alter the character of the neighborhood; that the addition will be similar to others in the neighborhood; that the variances will not be detrimental to the public welfare; that the addition will increase the value of the Property and the development; that the variance requested is the minimum variance necessary to afford relief; that the Applicants have owned the Property since 1996; that the existing home consists of approximately 1,800 square feet; that the addition is roughly 280 square feet; that the first floor addition will allow the Applicants the ability to maneuver within their dwelling; that he is unable to navigate stairs well; that the rear yard does not flood; that the ten (10) feet wide addition is the minimum width the addition needs to be in order to afford relief; that approximately 25 feet of the rear yard is in the lagoon; and that there is space between the edge of the paving along the road and the front yard property line.

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Ms. Cornwell stated that there have been multiple front and side yard variances granted in the development.

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

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be **tabled until March 21, 2016**. Motion carried 4 – 0.

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

Case No. 11734 – Roger Greene and Joyce Greene – seek a special use exception to place a manufactured home type structure for a medical hardship (Sections 115-23A and 115-210A(1) of the Sussex County Zoning Code). The property is located on the north side of Hearn's Pond Road approximately 2,617 feet east of Conrail Road. 911 Address: 8137 Hearn's Pond Road, Seaford. Zoning District: AR-1. Tax Map No.: 3-31-3.00-120.00.

Ms. Cornwell 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.

Roger Greene and Joyce Greene were sworn in and testified requesting a special use exception to place a manufactured home type structure for a medical hardship.

Mrs. Greene testified that the home will be placed on her son's property; that there are not any houses nearby; that the Property is fenced in; that there are trees on the Property and more trees will be planted; that Hearn's Pond is adjacent to the rear of the Property; that the Applicants are aware of the time restrictions on this type of approval; that the 2016 manufactured home will have a deck and landscaping nearby; that the parking for the unit will be located nearby; that the septic has been approved by the Department of Natural Resources and Environmental Control ("DNREC"); that the neighbors have no objection to the Application; that the home will not be seen from the road; that, due to her medical issues, she needs to be near family for assistance; and that the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

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 Special Use Exception Application No. 11734 for the special use exception for a period of two (2) years based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for a period of two (2) years for the reasons stated**. Motion carried 4 – 0.

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

Meeting Adjourned 8:35 p.m.