



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF MAY 16, 2011

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 16, 2011, 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. Ronald McCabe, Mr. John Mills, Mr. Brent Workman and Mr. Jeff Hudson, with Mr. Richard Berl – Assistant County Attorney and staff members, Mrs. Kelly Passwaters – Zoning Inspector and Mrs. Jennifer Norwood – Recording Secretary.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of May 2, 2011 as circulated. Vote carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 10796 – Madhu Realty – northwest of Road 36, 335 feet, from intersection of Road 36, Road 42, and Road 619.

A variance from the front yard setback requirement.

Mrs. Passwaters presented the case. Angelo Abbott was sworn in and testified requesting a 27.1-foot variance from the required 60-foot front yard setback requirement for a proposed addition; that the Board approved this variance in August 2008; that the proposed addition will be approximately 4,000-square-foot in size; that his hearing with ABC was held May 2009 and that they were not approved until August 2010; that while waiting for approval from the ABC his

variance approval expired; that the Fire Marshall's office extended his approval; that the property is a pie shaped lot making it unique in size; that without a variance it cannot be otherwise developed; 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.

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Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it meets the standards for granting a variance**. Vote carried 5 – 0.

Case No. 10797 – Maricryst Biraco – south of Route 54, east of Stoney Run being Lot 26 within Keenwick Sound development.

A variance from the front yard setback requirement.

Mrs. Passwaters presented the case. Maricryst Biraco was sworn in and testified requesting a 1.8-foot variance from the required 30-foot front yard setback requirement for an existing dwelling; that she purchased the property in July 2010; that she renovated the dwelling and added a sunroom; that when the survey was completed after the construction of the sunroom the encroachment of the dwelling was discovered; that the previous owners were not aware of the encroachment and a Certificate of Compliance was issued; and that the Homeowner's Association stated the road was widened about 15-years ago and could have created the encroachment.

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

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it does not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 10798 – Dale Sipple – southwest of Route 1, east corner of Gainsborough Drive and Dartmouth Drive, being Lot 1 within Rolling Meadows development.

A variance from the front yard setback requirement.

Mrs. Passwaters presented the case. Rockie Alton and Dale Sipple were sworn in and testified requesting a 5-foot variance from the required 30-foot front yard setback requirement for an existing attached garage addition; that he is an animal trapper and needs the addition for storage of his traps; that his builder obtained the permit; that he was not aware of the encroachment until he received a letter from the Planning & Zoning Department; that the Homeowner's Association supports the application; that the structure cannot be seen from the road; that the lot is a corner lot which makes it unique; that the structure does not encroach on a

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neighbor's property; that the variance is necessary to enable reasonable use of the property; that it will not alter the character of the neighborhood; that it was not created by the Applicant since he hired a contractor to build the addition for him; 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.

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the variance be **granted since it meets the standards for granting a variance**. Vote carried 5 – 0.

Case No. 10799 – Robert P. and Marianne Timko – east of Wilson Hill Road, north of Weigela Drive, being Lot D-6 within Pine Bluff #2 development.

A variance from the side yard setback requirement.

Mrs. Passwaters presented the case. Chris Holman, Attorney, testified on behalf of the application and testified requesting a 1.9-foot variance from the required 10-foot side yard setback requirement for an existing dwelling; that the dwelling was built in 2004; that the property line runs at an angle creating a unique shape lot; that the property cannot otherwise be developed without a variance; that the encroachment was not created by the Applicant; that it will not alter the character of the neighborhood; that the Certificate of Compliance was issued on the dwelling; and that he submitted pictures.

Mrs. Passwaters stated that the Applicant must obtain building permits for the existing decks and shed.

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

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it meets the standards for granting a variance**. Vote carried 5 – 0.

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Case No. 10800 – Ralph Joseph, Jr. – west of Road 68 (Old Stage Road) 220 feet south of Road 451 (Salt Barn Road).

A variance from the front yard setback requirement.

Mrs. Passwaters presented the case. Ralph Joseph, Jr. was sworn in and testified requesting a 15.6-foot variance from the required 40-foot front yard setback requirement for a proposed porch; that the existing dwelling was built in the early 1900's; that his property is unique in the fact that the dwelling was built 110-years ago; that it cannot be built in strict conformity with the current zoning ordinance; that it was not created by the Applicant; that the variance is necessary to enable reasonable use of the property; that it is the minimum variance to afford relief; and that he has owned the dwelling since 1976.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it meets the standards for granting a variance**. Vote carried 5 – 0.

Case No. 10801 – S & E Gallo Family Limited Partnership – southwest corner of Route 1 (Coastal Highway) and Bridge Road.

A variance from the corner side yard setback requirement.

Mrs. Passwaters presented the case. Matt Phillips and Andrew Ratner were sworn in and testified requesting a 4-foot variance from the required 20-foot side yard setback requirement for a proposed ground sign; that the sign is needed for a proposed business; that there is a landscaping buffer on the property per DelDOT; that the proposed sign will meet the size requirements; that the proposed location of the sign is 10-foot from the front yard property line;

that the lot is unique due to the required landscaping buffer and existing power lines; that the variance is needed to enable reasonable use of the property; that it was not created by the Applicant; 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.

Mrs. Passwaters read a letter of opposition into the record.

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Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it meets the standards for granting a variance**. Vote carried 5 – 0.

Case No. 10802 – Marilyn Finn – southwest of Front Street (aka 39B) approximately 1,500 feet north of Road 39 (Primehook Road), being Lot 77 within Primehook Beach Development.

A variance from the front and side yard setback requirements.

Mrs. Passwaters presented the case. Marilyn Finn was sworn and testified requesting an 11.5-foot variance from the required 30-foot front yard setback requirement and a 5-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that she purchased the property in 2005; that flooding has become an issue and she would like to build a new dwelling that will meet the flood zone requirements; that the property has an existing mound septic system that covers the rear yard; that the existing dwelling is built on a concrete slab and she has been encouraged by builders to re-build rather than remodel or raise the existing dwelling; that the lot is 50'x 100' in size; that there is an existing driveway and shed on the lot; that the variance is necessary to enable reasonable use of the property; that the proposed dwelling will be approximately the same square footage as the existing dwelling; that it will not alter the character of the neighborhood; that the existing dwelling is only 1.4-foot from the side yard property line and the proposed dwelling will be 5-foot from the side yard property line; that the proposed dwelling will be at the same setback as the existing dwelling in the front yard; and that it is the minimum variance to afford relief.

Michael Gushue was sworn in and testified in opposition to the application and stated that he is the neighbor directly affected by the side yard setback variance; that he does not feel the Applicant meets the standards for granting a variance; that he feels the dwelling can be built within the setback requirements; that the Applicant's wish to keep an existing driveway is strictly

for convenience; that the proposed dwelling will be raised which will cut off light to his lot and obstruct his view; and that he submitted pictures.

In rebuttal, Marilyn Finn, stated that the proposed dwelling is one-story with a loft; that the structure must be raised to meet current flood zone regulations; that the front yard variance is necessary due to the existing septic system; that she is unsure where the proposed pilings will have to be placed and may not be able to meet the side yard setback requirement; and that she could submit a proposed piling plan to the Board within a week.

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

The Board found that 1 party appeared in opposition to the application.

Mr. Mills withdrew a motion to approve the front yard setback requirement and deny the side yard setback requirement.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **left open to allow the Applicant to submit a proposed piling plan to the Board for review**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 10795 – Cellco Partnership d/b/a Verizon Wireless – northeast of Route 1 (Coastal Highway), approximately 1,650 feet northwest of Road 206 (Cedar Neck Road), with access thru Knollac Acres.

A special use exception to construct a 145 foot tall telecommunications monopole with a 5 foot tall lightning rod.

The Board discussed the case which has been tabled since May 2, 2011.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted since it meets the standards for granting a special use exception**. The vote by roll call: Mr. Workman – yea, Mr. Mills – yea, Mr. Callaway – yea, Mr. McCabe – nay, and Mr. Hudson – nay. Vote carried 3 – 2.

Meeting Adjourned 9:00 p.m.