

MINUTES OF MAY 19, 2014

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 19, 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 J. Everett Moore, Jr., – 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. Hudson, 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 and Finding of Facts for April 14, 2014 as circulated. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 11390 – Susan J. Tulloch, Trustee of the Susan J. Tulloch Revocable Trust – 375 feet east of Road 278 (Angola Road) on the northerly side of Baylis Drive, a private street, Baylis Road being approximately 1.0 mile south of Road 277 (Angola Road). (911 Address: 33669 Baylis Road, Lewes, Delaware) (Tax Map I.D. 2-34-18.00-16.00).

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.

Debra Waters was sworn in to testify about the Application. Chad Meredith, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Meredith stated that the Applicant is requesting a variance of 11.9 feet from the thirty (30) feet front yard setback requirement for an existing dwelling; that the Property is located in the Tall Pines subdivision; that the subdivision was created in 1958; that the lots in the subdivision are twenty-five (25) feet wide; that the Property consists of four (4) lots in the subdivision; that, based on property records, the dwelling was constructed in 1972; that the Susan Tulloch acquired an interest in the Property in 1985 and the Property was transferred to her trust in 2013; that the neighboring dwellings are at a similar distance from the front yard property lines; that the Applicant believes the measurements were taken from the pavement and not the property line when the dwelling was constructed; that the subdivision was created prior to the enactment of the Sussex

County Zoning Code; that the Property is unique because it slopes in the rear yard; that the dwelling at its current location meets the flood zone requirements; that moving the home would create a hardship as it would be expensive to move the house and it may result in the house being placed in a flood zone; that the variance is necessary to enable reasonable use of the Property; that the difficulty was not created by the Applicant as a previous owner placed the dwelling; that the variance does not alter the character of the neighborhood as there are other similarly situated dwellings in the neighborhood; that the use does not impair the uses of adjacent and neighboring properties; that the use is not detrimental to the public welfare; that the variance is the least modification to regulate the issue; and that the variance sought is the minimum variance necessary to afford relief.

Ms. Waters testified that she is a realtor in the Lewes area; that she is familiar with the Property and its surrounding area; and that the dwelling does not have an adverse effect on the value of neighboring properties. Ms. Waters, under oath, confirmed the statements of Mr. Meredith as being true and correct.

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. 11390 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 sloping rear yard;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance necessary to afford relief; and
6. 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. 11391 – Salt Pond Plaza LLC – southeast corner of Road 360 (Fred Hudson Road) and Road 357 (Cedar Neck Road). (911 Address: not available) (Tax Map I.D. 1-34-13.00-88.05).

An application for variance a from the maximum signage requirement for a wall sign.

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.

Douglas Liberman, with Larson Engineering was sworn in and testified requesting a variance of 210 square-feet from the maximum allowable wall sign requirement of 150 square-feet; that there are three (3) signs being proposed; that the signs on both the North and South elevation will measure 131.47 square-feet in size and the sign on the East side will measure 96.69 square-feet in size; that the location of the existing building is surrounded by three (3) roads that intersect; that the proposed store will have two (2) separate entrances; that two (2) of the signs will be located above each entrance; that the third sign will allow west bound traffic to see the store; that the proposed Dollar Tree will use 9,600 square-feet of the 11,000 square-feet retail space; that if the retail space was divided among five (5) separate stores, each store would be permitted to have a sign for each store up to 150 square-feet in size; that would allow 750 square-feet of signage at this location; that the proposed signage will be 360 square-feet; that the wall signage as proposed does not exceed the 15% coverage limitation; that there is parking on all sides of the building; that the Property is unique in that the building faces three roads creating a situation where there is no true back of the store; that the physical circumstances of the building dictate two (2) sides are used as entrances and that he feels the signs will draw attention to the entries is a reasonable use of the layout of the Property; that the unnecessary hardship has not been created by the Applicant as the site was developed by a prior owner; that the variance will not alter the essential character of the neighborhood; and that the variance will provide the minimum relief necessary considering the requested signage will meet the “% of wall area” standard of the code.

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. 11391 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The layout of the Property and surrounding roads make the Property unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The use is not detrimental to the public welfare; and
6. The variance sought is the minimum variance necessary to afford relief.

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

Case No. 11392 – Absher Farms, LLC – east of Road 570 (Double Fork Road) 0.5 mile south of Route 16 (Hickman Road). (911 Address: not available) (Tax Map I.D. 5-30-2.00-25.12).

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.

Raymond T. Absher, Jr. was sworn in and testified requesting a special use exception to place a multi-sectional home that is more than five (5) years old; that he recently purchased a forty-seven (47) acre farm; that the $\frac{3}{4}$ -acre building lot was included in the sale; that a 1996 double-wide manufactured home will be placed on the $\frac{3}{4}$ -acre lot; that he plans to live in the unit until he can build a dwelling on the forty-seven (47) acre farm; that the unit will be used for farm help once his dwelling is built; that the unit will not adversely affect the surrounding and neighboring properties; that he owns the surrounding lands; that the unit will have a block foundation and be well maintained; that there are similar homes in the area; that there is an old farmhouse with two (2) abandoned poultry houses across the street; and that he obtained a septic permit for the Property. Mr. Absher submitted pictures of the manufactured home for review.

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

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11392 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 adjacent and neighboring properties.

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

Case No. 11393 – Eileen P. McCaffery – north of Road 26 (Vines Creek Road) across from Road 344 (West Road). (911 Address: not available) (Tax Map I.D. 1-34-10.00-30.01).

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.

John Buck was sworn in and testified requesting a special use exception to place a multi-sectional home that is more than five (5) years old; that the unit is eight (8) years old; that the Property is twelve (12) acres; that the unit belongs to his mother; that they have sold the property where the unit was originally placed; that the unit is currently in storage; that the unit measures thirty-two (32) feet by seventy-six (76) feet and is in great condition; that the lot is completely wooded; that the unit will sit approximately 1,200 feet from Route 26; that the unit will sit approximately 400 feet from the rear property line and 70-80 feet from the side property lines; that the unit will not be seen from the road or surrounding properties; that he has a septic permit; that one acre was recently subdivided off of the Property and that property has a dwelling and a separate entrance; that the dwelling is similar to a modular home on a steel frame; and that there are fields and undeveloped wooded lot nearby. Mr. Buck submitted a copy of the site survey for his septic permit and pictures of the manufactured home for the Board to review.

James Mulligan, Sr., was sworn in and testified that he and four (4) others have concerns about the Property being used as a rifle range; that he is the President of the Homeowners Association for Dogwood Estates; and that they have no objection to the Application.

The Board found that no 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 Special Use Exception Application No. 11393 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 adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the special use exception 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. 11394 – Stephen Lopuszanski, Jr., & Evelyn Lopuszanski – east of Angola Beach Road (Road 278) and being west of Herring Reach, a private street 440 feet north of Inlet Breeze Drive, a private street, and being Lot 46 within Bay Pointe Subdivision. (911 Address: 23674 Herring Reach Court) (Tax Map I.D. 2-34-18.00-660.00).

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 received nine (9) letters in support of the Application and had not received any correspondence in opposition to the Application.

Stephen Lopuszanski, Jr., was sworn in and testified requesting a variance of six (6) feet from the ten (10) feet rear yard setback requirement for a proposed four season room; that Ryan Homes placed the dwelling on the lot; that the dwelling was a larger model that was discontinued by Ryan Homes due to the size of the lots in the neighborhood; that the size of the dwelling has resulted in a smaller rear yard for the Applicants; that the dwelling was built towards the rear of the lot and there is no possibility for construction in the backyard without a variance; that the proposed room will allow them to enjoy the outdoor view of their property and protect them from mosquitoes; that the sunroom will meet all neighborhood architectural requirements; that the neighbors all have similar sun rooms; that the variance will not alter the essential character of the neighborhood; that the difficulty was not created by them; that the proposed four season room will not impair the uses of the neighboring and adjacent properties; that the variance will not be detrimental to the public welfare; and that the variance is the least modification possible to regulation in issue.

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. 11394 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance necessary to afford relief; and
6. The variance requested represents the least modification of the regulation at issue.

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

Case No. 11375 – Carolyn E. Ortwein & Ann S. Barry – west of Silver Lake Road (Route 1A) 602 feet north of Pine Lane (911 Address: 20398 Silver Lake Drive, Unit 4, Rehoboth Beach, Delaware) (Tax Map I.D. 3-34-20.09-125.00-Unit 4).

An application for variances from the side yard setback requirement.

Mr. Lank presented the case which was tabled on April 7, 2014, and then on April 21, 2014 was reopened, and then advertised for another public hearing to be held on May 19, 2014. Mr. Lank stated that the Office of Planning and Zoning had received four (4) letters in opposition to the Application and had not received any letters of support to the Application. Mr. Lank advised the Board that the Applicants submitted a letter regarding the standards for granting a variance.

Mr. Moore stated that the Ronald Moore who submitted a letter regarding the Application is not his brother.

Carolyn Ortwein and Ann Barry were sworn in and testified requesting a variance of 6.8 feet from the ten (10) feet side yard setback requirement for a proposed elevator, a variance of 0.1 feet from the ten (10) feet side yard setback requirement for an existing building, and a variance of 2.1 feet from the ten (10) feet side yard setback requirement for a second floor overhang. Ms. Ortwein testified that they were unable to attend the April 7th hearing due to her surgery the following morning; that Thomas Ott from the elevator company represented them at the previous hearing; that they hope to address questions which were raised at that hearing; that they request that Board take into consideration the prior testimony and evidence submitted; that the Applicants purchased the Property in 2011 and plan to live there permanently after retirement; that there are a total of four (4) condominium units that make up the condominium association; that the common area is owned by the condominium association; that the association supports the Application; that the unit has four levels; that the kitchen and living area is located on the third floor; that, due to her degenerative arthritis and recent knee replacement, she can no longer navigate the numerous stairs; that the unit is four stories tall and the kitchen is located on the third floor; that two (2) of the interior units were able to have interior elevators since the units were already equipped with existing dumbwaiters; that their unit does not have a dumbwaiter; that the Applicants have had numerous contractors and elevator companies who all stated the unit is not suited for an interior elevator; that the proposed elevator cannot be placed in the interior of the unit; and that the proposed elevator shaft will not be located near any bedroom window of a neighboring unit.

Ms. Barry testified about the location of the elevator shaft in relation to the neighboring property; and that the proposed elevator does not encroach into the neighbors existing line of site.

Ms. Ortwein testified that the exterior of the elevator shaft will match the existing siding and stone on the existing unit; that the elevator shaft will have the appearance of a large chimney; that there is no exterior access to the proposed elevator and it will be accessed through the garage; that there will be no noise or changes in the existing landscape and sidewalks; that the elevator will not adversely affect property values; that the unit is unique because it is a reverse floor plan with the primary living space on the upper levels of the unit; that the Property cannot be otherwise developed; that the variances will enable reasonable use of the Property; that the difficulty was not created by the Applicants; that the variances will not alter the essential character of the neighborhood; that the variances are the minimum variances necessary to afford relief; that the use will not be detrimental to the public welfare; that the Condominium Association supports the

Application; and that the two end units of the condominium were not designed with the ability to install an internal elevator. Ms. Ortwein and Ms. Barry submitted exhibits 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.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until June 2, 2014**. 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.

OLD BUSINESS

Case No. 11357 – Keith D. Riker – southeast of Hebron Road (Road 273) and southwest of Harmon Road, a subdivision street, and 75 feet southwest of Burton Avenue in West Rehoboth Subdivision and being Lot 1 in George H. Shockley Subdivision. (Tax Map I.D. 3-34-13.19-77.00)

An application for variances from the rear yard, side yard, front yard, and corner side yard setback requirements.

The Board discussed the case, which has been tabled since May 5, 2014.

Mr. Lank read the report from the Planning and Zoning staff which stated that there is a trap door under the gazebo leading to the well; that there was no evidence of a business being located in the pole barn; and that the well does not appear to be a new well. Mr. Lank submitted copies of pictures taken by Planning & Zoning staff for the Board to review.

Mr. Rickard stated that a building permit was obtained in June 2013 for a detached shed; that in October 2013 the Applicant received a violation from the Planning and Zoning Department for the decks and second floor being built without permits and that there were encroachments; that the Applicant never responded until the Constable's Office contacted him in January 2014 when he then applied for the variances; and that he believes that the Applicant has created the hardship.

Mr. Workman stated that he believes the Applicant could build stairs within the pole barn to reach the second floor.

Mr. Hudson stated that he does not believe the Applicant has met the standards for granting a variance.

Mr. Mills stated that the Applicant has failed to demonstrate that the Property was unique; that the Property was already developed prior to the addition; that the Applicant created the hardship; and that the addition has had an effect on neighboring properties.

Mr. Callaway stated that he does not believe the Applicant has met the standards for granting a variance.

Mr. Rickard stated that he would move that the Board recommend denial of Variance Application No. 11357 for the requested variances based on the record made at the public hearing since the difficulty was created by the Applicant.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **denied 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.

Meeting Adjourned 9:15 p.m.