

MINUTES OF MAY 20, 2013

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 20, 2013, at 7:00 p.m. in the County Council Chambers, County Administrative 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, and Mr. Jeff Hudson, with Mr. James Sharp – Assistant County Attorney, and staff members, Ms. Melissa Thibodeau – Zoning Inspector II, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Revised Agenda, with the Old Business moved ahead of the Public Hearings. Motion carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of April 15, 2013 and the Finding of Facts for April 15, 2013. Motion carried 4 – 0.

OLD BUSINESS

Case No. 11197 – Colonial East Community, LLC & Colonial East Limited Partnership – northeast of Route 1 (Coastal Highway) 0.25 miles northwest of Road 276 (Wolf Neck Road) within Colonial East Mobile Home Estates. (Tax Map I.D. 334-6.00-335.00 & 335.01)

An application for a variance from the required separation distance between manufactured homes and other structures within a mobile home park and a variance from the permitted lot coverage within a mobile home park requirement.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until June 3, 2013**. Motion carried 4 – 0.

Case No. 11203 – Gautamkumar I. Brahmhatt – south of Route 534 (Tharp Road) corner of Elm Street and being approximately 800 feet west of Road 535 (Middleford Road). (Tax Map I.D. 3-31-6.00-270.00)

An application for variances from the rear yard setback requirement.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until June 3, 2013**. 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. 11209 – Steven Royer & Karen Royer – south of Route 54 (Lighthouse Road) west of Grant Avenue, being Lot 37 within Cape Windsor Subdivision. (Tax Map I.D. 5-33-20.18-41.00)

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

Ms. Thibodeau presented the case. Karen Royer was sworn in and testified requesting a variance of five (5) feet from the twenty (20) feet rear yard setback requirement for a proposed second floor deck. Ms. Royer testified that the Applicants own property in Cape Windsor subdivision and that the Applicants plan to replace an existing cantilevered deck.

Mr. Sharp advised the Board that the Applicants initially applied for a variance in January 2012 but that variance request was denied.

Ms. Royer submitted exhibits for the Board to review. Ms. Royer testified that the Homeowners Association approves of the variance application; that the proposed deck will be attached with a ledger board to be supported by columns to the deck below; that the existing deck is causing water damage to the existing dwelling; that the existing deck is deteriorating; that the proposed deck will help eliminate the damage and will be a more secure structure; that the Property is an undersized shallow lot; that the Property is unique in size; that the Applicants purchased the Property with the existing dwelling in place; that the proposed deck cannot be built in strict conformity with the Sussex County Zoning Code; that the variance is necessary to enable reasonable use of the Property; that the Applicants did not create the difficulty; that the variance is consistent with the character of the neighborhood; that the variance will not be detrimental to the public welfare; that the variance is the least possible modification of the regulation at issue; that the variance is the minimum variance to afford relief; that the proposed deck will be less intrusive to the dwelling than a cantilevered deck; that if the deck was created on the same footprint of the existing deck, it would render the deck below unusable because of the location of the supports; that the second floor deck will be the same size of the first floor deck; that they will not expand the second floor bedroom; and that they want to make the deck safer and more usable.

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. 11209 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 situation with the cantilevered deck is unique;
3. The variance is necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicants as the Applicants did not build the original deck;
5. The variance will not alter the essential character of the neighborhood; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mill, seconded by Mr. Hudson, 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.

Case No. 11210 – William Michael Harlam – south of Sandy Cove Road west of Pine Crest Drive, being Lots 8 & 9, Section 3 within Pine Crest Terrace Subdivision. (Tax Map I.D. 1-34-9.00-140.00)

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

Ms. Thibodeau presented the case. William Harlam was sworn in and testified requesting a variance of twenty (20) feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. Mr. Harlam submitted exhibits to the Board for review. Mr. Harlam testified that he has moved the existing manufactured home on the Property and intends to replace it with a new dwelling; that he is unsure whether the previous owner obtained a variance for the original dwelling; that the existing concrete pad will remain; that the proposed dwelling will be placed on the concrete pad; that a two (2) car garage will be added on both sides of the proposed dwelling; that the original manufactured home is a 1971 model; that the proposed dwelling will be on the same footprint as the original dwelling but will be larger than the original dwelling; that the dwelling would be thirty (30) feet from the existing road; that the recorded cul-de-sac adjacent to the Property does not exist; that the existence of the paper cul-de-sac creates the need for the variance; that, if the cul-de-sac did not exist, there would not be a need for the variance; that the proposed location of the new dwelling will be in character of the neighborhood; that he proposes to build a single story house to protect his neighbors' views of the water; that the proposed dwelling will line up with other dwellings in the development; that the back of the Property is prone to flooding and he would like to keep the dwelling away from the water; that the flooding has created the need for the variance; that the Property is unique since it is at the end of a private street; that the variance will enable reasonable use of the Property; that the additions planned in the future will not need any further variances; that the variance sought is the minimum variance to afford relief; and that the original dwelling probably encroached into the front yard setback area.

Ms. Thibodeau stated that there have been no prior variances granted for the Property.

Sandy Carter was sworn in and testified that she has no issue with the proposed variance; that she is concerned for the manufactured home sitting on the Property unsecured; that she feels the original dwelling should remain secured until it can be removed from the Property; and that she does not object to the dwelling being located in the front yard setback area.

In rebuttal, William Harlam testified that he plans to move the existing dwelling off the Property once the proposed garage is built; that it is difficult to move the existing dwelling because it is used for storage for items that will go into the proposed dwelling; that the building should be complete within six (6) months; that he has no problem with anchoring the unit until it can be removed from the Property; and that it would be a hardship to move the original dwelling during construction.

Ms. Thibodeau advised the Board that it is permissible to leave a manufactured home on property until six (6) months after the final building inspection, at which time the unit must be removed.

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

The Board found that one (1) party appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11210 for the requested variance with the stipulation that the existing manufactured home be anchored on the Property until it is removed based on the record made at the public hearing and for the following reasons:

1. The location of the paper cul-de-sac makes the Property unique and, if not for the existence of the paper cul-de-sac, there would be no need for the variance;
2. The variance is necessary to enable reasonable use of the Property because of the flooding on the rear of the Property;
3. The Applicant did not design the lot;
4. The difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood;
6. Other dwellings in the neighborhood are a similar distance from the road as proposed; and
7. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated and with the stipulation that the existing manufactured home be anchored on the Property until it is removed.** Motion carried 4 – 0.

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

Case No. 11211 – Tracey Halvorsen & Amy Goldberg – east of Country Club Road west of Suffolk Road, being Lot 6, Block 10, Section B, within Rehoboth Beach Yacht and Country Club Subdivision. (Tax Map I.D. 3-34-19.00-933.00)

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

Ms. Thibodeau presented the case. Tracey Halvorsen was sworn in and testified requesting a variance of 11.8 feet from the thirty (30) feet front yard setback requirement for a proposed detached garage; that the proposed detached garage will measure twenty (20) feet by twenty two (22) feet; that there was no garage on the Property when purchased by the Applicants; that the Homeowners Association approves the location of the garage; that the Homeowners Association setback requirements differ from Sussex County requirements; that the Property is unique since there is no other location on the Property where the proposed garage could be placed; that the proposed garage cannot be built in strict conformity with the Sussex County Zoning Code; that the Applicants have limited the size of the garage; that the variance will enable reasonable use of the Property and provide added security; that the difficulty was not created by the Applicants; that the garage will not alter the character of the neighborhood; that the Applicants have been careful to design plans for the garage that suit the neighborhood; that the proposed garage will not be detrimental to the public welfare; that the variance is the least modification possible to provide relief; that the Applicants are unable to attach the garage to the dwelling due to the existing layout of the dwelling; that the Applicants did not design or build the dwelling; and that the Applicants looked at attaching the garage to the dwelling but it would cause greater harm to the house if it was attached rather than detached.

The Board found that three (3) parties appeared in support of the Application.

Ms. Thibodeau stated that the Office of Planning & Zoning received two (2) letters 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. 11211 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The placement of the existing dwelling creates a uniqueness to the Property;
2. The Property is oddly shaped;
3. The variance is necessary to enable reasonable use of the Property as it will allow the Applicants to place a garage on the Property;

4. The difficulty was not created by the Applicants; and
5. 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 4 – 0.

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

Case No. 11212 – Victoria Starnes & John Ewald – west of Bald Eagle Drive north of Third Street, being Lots 126 & 127, within Bay Vista Subdivision. (Tax Map I.D. 3-34-19.16-33.01)

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

Ms. Thibodeau presented the case. Matthew Dotterer was sworn in and testified requesting a variance of 0.8 feet from the thirty (30) feet front yard setback requirement for an existing dwelling and a variance of 11.3 feet from the twenty (20) feet rear yard setback requirement for a proposed addition; that the Applicants purchased the Property in 2007; that the existing dwelling was non-conforming at that time; that the dwelling is in the same location as when the Property was purchased; that the existing gazebo, shed and deck will be removed; that the Property is a corner lot with angled road frontage in the front yard making it unique; that the setback requirements are greater than a standard lot; that the Property cannot be developed in strict conformity because the existing dwelling is non-conforming; that the variances are necessary to enable reasonable use of the Property; that the difficulty was not created by the Applicants because the dwelling was built by a prior owner; that the variances will not alter the character of the neighborhood because the addition will blend in with the neighborhood and may increase the property values of adjacent properties; that the variances will not be detrimental to the public welfare; that the variances are the least modifications necessary to afford relief; that the variances are the minimum variances necessary to afford relief; and that Bald Eagle Road is adjacent to the side yard of the Property.

Ms. Thibodeau advised the Board that there was no need for a side yard variance.

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.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the case be taken under advisement. Motion carried 4 – 0.

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

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11212 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The small lot size and the irregular shape make the Property unique;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The variances are necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicants;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances necessary to afford relief.

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

Case No. 11213 – Tony Hudson – west of Shortly Road north of Bull Pine Road. (Tax Map I.D. 1-35-22.00-34.01)

An application for a special use exception to place a multi-sectional home that is more than five (5) years old.

Ms. Thibodeau presented the case. Chad Hudson was sworn in and testified requesting a special use exception to place a multi-sectional home that is more than five (5) years old. Mr. Hudson submitted pictures for the Board to review. Mr. Hudson testified that the proposed 1998 manufactured home measures twenty four (24) feet by sixty (60) feet; that the lot is wooded; that the unit will not be seen from the road as it will be approximately six hundred (600) feet from the road; that there are other manufactured homes in the area, including some lots which have older homes; that there is a horse farm on an adjacent property; that the Property contains five (5) acres; and that the manufactured home will not adversely affect the surrounding properties.

The Board found that seven (7) parties appeared in support of the Application.

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

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception No. 11213 for the requested special use exception based on the record made at the public hearing because the proposed use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception 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.

Case No. 11214 – Louis F. Berger, Jr. – north of Route 54 (Lighthouse Road) north of Laws Point Road, being Lot 45, Block E, within Swann Keys Subdivision. (Tax Map I.D. 5-33-12.16-286.00)

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

Ms. Thibodeau presented the case. Charles Shade was sworn in and testified requesting a variance of five (5) feet from the ten (10) feet side yard setback requirement for a proposed dwelling; that he is the owner of Chesapeake Homes; that the Property is located within the Swann Keys community; that the side yard variance is necessary to place a new modular home on the Property; that the existing 1977 unit, which was not livable, will be removed from the Property; that the existing unit did not comply with the setback requirements; that the Property is narrow in size; that there will not be an adverse effect to the adjacent properties; that the existing gravel driveway will be moved into compliance and not encroach on the neighbor's lot; and that the variance will not alter the character of the neighborhood; and that other older mobile homes have been replaced with similar homes in the neighborhood.

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. 11214 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 Property is only forty (40) feet wide;
3. The variance is necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood;
6. The manufactured home is only twenty four (24) feet wide; and
7. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, 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.

OTHER BUSINESS

Case No. 11199 – Scott Boatman – north of Route 26, 1.04 miles east of Road 382. (Tax Map I.D. 2-33-11.00-95.00)

A request for a new hearing on an application for a special use exception to retain a manufactured home as a classroom.

Ms. Thibodeau read a letter from the Applicant requesting a new hearing.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the request for a new hearing be **approved and the Applicant must submit another application and pay the filing fee**. Motion carried 4 – 0.

Meeting Adjourned 8:30 p.m.