

MINUTES OF MAY 5, 2014

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 5, 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 James Sharp - Assistant 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 March 24, 2014 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes and Finding of Facts for April 7, 2014 as circulated. 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. 11383 – Michael D. Katz, M.D. LLC – corner of N. Bay Shore Drive (northeast side) and Mississippi Avenue (southeast side) and being Lot 15 North Shore Section of Broadkill Beach. (Tax Map I.D. 2-35-3.12-99.00)

An application for a variance from the corner side 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.

Laurie Bronstein, Realtor, was sworn in to testify about the Application. Elizabeth Soucek, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits and a signed affidavit from the Applicant for the Board to review.

Ms. Soucek stated that the Applicant was requesting a variance of five (5) feet from the fifteen (15) feet corner side yard setback requirement for a proposed dwelling; that the Applicant lives out of state and was unable to attend the hearing; that Laurie Bronstein is the Applicant's realtor; that the Applicant purchased the Property in February 2014; that the Property is an unimproved corner lot; that the Property is fifty-three (53) feet wide; that the proposed dwelling will be thirty (30) feet wide; that the proposed dwelling is similar in size to neighboring dwellings; that the lots are small throughout the neighborhood; that there have been other variances granted

in the surrounding area; that the proposed dwelling will not alter the character of the neighborhood; that the Property is a corner lot which makes it unique; that the difficulty was not created by the Applicant; that the variance is necessary to enable reasonable use and to allow the Applicant to construct a home consistent with other homes in the neighborhood; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that the use will not be detrimental to the public welfare; that the variance is the minimum variance to afford relief; and that the variance is the least modification of the regulation at issue.

Ms. Bronstein, under oath, confirmed the statements made by Ms. Soucek.

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. 11383 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 width;
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. 11384 – Inns of Rehoboth Beach LLC – southwest of Route 1 (Coastal Highway) 260 feet northwest of Route 24 (John J. Williams Highway). (Tax Map I.D. 3-34-12.00-92.00)

An application for a variance from the maximum allowed square footage 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.

Dale McCalister and Marley Wade were sworn in and testified requesting a variance of seventy-four (74) square feet from the maximum allowable 150 square feet for a wall sign. Mr. McCalister testified that he represents the Hampton Inn which is in the process of being remodeled; that there is currently one (1) sign on the north side of the building; that the Applicant would like to install a second sign on the south side of the building; that the second sign will provide better

visibility to the shared entrance the Applicant shares with McDonald's along Route 24; that the Applicant's patrons often miss the entrance along Route 24 when they approach the hotel and create traffic problems; that the proposed sign needs to be large due to the size of the building; that there will not be a substantial adverse effect to the surrounding properties; that the shared entrance along Route 24 makes the Property unique; that the variance will enable reasonable use of the Property; that the use will not be detrimental to the public welfare; that McDonald's and a Japanese restaurant are neighbors to the Property and have signs along Route 1; that the proposed sign will benefit the public welfare; that the existing ground sign will be refaced only but there will be no changes to its structure or size; that the structure will have a sign on the north and south side of the building; and that the Property has entrances on two (2) different highways making this property unique. Mr. McCalister submitted exhibits for the Board review.

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. 11384 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The sign is needed due to the unique physical conditions of the Property;
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; and
5. 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. 11385 – Christopher Lopez – east of US Route 113, 1,420 feet south of Road 321 (Woodbranch Road). (Tax Map I.D. 1-33-2.00-21.00)

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

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.

Christopher Lopez and Mark Davidson of Pennoni Associates, were sworn in and testified requesting a variance of 32.06 feet from the forty (40) feet front yard setback requirement and a variance of 8.48 feet from the ten (10) feet side yard setback requirement for a proposed automotive facility. Mr. Davidson submitted exhibits for the Board to review. Mr. Davidson

testified that he is the engineer on behalf of the Applicant; that the Property is located along Route 113 outside the Town of Georgetown; that the Planning and Zoning Commission and Sussex County Council have approved a Conditional Use allowing the Applicant to operate an automotive business on the Property; that the Board approved variances for the proposed structure in 2012; that the original plan was to use the existing structure and to make renovations and additions thereto; that the original approval expired prior to the Applicant being able to apply for the building permit; that it has taken the Applicant over a year and a half to secure financing for this project; that, during the removal of the roof on the existing structure, the Applicant discovered that the walls were unstable and the entire structure had to come down; that the existing walls were built on a concrete pad and not on footers; that the footers and wall system had to be redesigned; that the only portion of the existing structure left is the fireplace; that the Applicant seeks a renewal of the original variance approval; that the lot is 70 feet wide by 208 feet deep; that the proposed building will not encroach any further into the setback area than the original structure; that the building cannot be developed in strict conformity with the Sussex County Zoning Code; that all other agency approvals are secured; that there will be an entrance approved by the Delaware Department of Transportation (“DelDOT”) constructed; that all water runoff will be contained on the site through a storm water management system; that the septic system is located in the rear of the Property; that the variances are necessary to enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the variances will not alter the essential character of the neighborhood; that there are numerous commercial properties in the area along Route 113; that the variances will not be detrimental to the public welfare; that the Fire Marshal has approved fire lanes around the building; that the variances are the least modifications necessary of the regulations at issue; that the variances are the minimum variances necessary to afford relief; and that he stopped all construction upon receipt of the violation notice informing him the Board’s approval had expired.

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. 11385 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its small frontage;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood;
5. The variances sought are the minimum variances necessary to afford relief; and
6. The variances sought represent the least modifications of the regulations at issue.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the variances 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. 11385 – Russell Shaner & Cynthia Shaner – 800 feet south of Route 54 (Lighthouse Road) and being south of Beach Tree Court 160 feet west of Keenwik Road and being more specifically Lot 17 Keen-wik Resubdivision of Subdivision No. 9. (Tax Map I.D. 5-33-20.09-2.00)

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.

Russell Shaner and Cynthia Shaner were sworn in and testified requesting a variance of 0.6 feet from the thirty (30) feet front yard setback requirement. Mr. Shaner testified that his parents purchased the Property in 1994; that the Nanticoke modular dwelling was placed on the Property in 1995; that he recently purchased the Property from his mother; that the survey completed for settlement showed the encroachment; that the road is well beyond the front property line; that the existing driveway extends approximately eight (8) feet off of the Property towards the roadway; that his parents were unaware of the encroachment into the front yard setback area; that the Property is located within the Keen-wik subdivision; that his neighbors do not object to the variance request; that the home was placed less than a foot into the setback area; that a Certificate of Compliance had been issued for the dwelling; that the variance does not alter the character of the neighborhood; that the difficulty was not created by the Applicants; and that the neighbors have never complained about the Property.

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. 11386 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 is necessary to enable reasonable use of the Property;
3. The difficulty has not been created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. 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 5 – 0.

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

Case No. 11387 – Paul L. Blust & Ronald L. Sheaffer – southeast of Mercer Avenue 150 feet northeast of Route 279A and being Lot 4 of the Ira B. Phillips Subdivision. (Tax Map I.D. 2-34-35.05-127.00)

An application for variances from the side yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning received two (2) letters in support of the Application and he read one (1) letter that stated support and opposition to the Application.

Paul Blust and Don Miller were sworn in and testified requesting a variance of 2.4 feet from the five (5) feet side yard setback requirement for an existing pergola, a variance of 0.8 feet from the ten (10) feet side yard setback requirement for an existing pool, a variance of 0.8 feet from the ten (10) feet side yard setback requirement for an existing dwelling, a variance of five (5) feet from the required ten (10) feet side yard setback requirement for an existing dwelling, and a variance of 2.1 feet from the ten (10) feet side yard setback requirement for an existing screen porch.

Mr. Miller testified that the Applicants seek multiple variances; that the lot is fifty (50) feet wide and has been developed for many years; that the dwelling was built in 1922; that the other additions were built over the years; that the pool and screen porch were built years ago; that the pool was constructed in 1988; that the Applicants obtained building permits for the pool and porch; that the Applicants were not aware the pergola needed to meet the setback requirements; that the pergola has been on the lot for ten (10) years; that the house was built prior to the passing of the Sussex County Zoning Ordinance; that the screen porch was constructed in line with the existing dwelling; that two (2) different surveys have different measurements and created a shift in the property lines; that the property markers were moved when the sewer lines were installed; that the new property lines are angled differently now as the lots approach the road and these different angles have caused problems with setback requirements; that the difficulty has not been created by the Applicants; that the Applicants would like to sell the Property and want to bring the Property compliant with the Code before selling it; that the use is not detrimental to the public welfare; that the variances do not alter the character of the neighborhood; and that the Property is well maintained.

David Mitchell was sworn in and testified neither in support of or in opposition to the Application and testified that the survey references an Elizabeth Jones is not correct; that the existing fence encroaches on his property; and that he realizes the fence is not part of the Application but he would like it moved into compliance.

The Board found that two (2) parties appeared in support of the Application.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. 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.

At the conclusion of the public hearings, the Chairman referred back to this case and the Board discussed the case. Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11387 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 and circumstances;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The 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. Hudson, seconded by Mr. Mills, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 11388 – B.C.G. Real Estate Holding LLC – east of U.S. Route 13 (Sussex Highway) 120 feet north of Route 70 (Gordy Road). (Tax Map I.D. 3-32-1.00-105.00 part of)

An application for a special use exception to place an off-premise 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.

William Glenn was sworn in and testified requesting a special use exception to place an off-premise sign; that the proposed billboard will not block the view of any other signs in the area; that there are no dwellings within 300 feet of the proposed billboard; that the nearby area consists of mainly cornfields; that he purchased the Property from the adjacent property owner for the sole purpose to erect a billboard; that the adjacent property owner does not object to the Application; that the billboard would not affect any housing values and that there are not many houses nearby; that the billboard will be used to advertise his business at another location; that the majority of billboards in the area are currently leased; that he has not decided if the proposed billboard will be

a steel monopole structure or a three pole structure; that the proposed billboard will meet all the required setbacks, square footage, and height requirements; and that the proposed billboard will not have an adverse effect to the surrounding and adjacent neighboring properties.

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. Mills stated that he would move that the Board recommend approval of Special Use Exception No. 11388 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. 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. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 11389 – Richard E. Tucker – southwest of Route 54 (Lighthouse Road) 2,400 feet northwest of Road 389 (Dickerson Road). (Tax Map I.D. 5-33-18.00-61.02)

An application for a special use exception to operate a daycare facility.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had received two (2) letters in support of the Application. Mr. Lank read one of the letters into the record. Mr. Lank added that the office had not received any correspondence in opposition to the Application.

Sharon Gump and Reverend Jim Penuel were sworn in and testified requesting a special use exception to operate a daycare facility. Rev. Penuel testified that he is the pastor at Bayside Chapel; that Bayside Chapel plans to offer after school care at the church located on the Property; and that the Indian River School District provides bus transportation for the students.

Ms. Gump testified that she is leading the project for the Boys & Girls Club; that she has filed applications with the relevant state agencies for approvals; that the after school care would begin during the next school year; that the Boys & Girls Club will offer care from 3:00 p.m. to 6:00 p.m. during the school year; that they would like to extend the care into the summer months as well; that the summer hours will be from 7:00 a.m. to 6:00 p.m.; that care would also be provided during in-service and holidays when school is not in session; that the age of the children will range from five (5) years old to eleven (11) years old; and that the Applicant will care for a maximum of thirty (30) children.

Rev. Penuel testified that there is adequate parking available; that the use will not substantially adversely affect the surrounding and adjacent properties; and that the area is predominantly farmland with some businesses in a nearby industrial park.

The Board found that one (1) person 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 No. 11389 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. 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. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – 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 April 21, 2014.

Mr. Lank stated that he had not received a report from the Planning and Zoning staff.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to **leave the case open until May 19, 2014 for the limited purpose of a report from the Planning and Zoning staff**. Motion carried 5 – 0.

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

Case No. 11382 – The Village at Highway One, LLC – east of Road 275A (Airport Road) at the intersection southwest of Route 1 (Coastal Highway). (Tax Map I.D. 3-34-13.00-325.02)

An application for a special use exception to place an off-premise sign and a variance from the height requirement for an off-premise sign.

The Board discussed the case, which has been tabled since April 21, 2014.

Mr. Mills stated that he believes that the current state of the Property is busy and there are numerous billboards along Route 1 that exceed the height requirement.

Mr. Rickard stated that the Applicant is seeking the height variance to clear the existing structure on the Property.

Mr. Hudson stated that there was testimony that the proposed billboard would substantially affect adversely the uses of the adjacent and neighboring properties.

Mr. Rickard stated that he would move that the Board recommend approval in part and denial in part of Special Use Exception/Variance Application No. 11382. Mr. Rickard moved that the requested special use exception to place a billboard be approved based upon the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

As part of his Motion, Mr. Rickard move that the Board deny the requested variance for the proposed billboard since the difficulty has been created by the Applicant.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried that the special use exception be **granted for the reasons stated and that the requested variance for the proposed billboard be denied**. Motion carried 3 – 2.

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

OTHER BUSINESS

Case No. 11106 – Alice P. Robinson – north of Route 1 (Coastal Highway) northwest of Terrace Road and Silver Lane, being ½ Lot 2, 3, 4, 5, & ½ Lot 6 within Silver Lake Manor development. (Tax Map I.D. 3-34-20.05-325.00 & 326.00)

An application for variances from the required lot size requirement for a parcel, the minimum lot width for a parcel and the corner side yard setback requirement.

Requesting a time extension.

Mr. Lank read a letter from the Applicant requesting a one (1) year time extension.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously to approve the requested time extension for a period of one (1) year. 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.

Additional Business

Discussion to follow-up on previous Building Height Workshop

The Board, Mr. Lank, and Mr. Sharp discussed the building height workshop and possible recommendations to the Sussex County Council regarding the building height ordinance. The Board recommended that the definition of public use be more narrowly defined so that building height would be restricted.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that Mr. Sharp draft a letter of recommendations from the Board that would be more clearly defined in the Ordinance and that the letter be reviewed on May 19, 2014. Motion carried 5 – 0.

Discussion about posting and open meeting requirements

The Board, Mr. Lank, and Mr. Sharp discussed the Freedom of Information Act requirements and its impact on the Board regarding meetings of the Board and notice thereof. Mr. Sharp stated that the Board must post notice of all gatherings.

Meeting Adjourned 9:13 p.m.