



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF NOVEMBER 19, 2012

The meeting of the Sussex County Board of Adjustment was held on Monday, November 19, 2012, 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, Mr. Jeff Hudson, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members Mrs. Susan Isaacs – Chief Zoning Inspector, 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.

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. 11092 – Scott M. Leshner & Teresa L. Leshner** – south of Road 280B (Conley Chapel Road) east of Country Lane, being Lot 6A within Chapel View development. (Tax Map I.D. 2-34-10.00-110.01)

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

Mrs. Isaacs presented the case. Scott Leshner and Teresa Leshner were sworn in to testify about the Application. Meaghan Hudson, Attorney, presented the case to the Board on behalf of the Applicants and stated that the Applicants are requesting a variance of 6.4 feet from the 30 foot front yard setback requirement for an existing dwelling, a variance of 2.2 feet from the 30 foot front yard setback requirement, a variance of 0.4 feet from the 10 foot side yard setback requirement, and a variance of 0.4 feet from the 10 foot rear yard setback requirement for an existing detached garage; that the Applicants purchased the Property on September 21, 2012; that the survey completed for settlement showed encroachments of the setback requirements by the existing dwelling and garage; that there are six (6) points of non-conformity with the structures

and that the variances are the minimum variances necessary to bring the structures into compliance; that the Property is unique due to the location of a cul-de-sac which creates an odd angle on the Property; that moving the structures into compliance would cost the Applicants approximately \$45,000.00; that the Property cannot be developed in strict conformity with the Sussex County Zoning Ordinance since the structures already exist; that the difficulty was not created by the Applicants because the prior owner built the structures; that the detached garage was built in 2004; that the variances will enable reasonable use of the Property; that Sussex County issued a Certificate of Compliance for the detached garage in September 2004 and for the dwelling in January 2010; that the variances will not alter the essential character of the neighborhood because the area is residential; and that the variances requested are the minimum

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variances necessary to afford relief. Ms. Hudson submitted exhibits including pictures and letter of support from the Applicants' neighbors. Mr. and Mrs. Leshner, under oath, confirmed the statements by Mrs. Hudson.

The Board found that four (4) parties appeared in support of the Application.

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

Mrs. Isaacs stated that the office received three (3) letters in support of the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11092 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The location of the cul-de-sac creates a uniqueness to the Property;
2. The cost to move the structures into compliance creates an exceptional practical difficulty;
3. The difficulty was not created by the Applicants;
4. The variances will enable reasonable use of the Property;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances 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. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

**Case No. 11093 – Waste Industries** – south of Route 24 (John J. Williams Highway) approximately 600 feet west of Route 309. (Tax Map I.D. 2-34-33.00-10.03)

An application for a special use exception to place a manufactured home type structure to use as a construction trailer office for a period of five (5) years.

Mrs. Isaacs presented the case. Seth Heath was sworn in and testified on behalf of the Applicant requesting a special use exception to place a manufactured home type structure to use as a construction trailer office for a period of five (5) years. Mr. Heath testified that he is the General Manager of Waste Industries; that the request for five (5) years matches the Applicant's current lease to use the Property; that the unit is already on the Property; that the unit was placed on the Property approximately one (1) month ago; that the Property was approved in 2007 for a special use exception and the Applicant was not aware that the approval had expired until after placement of the unit; that the landlord advised the Applicant that the Property was approved for

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this use; that the Applicant is aware that the request is limited in duration and that an additional approval will be necessary in order to keep the unit on the Property at the end of five (5) years; that there will be landscaping around the unit; that the Property is near the Mountaire plant and the Paradee Gas Company; that the Applicant shares an access road with the Paradee Gas Company; that the Property is also adjacent to a wooded area; that the hours of operation are from 5:00 a.m. to 4:00 p.m.; that the trucks run seven (7) days a week in the summer and five (5) to six (6) days a week during the other seasons; that there is no residential property nearby; that the Applicant plans to relocate to a larger property at the end of the lease term; that the Applicant will remove the unit once it is no longer needed and that twenty five (25) trucks use the site.

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 Special Use Exception No. 11093 for the requested special use exception for a period of five (5) years based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

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

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

**Case No. 11094 – Louis Karko & Phyllis Karko** – northeast of Route 1 (Coastal Highway) northwest of William F. Street, being Lot 43 within Dodd's Addition development. (Tax Map I.D. 3-34-20.09-75.00)

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

Mrs. Isaacs presented the case. Bryan Elliott, of Integrity Builders, was sworn in and testified requesting a 1.2 foot variance from the 18.3 foot average front yard setback requirement for a proposed dwelling and screen porch, a 6.6 foot variance from the 10 foot side yard setback requirement for a proposed dwelling, a 5.4 foot variance from the 10 foot side yard setback requirement for an existing sunroom, a 1.3 foot variance from the 5 foot side yard setback requirement and a 1.1 foot variance from the 5 foot rear yard setback requirement for an existing shed; that the Applicants have owned the Property for fifty (50) years; that the Applicants want to demolish the existing dwelling and keep the existing sunroom; that the proposed dwelling will be attached to and line up with the existing sunroom; that lining up the dwelling with the existing sunroom creates an encroachment; that the proposed dwelling is a Beracah-style house; that the

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lot is small and is only 5,000 square-feet in size; that the variances will not alter the essential character of the neighborhood since all existing dwellings have unique setbacks; that the proposed dwelling is very similar to the footprint of the existing dwelling but the new footprint encroaches less into the side yard setback area; that if the proposed porch was built smaller to comply it would not be useful; that the existing one (1) story dwelling is 800 square-feet in size and that the proposed two (2) story dwelling is 1,812 square-feet in size; that the proposed dwelling could comply with the front yard setback area if it was smaller; that other houses in the neighborhood are closer to the street than the proposed dwelling; that the Applicants plan to retire to the area; that the existing shed is on a concrete pad but could be moved into compliance; that the neighbors support the Application; that placing the dwelling in compliance with the setback requirements and not have it line up with the existing sunroom would look “stupid”; that the sunroom was remodeled approximately ten (10) years ago and would be a huge loss to the Applicants if it had to be removed; and that the sunroom is located on a permanent foundation.

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

Mrs. Isaacs advised the Board that many dwellings in the neighborhood are non-conforming and some dwellings are only eleven (11) feet from the front yard property line.

Motion by Mr. Rickard, seconded by Mr. Workman, 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. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

At the conclusion of the public hearings, the Chairman referred back to this case and discussed the merits of the Application. Mr. Rickard stated that he believed the shed could be moved into compliance with the Sussex County Zoning Code. Mr. Mills stated that the dwellings in the neighborhood are not lined up with respect to the front yard setbacks.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11094 for the requested variances in part and denial of the Application in part. As part of his Motion, Mr. Rickard moved that the Board deny the request for variances pertaining to the location of the existing shed because the Applicants' builder has noted that the shed can be moved into compliance with the setback requirements. Mr. Rickard moved to approve the remaining variances sought by the Applicants based on the record made at the public hearings and for the following reasons:

1. The lot is unique in size;
2. The variances will enable reasonable use of the Property;
3. The difficulty was not created by the Applicants;

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4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated and with the stipulation that the existing shed be moved into compliance**. Motion carried 5 – 0.

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

**Case No. 11095 – Joe Price & Leslie Kole** – northeast of Route 1 (Coastal Highway) southeast of James A. Street, being Lot 34 Block C within Dodd's Addition development. (Tax Map I.D. 3-34-20.09-115.00)

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

Mrs. Isaacs presented the case. Bill Wagamon and Joe Price were sworn in to testify about the Application. Douglas Marshall, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant was requesting a 0.2 foot variance from the 10 foot side yard setback requirement for an existing dwelling; that the dwelling was built in 1989; that Lot 34, which is the property in question, and Lot 36, which is the adjacent property, are identical in size and had identical dwellings built on thereon; that the dwelling placed on Lot 36 was placed in compliance with the setback requirements but that the dwelling for Lot 34 was placed slightly into the setback area; that the Property is narrow which makes it unique; that the variance is necessary to enable reasonable use of the Property; that it would be difficult to bring the Property into compliance; that the difficulty was not created by the Applicants because the Applicants did not build the dwelling; that the variance will not alter the essential character of the neighborhood because the dwelling has been on the Property twenty two (22) years and the size of the variance is so small; that Sussex County issued a Certificate of Compliance for the dwelling in 1990; that a survey completed for settlement showed the encroachment; that the variance is not detrimental to public welfare; and that the variance is the minimum variance to

afford relief. Mr. Marshall submitted exhibits to the Board. Mr. Wagamon, under oath, testified that he works for Lingo Real Estate and confirmed the statements by Mr. Marshall.

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

Mrs. Isaacs read a letter from Tim Thompson and Tracy Thompson in opposition to the Application.

Mr. Marshall stated that he had spoken to the neighbors in opposition and they were concerned the Applicant was expanding the existing dwelling, which is not the case.

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Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11095 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The lot is narrow making it unique in size;
2. There is no possibility the Property can be developed in strict conformity with the Sussex County Zoning Ordinance;
3. The difficulty was not created by the Applicants;
4. The variance will enable reasonable use of the Property;
5. The variance will not alter the essential character of the neighborhood; and
6. The variance sought is the minimum variance to afford relief.

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

**Case No. 11096 – Steve Weik** – west of Route 14 southeast of West Yorkshire Road, being Lot 18 Block F within Shawnee Acres development. (Tax Map I.D. 3-30-11.00-251.00)

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

Mrs. Isaacs presented the case. Steve Weik was sworn in and testified requesting a 10.4 foot variance from the 30 foot front yard setback requirement for a proposed handicap ramp and a 0.7 foot variance from the 30 foot front yard setback requirement for an existing dwelling; that the dwelling is only 29.3 feet from the front yard property line; that the ramp is needed for the disabled resident; that the location of the ramp was determined by the existing location of the driveway and cost to build the ramp; that there is limited access at the rear of the dwelling to allow access for a wheelchair; that it would not be feasible to redesign the handicap ramp; that the need for the variance was not created by the Applicant; that three (3) individuals reside in the

dwelling and one of those individuals uses a wheelchair and one of the residents uses a cane; that the variances sought will not alter the character of the neighborhood; and that the variances sought are the minimum variances necessary to afford relief. Mr. Weik submitted a letter from Chimes Delaware supporting the Application.

Mrs. Isaacs stated that the dwelling was approved for a front yard variance in 1984 but there is a discrepancy between the survey from 1984 and the current survey. Mrs. Isaacs stated that the front yard variance for the dwelling was included in the Application to clear up that discrepancy.

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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. 11096 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The need for the location of the handicap ramp makes the Property unique;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The variances will enable reasonable use of the Property;
4. The variances will not alter the essential character of the neighborhood;
5. The variances sought are the minimum variances necessary to afford relief as the variances will provide the occupants with better access to the dwelling; and
6. The variances will not be detrimental to public welfare.

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

**Case No. 11097 – Darlene Gounaris & Richard Gounaris** – northeast of Road 275 (Plantation Road) northwest of Dot Sparrow Drive (A thru lot), being Lot 6 within Summercrest development. (Tax Map I.D. 3-34-12.00-776.00)

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

Mrs. Isaacs presented the case.

No one appeared on behalf of the Application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be **denied due to lack of representation**. Motion carried 5 – 0.

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

**Case No. 11098 – Bayside Homes c/o Ryan Class** – west of Route 1 (Coastal Highway) south of South Shore Drive Ext. off of South Inlet Road, being Lot 51 within Rock Turn a mobile home park. (Tax Map I.D. 1-34-2.00-4.00-Park)

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An application for a special use exception to build a dwelling in a mobile home park.

Mrs. Isaacs presented the case. Steve Class was sworn in and testified requesting a special use exception to build a dwelling in a mobile home park. Mr. Class submitted a packet of exhibits to the Board. Mr. Class testified that the proposed dwelling will be a modular home; that the dwelling will be placed on pilings; that the dwelling will meet all Sussex County Building Code and Flood Zone Elevation requirements; that Lots 49 and 51 are being combined into one (1) lot; that there are other modular in the park approved by the Board; that the lot is currently vacant; and that the park owner has no objection to the Application.

Gail Payne was sworn in and testified as to the Application and stated that she lives in the adjacent development; that she did not know if the proposed dwelling will be a stick built dwelling or a modular dwelling; that she questioned if the proposed dwelling will meet setback requirements and not be built in the wetlands; and that she has no objection to the proposed application after her questions were answered.

The Board found that one (1) party appeared in support of the Application.

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

Mrs. Isaacs stated that the Office of Planning & Zoning received one (1) letter in support of the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11098 based on the record made at the public hearing because the use does not substantially affect adversely the uses of the 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. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

**Case No. 11099 – 36 Builders d/b/a Insight Homes** – west of Road 288 (Wil King Road) northeast corner of Marie Boulevard and North Acorn Way, being Lot 1 within Oakwood Village development. (Tax Map I.D. 2-34-6.00-631.00)

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

The Applicant withdrew the Application on October 23, 2012.

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**Case No. 11100 – Wm. W. Vanderwende & Ellen Ann Vanderwende** – southeast corner of Road 32 (Scott's Store Road) and Route 404 (Seashore Highway). (Tax Map I.D. 5-30-12.00-51.00)

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

Mr. Workman recused himself from the hearing since he is a member of the Bridgeville Kiwanis Club.

Mrs. Isaacs presented the case. Kevin Carson and Richard Beauchamp were sworn in and testified requesting a 3 foot variance from the required 15 foot side yard setback requirement for a proposed roof over an existing walk-in cooler. The Applicants submitted a packet of exhibits in support of the Application. Mr. Carson testified that the Property is triangular shape which makes it unique; that a barbeque stand is operated on the site as a fundraising source for various community organizations; that the barbeque stand is the Bridgeville Kiwanis Club's main source of revenue; that the money raised goes to help the community directly; that the barbeque stand raised over \$36,000.00 last year; that the proposed roof is to protect the walk-in cooler from the elements; that the barbeque stand has existed on the Property since 1963; that the walk-in cooler has been on site for many years as well; that the Applicants own the surrounding properties; that the variance is necessary to enable reasonable use of the Property; that the variance sought is the minimum variance necessary to afford relief; and that the variance will not alter the essential character of the neighborhood.

Mr. Beauchamp testified that there are termites in the existing barn.

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. 11100 based on the record made at the public hearing and for the following reasons:

1. The Property is triangular in shape which makes it unique;
2. The variance will enable reasonable use of the Property;
3. The variance will not alter the essential character of the neighborhood; and
4. The variance sought is the minimum variance necessary to afford relief.

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

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**Case No. 11101 – Donald G. D’Aquila** – east of Route 13 (Sussex Highway) approximately 684 feet south of Road 466 (Sycamore Road). (Tax Map I.D. 2-32-12.00-132.01)

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

Mr. Sharp stated to the Board that the Applicant has been a client in the past and wanted to advise the Board that, if the Board believed that a conflict existed, they may want to defer legal questions to Vince Robertson, Esquire.

Mrs. Isaacs presented the case. Donald D’Aquila was sworn in and testified requesting a 15.3 foot variance from the 60 foot front yard setback requirement for a proposed second floor addition; that the building has been on the lot since the 1960’s; that he has owned the Property since the 1970’s; that the roof is dated and in need of repair; that the Applicant intends to build a second floor addition to the existing structure; that the proposed addition is needed for his existing business; that the proposed addition will be the same height as an existing two (2) story garage on the Property; that the existing building is only 850 square feet in size; that the existing garage is used to store parts and to house the Applicant’s staff; that the Applicant runs a car sales business on site; that the size of the building makes it difficult for the Applicant to do business; that the proposed addition will not further encroach into the front yard setback than the existing building; that there is only one business operating on the Property; that the neighbors have no objection to the application; that more space is needed to store files and parts on the site; that the use is not detrimental to public welfare; that there will be no adverse affect to the surrounding properties; and that the variance will enable reasonable use of the Property. Mr. D’Aquila submitted pictures of the Property to the Board.

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

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

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

At the conclusion of the public hearings, the Chairman referred back to this case and discussed its merits. Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be **tabled until December 10, 2012**. Motion carried 5 – 0.

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

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### **OLD BUSINESS**

**Case No. 11086 – Geoffrey Manns** – north of Route 54 (Lighthouse Road) east of Canvasback Road, being Lot 32 within Swann Keys development. (Tax Map I.D. 5-33-12.16-391.00)

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

The Board discussed the case which has been tabled since November 5, 2012.

Motion by Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until December 10, 2012**. 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.

**Case No. 11090 – Parker Ent PSP, John H. Parker, Sr., Trustee** – north of Route 326A (State Street) approximately 1,500 feet east of Route 82 (Delaware Avenue). (Tax Map I.D. 1-33-17.09-6.00)

An application for a variance from the minimum depth for a parcel.

The Board discussed the case which has been tabled since November 5, 2012.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11090 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is narrow making it unique in size;
2. The variance will enable reasonable use of the Property;
3. The variance will not alter the essential character of the neighborhood; and
4. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried that the variance be **granted for the reasons stated**. Motion carried 3 – 2

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

**OTHER BUSINESS**

2013 Public Hearing Dates – The Board approved the dates for the 2013 schedule.

**Meeting Adjourned 9:45 p.m.**