

MINUTES OF NOVEMBER 2, 2015

The regular meeting of the Sussex County Board of Adjustment was held on Monday, November 2, 2015, 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 Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Brent Workman, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Planning and Zoning Manager, and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Rickard, seconded by Mr. Workman, 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. 11659 – Lynda S. McHugh – seeks a variance from the side yard setback requirement (Section 115-25C of the Sussex County Zoning Ordinance). The property is located on the south side of Mission Place approximately 1,400 feet east of Mount Joy Road. 911 Address: 26774 Mission Place, Millsboro. Zoning District: AR-1. Tax Map No.: 2-34-29.00-299.00.

Ms. Cornwell 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.

Lynda McHugh was sworn in to testify about the Application. Stephen Ellis, Esquire, presented the case to the Board on behalf of the Applicant.

Mr. Ellis stated that the Applicant is requesting a variance of 3.7 feet from the fifteen (15) feet side yard setback requirement for an existing detached garage; that the Applicant is the Executor of the Estate of Jack Yarish; that Mr. Yarish purchased the Property in 1988; that the detached garage was constructed in 1989; that there have been no changes to the Property since 1989; that the Applicant was not involved in the construction of the garage; that there have not been complaints from neighbors about the existence of the garage; that the difficulty was not created by the Applicant; that the variance will enable reasonable use of the Property; that the variance does not alter the character of the neighborhood; that the variance requested is the minimum variance to afford relief; that the detached garage is on a block foundation; and that the existing detached garage cannot be moved into compliance.

Ms. McHugh, under oath, affirmed the statements made by Mr. Ellis.

Don Weber was sworn in and testified in support of the Application and testified that he is purchasing the Property; that he has talked with the neighbors and there were no objections to the Application; and that the variance requested does not alter the character of the neighborhood.

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. 11659 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The age of the detached garage creates a unique situation;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical 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. 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. 11661 – Donald L. Maull – seeks a variance from the side yard setback requirement (Section 115-34B of the Sussex County Zoning Ordinance). The property is located on the east side of Old Shawnee Road approximately 287 feet south of Meadow Brook Lane. 911 Address: 6203 Old Shawnee Road, Milford. Zoning District: MR. Tax Map No.: 1-30-3.00-131.00.

Ms. Cornwell 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.

Sandra Hudson and Donald Maull were sworn in and testified requesting a variance of 5.3 feet from the ten (10) feet side yard setback requirement for an existing detached garage. Ms. Hudson testified that she and Mr. Maull inherited the Property from their parents; that they intend to sell the Property; that a survey completed for settlement showed that the garage encroached into the side yard setback area; that the Property was purchased by her parents in 1960; that they were unable to find a copy of a building permit for the garage; that the garage does not alter the character of the neighborhood; that they believe the garage was built in 1968; that the garage enhances the neighborhood; that the existing garage is on a block foundation and cannot be moved into compliance; that the neighbors have no objection to the Application; that the Property is unique

due to its narrow width; that there are other garages in the area; and that the variance requested is the minimum variance to afford relief.

Duane Fox, Jr. was sworn in and testified in support of the Application and testified that he owns the adjacent property; that the garage has not been an issue for the twenty-six (26) years he has lived there; that his garage is adjacent to the Applicant's garage; and that the variance does not alter the character of the neighborhood.

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. 11661 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The narrow lot and age of the garage make the Property unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical 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. 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. 11662 – Judith Dayoff & Frederick Dayoff – seek a variance from the front yard setback requirement (Section 115-34B of the Sussex County Zoning Ordinance). The property is located on the southeast side of Roy Creek Lane approximately 149 feet east of Cedar Road. 911 Address: 38186 Roy Creek Lane, Selbyville. Zoning District: MR. Tax Map No.: 5-33-20.09-168.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter of support to the Application and had not received any correspondence in opposition to the Application.

Frederick Dayoff and James Parker were sworn in and testified requesting a variance of five (5) feet from the thirty (30) feet front yard setback requirement for a proposed attached garage and a proposed front porch.

Mr. Dayoff testified that the Applicants intend to build the garage and porch for safety reasons; that the Applicants are aging and the proposed attached garage is needed to provide shelter and safety when exiting and entering the existing dwelling; that he has difficulty walking; and that his wife fell on ice last year and broke her hip.

Mr. Parker testified that the Property is unique because it is small; that the Property consists of only 10,021 square feet; that the dwelling was built in 1984 as a vacation home; that the Applicants are now full time residents; that Keenwik Subdivision has a front yard setback requirement of twenty-five (25) feet which is less than the Sussex County front yard setback requirement; that the Keenwik Subdivision Homeowners Association supports the Application; that the proposed attached, one car garage will measure 19 feet by 24 feet; that the proposed garage and porch will provide easier access to the existing dwelling; that the proposed garage was designed to accommodate a future handicap ramp; and that an existing bedroom is being eliminated in order to make room for the proposed garage and for access thereto.

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. 11662 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique as it is only 10,021 square feet in size;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not 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. Rickard, 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. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11663 – Terry Megee – seeks a special use exception to place a billboard and a variance from the maximum height requirement for a billboard (Section 115-159C, 115-80C, & 115-210A(3)(q) of the Sussex County Zoning Ordinance). The property is located on the northwest corner of DuPont Boulevard and Dickerson Road. 911 Address: None Available. Zoning District: C-1. Tax Map No.: 2-33-5.00-110.02.

Ms. Cornwell 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.

Mr. Sharp advised the Board that his firm has represented the Applicant in the past and that if the Board had any questions, they should direct them to Vince Robertson, Esquire.

Carlton Savage, with Pennoni Associates, was sworn in and testified requesting a special use exception to place a billboard and a variance of twenty-three (23) feet from the twenty-five (25) feet maximum height requirement for a billboard. Mr. Savage testified that the nearby medical center is located in a shopping center; that the proposed billboard will be 48 feet tall; that the Property is located on the corner of Dickerson Road and Route 113; that the Property is commercially zoned; that the Property is unique as a ditch runs through the middle of the Property and renders much of the Property useless; that there is another billboard located nearby; that the proposed location of the billboard will allow the billboard to meet the required separation and setback requirements; that the grade of the Property is approximately eight (8) feet below the grade of the adjacent road; that the height variance is needed so that the billboard can be seen from the roads and so as not to block visibility of the neighboring commercial property; that the Property cannot otherwise be developed because the existence of the ditch; that the exceptional practical difficulty was not created by the Applicant; that the Applicant did not create the unusual topography of the Property; that the billboard will not alter the character of the neighborhood since there are similar billboards in the area; that a majority of the nearby billboards are taller than twenty-five (25) feet; that Peninsula Crossing is located north of the Property and it has a tall sign as well; the use will not substantially adversely affect the uses of the neighboring and adjacent properties; that the proposed elevation of the billboard allows for better visibility of neighboring businesses; that the proposed elevation of the billboard also allows for the billboard to clear the height of existing trees located on the Property; that there will be some removal of trees to accommodate the proposed billboard; that there is a 200 feet right-of-way from Route 113 so the billboard will be located far from the existing road; that the trees lie in a ditch and there is possible jurisdictional issue which may restrict the Applicant from removing enough trees to erect a billboard that meets the 25 feet tall height requirement; that the Applicant is waiting for approval from either the Army Corps of Engineers or the Department of Natural Resources and Environmental Control ("DNREC") regarding whether the Applicant can remove the trees located in the ditch; that the ditch may be considered wetlands under the jurisdiction of either the Army Corps of Engineers or DNREC and the Applicant would need approval from them to clear the trees; that the billboard would be blocked by the trees if the trees cannot be removed; that a height variance would be necessary even if the trees are removed because the topography of the Property is unique; that the Applicant did not create the topography or plant the trees on the Property; that the ditch is not a tax ditch; that the process through the Army Corps of Engineers and DNREC takes approximately six to nine months; that the billboard will be placed just outside of the ditch; that the proposed location of the billboard may allow for the Applicant to later develop other portions of the Property; that the Applicant seeks approval to raise the billboard above the trees; that the Property could be otherwise developed for other uses; and that the billboard across the street is likely greater than 30 feet tall.

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

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be **left open for six (6) months for the Applicant to submit to the Board responses from the Army Corps of Engineers and / or DNREC as to the jurisdictional issues related to the ditch and for the Applicant to submit documentation as to whether the ditch is classified as a tax ditch.** 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. 11666 – James G. Miller – seeks variances from the side yard and front yard setback requirements (Section 115-34B of the Sussex County Zoning Ordinance). The property is located on the southeast side of Maple Lane approximately 0.25 miles south of Cedar Road. 911 Address: None Available. Zoning District: MR. Tax Map No.: 5-33-20.13-2.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application, one (1) letter of approval from the Homeowners Association and no correspondence in opposition to the Application.

James G. Miller and James Parker were sworn in and testified requesting a variance of five (5) feet from the ten (10) feet side yard setback requirement for a HVAC system, a variance of 1.33 feet from the ten (10) feet side yard setback requirement for a proposed dwelling, and a variance of 4.23 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling.

Mr. Miller testified that the shape of the Property is unique; that the first design of the dwelling was not acceptable to the Keenwik Homeowners Association; that the new design is ten (10) feet smaller than the first design; that the paved edge of Maple Lane is fifteen (15) feet from the front property line; that the proposed dwelling will be forty (40) feet from the edge of Maple Lane; that there are other three story dwellings in the neighborhood; that the community requires the larger rear yard setback to protect the views of the lagoon; and that the HVAC units throughout the development are five (5) feet from the side property lines.

James Parker testified that he is the builder for the Applicant; that the lot is located in the Keenwik community; that the Property has a unique size; that Keenwik requires a twenty (20) feet setback from the rear yard so the dwelling does not block the view of the lagoon; that Keenwik has a twenty-five (25) feet front yard setback requirement; that other dwellings in the area are similarly placed on their properties; that the homeowners association supports the Application; that the proposed three (3) story dwelling will be approximately 3,512 square feet in size; that the proposed dwelling will be on a block foundation which is consistent with other homes on Maple Lane; that the difficulty was not created by the Applicant; that the variances will not alter the character of the neighborhood; and that the neighbors have no objection to the Application.

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. 11666 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The irregular shape and size of the Property make it unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
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. Rickard, seconded by Mr. Workman, and carried unanimously that the variances 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, and Mr. Callaway – yea.

OTHER BUSINESS

Case No. 11292 – Gregory Stevens & Rita Stevens – seeks a variance from the front yard and rear yard setbacks (Section 115-25C of the Sussex County Zoning Ordinance). The property is located south of Road 284 (Mulberry Knoll Road) and being south of East Lane which is 1,800 feet south of State Maintenance of Mulberry Knoll Road and Bay Shore Drive. 911 Address: None Available. Zoning District: AR-1. Tax Map No: 3-34-18.00-49.01.

A request for a time extension.

Ms. Cornwell read a letter from the Applicants requesting a one (1) year time extension and that this is the Applicants' second request.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the request for a time extension be **granted for a period of one (1) year**. 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.

Meeting Adjourned 8:28 p.m.