

MINUTES OF NOVEMBER 3, 2014

The regular meeting of the Sussex County Board of Adjustment was held on Monday, November 3, 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 Vice-Chairman John Mills presiding. The Board members present were: 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. Hudson, seconded by Mr. Rickard, and carried unanimously to approve the Revised Agenda as circulated. 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. 11478 – Lido Realty Co. – southwest of Route One (Coastal Highway) 100 feet northeast of Bay Road (a.k.a. Canal Road) and 1,300 feet southeast of the Lewes and Rehoboth Canal Bridge (911 Address: 20616 Coastal Highway, Rehoboth Beach, DE) (Tax Map I.D. 3-34-19.08-177.00)

An application for variances from the front yard setback requirement and the requirement for the number of parking spaces.

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.

James Fuqua was sworn in to testify about the Application. James Fuqua, Jr., Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Fuqua, Esquire, stated that the Applicant is requesting a variance of 36.1 feet from the sixty (60) feet front yard setback requirement for a proposed office building, a variance of four (4) parking spaces from the sixteen (16) parking space requirement for the proposed office building, and a variance of 42 feet from the sixty (60) feet front yard setback requirement for a set of steps and a landing; that the representative for the Applicant is his son James Fuqua; that Dewson Construction is under contract to purchase the Property pending the Board's approval; that Dewson Construction is a custom builder and plans to demolish the existing building and construct a new office building; that the Property is located along Route 1 south of the Route 1 Canal Bridge north of Dewey Beach; that the Property is zoned commercial; that the Property is unusual in shape as it is shaped like a boot; that the Property has 106 feet of road frontage on Route One and tapers to just 25 feet in the rear of the Property; that the existing building has a front yard setback of 23.9

feet; that the Applicant wants the proposed building in the same location as the existing building; that the Property was used previously for a Cross Fit gym, a bar, and a restaurant; that the new structure will be no closer to Route 1 than the existing structure; that the existing structure was built prior to the sixty (60) feet front yard setback requirement; that there are other structures in the area which are similar distances from Route One; that a neighboring motel is located a similar distance from Route 1; that the proposed building will be a two (2) story, 3,200 square-foot structure; that the Property also has access to Bay Road; that the proposed traffic flow will enter from Route One and exit to Bay Road; that the shape of the Property limits development; that the number of required parking spaces for the proposed office building are not necessary for a custom home builder's office; that twelve (12) parking spaces are more than adequate for the proposed use; that the unique shape of the Property makes it difficult to develop the Property in a reasonable manner in strict conformity with the Sussex County Zoning Code; that the variances are necessary for the reasonable use of the Property; that the difficulty was not created by the Applicant; that the lot was originally created in its current shape; that the variances will not alter the character of the neighborhood; that the proposed building will improve the Property; and that the variances are the minimum variances necessary to afford relief.

Mr. Fuqua, under oath, confirmed the statements made by Mr. Fuqua, Esquire.

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. 11478 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size and shape;
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;
5. The variances sought are the minimum variances necessary to afford relief; and
6. The variances represent the least modifications of the regulations at issue.

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

Case No. 11479 – Rebecca Holsen, Trustee – northeast of S Bay Shore Drive 1.0 mile southeast of Route 16 (Broadkill Road) and 1,000 feet southeast of Marlin Drive in Broadkill Beach (911 Address: 2202 S Bay Shore Drive, Milton, DE) (Tax Map I.D. 2-35-10.06-48.01)

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

Mr. Lank presented the case and stated that the Office of Planning and Zoning received one (1) letter in opposition to the Application and no correspondence in support of the Application.

Laurie Bronstein was sworn in to testify about the Application. William Schab, Esquire, presented the case to the Board on behalf of the Applicant and submitted pictures for the Board to review.

Mr. Schab stated that the Applicant is requesting a variance of 0.6 feet from the ten (10) feet rear yard setback requirement for an existing dwelling, a variance of 7.7 feet from the ten (10) feet rear yard setback requirement for an existing deck, and a variance of 5.5 feet from the ten (10) feet side yard setback requirement for an existing deck; that the Applicant is the trustee of her late father's trust; that the Applicant has only been to the Property herself a few times; that her parents purchased the Property in 1978 and that the dwelling and decks were built in 1979; that the Trust directs the Applicant to sell the Property; that the Property was listed for sale by Ms. Bronstein; that the Property is under contract to be sold; that a survey completed for settlement showed the encroachments; that the Property is irregularly shaped; that the dwelling is 9.4 feet from the rear property line rather than the required ten (10) feet; that the rear yard faces the beach; that the wrap around deck is an important feature of the Property; that the structures have existed on the Property for approximately thirty-five (35) years; that the entire deck would have to be removed to comply with the Sussex County Zoning Code; that the deck is one of the most attractive features of the house; that the difficulty was not created by the Applicant; that the variances do not alter the essential character of the neighborhood; that there are other variances in Broadkill Beach; that the variances will not be detrimental to the public welfare; that the variances do not impair the uses of neighboring and adjacent properties; that there are similar decks in the neighborhood; that the variances requested are the minimum variances to afford relief; that the variances are the least modifications to regulate the issue; and that the present owner would suffer a substantial hardship if the Application was denied.

Laurie Bronstein testified that she is the Real Estate Agent; that she is familiar with the Property and Broadkill Beach; that the existing deck is a critical part of the Property; that the variances do not alter the essential character of the neighborhood; that the dwelling is similar to other houses in the neighborhood and the placement of the house is similar to neighboring dwellings; that there is storage area and a half bath under the first floor living space of the dwelling; that the deck has existed for many years; that the septic system is located in the front yard of the Property and the septic system likely limited the placement of the dwelling. Ms. Bronstein also affirmed the testimony of Mr. Schab as true and correct.

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. Lank read one (1) letter of opposition into the record.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11479 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 irregular shape;
2. The exceptional practical difficulty and hardship were not created by the Applicant;
3. The variances will not alter the essential character of the neighborhood as there are other similar variances in the neighborhood;
4. The variances sought are the minimum variances necessary to afford relief; and
5. The variances represent the least modifications of the regulations at issue.

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

Case No. 11480 – Timothy L. Lyle, Sole Trustee of the Timothy L. Lyle Living Trust and Eileen F. Lyle, Sole Trustee of the Eileen F. Lyle Living Trust – northeast of Road 208 (Sapp Road) 1,598 feet northwest of Road 206 (Cedar Neck Road) (911 Address: 20835 Sapp Road, Milford, DE) (Tax Map I.D. 3-30-8.00-21.00)

An application for variances from the rear 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.

Timothy Lyle was sworn in to testify about the Application. Jonathan Horner, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Horner stated that the Applicants are requesting a variance of 0.1 feet from the five (5) feet rear yard setback requirement for an existing shed, a variance of 0.5 feet from the five (5) feet rear yard setback requirement for an existing shed, a variance of 16.4 feet from the twenty (20) feet rear yard setback requirement for an existing detached garage, and a variance for 16.1 feet from the twenty (20) feet rear yard setback requirement for an existing detached garage; that the Applicants purchased the Property in February 2013; that the survey completed for settlement

showed the encroachments into the rear yard setback; the Property was initially developed as a large family farm and was subsequently subdivided; that the existing shed was built in 1970 and the existing detached garage was built in 1975; that an addition was built on the existing detached garage in 1991; that it would be an exceptional practical difficulty to move the structures into compliance because both structures have concrete bases; that the Property cannot be developed in strict conformity with the zoning ordinance without a variance; that the variances are necessary to enable reasonable use of the Property; that the difficulty was not created by the Applicants as the structures were constructed prior to the Applicants' ownership of the Property; that the variances will not alter the essential character of the neighborhood; that the Property is adjacent to a large farm owned by the Seller who does not object to the relief sought by the Applicants; that the variances will not be detrimental to neighboring properties or to the public welfare; that the variances are the least modifications to regulate the issue; and that the variances are the minimum variances to afford relief.

Mr. Lyle affirmed the statements made by Mr. Horner as true and correct.

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

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11480 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The characteristics and conditions make this Property unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical 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. Rickard, 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. Hudson – yea, Mr. Rickard – yea, and Mr. Mills – yea.

Case No. 11481 – Barbara Andreavich – northeast of Road 362 (Parker House Road) northeast of Birch Street, 773 feet southeast of Hemlock Street and being Lot 19 Block K Section 4 within Shady Dell Park (911 Address: 37581 Birch Street, Ocean View, DE) (Tax Map I.D. 1-34-16.00-480.00)

An application for variances from the side yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Barbara Andreavich was sworn in and testified requesting a variance of three (3) feet from the ten (10) feet side yard setback requirement and a variance of 2.8 feet from the ten (10) feet side yard setback requirement for an existing manufactured home; that she purchased the Property thirty-one (31) years ago and that she replaced the existing manufactured home with a newer model at that time; that the unit was placed in the same location as the previous unit; that she is selling the Property and needs the variances in order to complete the sale; that she purchased the manufactured home from Larry's Homes in 1983 and relied on them for permitting and placement of the unit; that the Property is serviced by sewer; that other units in the development are placed in a similar fashion as her unit; that her neighbor to the east has a manufactured home that is located on the east side of that lot; that the unit cannot be moved due to an existing porch; that the situation is unique; that the variances are necessary to enable reasonable use of the Property; that the difficulty was not created by her; that the variances will not alter the character of the neighborhood; that the variances are the minimum variances to afford relief; and that there have never been any complaints from the neighbors.

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. 11481 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it is 75 feet wide;
2. The hardship was not created by the Applicant as the Applicant relied on Larry's Homes to place the home on the Property in compliance with the Sussex County Zoning Code;
3. The variances do not alter the essential character of the neighborhood; and
4. The variances sought are the minimum variances 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 4 – 0.

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

Case No. 11482 – Frederick Ferry – southwest of Road 279 (Camp Arrowhead Road) northeast of Sand Bay Drive and being Lot 112 within The Villages of Herring Creek (911 Address: 33969 Sand Bay Drive, Lewes, DE) (Tax Map I.D. 2-34-12.00-308.00)

An application for a variance from the height requirement for a fence.

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.

Frederick Ferry was sworn and testified requesting a variance of one (1) foot from the seven (7) feet maximum height requirement for a fence; that an existing fence throughout the development and adjacent to his property is eight (8) feet tall; that he would like to erect 100 feet of eight (8) feet high fencing on his rear property line to match the existing fence on neighboring property; that the Property is unique because an eight (8) feet high fence already exists in the development; that the variance will not alter the essential character of the neighborhood; that the fence will bring his property into conformity with the development; that the fence will not impair the uses of the neighboring and adjacent properties; that the variance will not be detrimental to the public welfare; that the variance represents the least modification of the regulation at issue; that the difficulty was not created by the Applicant; that he recently cleared his property of existing brush that he believes prevented the existing fence to be placed along his property; that there was heavy brush on the eight (8) lots which do not have the existing fence; and that the adjacent property to the rear of his lot is not within the development.

Mr. Ferry submitted a letter of support to the Application from the Homeowners Association.

Mr. Lank stated that the existing fence was put up by the developer with permission on the majority of the perimeter of the development when the development was started.

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. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11482 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique since the developer erected an eight (8) feet high fence throughout the development;
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. Hudson, seconded by Mr. Rickard, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 11483 – Pamela Dillon – south of Road 277 (Angola Road) northeast of Woodland Court North, 550 feet northwest of Woodland Circle and being Lot 69 and ½ Lot 68 in Angola by the Bay (911 Address: 33143 Woodland Court North, Lewes, DE) (Tax Map I.D. 2-34-11.20-393.00)

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

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Pamela Dillon was sworn in and testified requesting a variance of 6.4 feet from the twenty (20) feet rear yard setback requirement for a proposed sunroom addition; that the Property is located in Angola by the Bay and that she wants to add an addition to the rear her home; that the existing dwelling sits sideways on the Property so that the side of the house faces the rear yard; that a deck is located on rear of the dwelling; that she intends to remove the deck and replace it with a sunroom measuring sixteen (16) feet by sixteen (16) feet; that the rear yard is adjacent to the “common area” of the development which is wooded; that the property owners’ association has given tentative approval for the addition; that the placement of the existing dwelling makes the rear yard shallow and created a unique situation; that the addition will not impact the adjacent properties; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that a variance is necessary to construct a sunroom in the rear yard; that the variance is necessary to enable reasonable use of the Property; that the existing deck is not useful, except in warm weather, and will be removed; that the proposed sunroom addition can be used all year and add to the living space; that the living space in the home is limited; that the sunroom will afford her additional living space; that she did not create the need for the variance because she did not place the dwelling on the lot; that the variance will not alter the essential character of the neighborhood; that the sunroom will not be visible from the street and is not near any neighbor; that the variance will not be detrimental to the public welfare; that the variance represents the least modification possible; that there is an existing window in the dwelling that would be affected if the proposed sunroom was wider and not as deep; that a ten (10) feet addition would not be worth building; that the variance is the minimum variance to afford relief; and that she replaced the shed and was unaware a building permit was required.

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. Lank stated that there have been other variances granted in the area.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11483 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 and size of the lot 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 4 – 0.

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

Case No. 11484 – Sherman Hill, Jr. & Randy Hill – southeast of Road 490 (River Road) northeast corner of 2nd Street and Road 490 (River Road) and 600 feet south of Railroad in the Town of Blades (911 Address: 26063 River Road, Seaford, DE) (Tax Map I.D. 1-32-1.15-3.00)

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 received four (4) letters in support of the Application and no correspondence in opposition to the Application.

Randy Hill was sworn in and testified requesting a variance of 7.7 feet from the forty (40) feet front yard setback requirement for a proposed manufactured home; that the average front yard setback of neighboring properties is 34.9 feet; that the proposed manufactured home will be 32.3 feet from the front property line; that the Property is zoned G-R where single-wide manufactured homes are permitted; that the lot is rectangular in shape but is small in size; that the lot was created over 40 years ago; that the existing mobile home is 41 years of age; that neighbors support the variance; that he is replacing an existing manufactured home; that the new home will improve the neighborhood; that a septic permit is in place; that the shape and size of the lot create a hardship; that the variance is necessary to enable reasonable use of the Property; that the need for the variance was not created by the Applicants; that the variance will not alter the character of the neighborhood; that the variance requested is the minimum variance to afford relief; that the proposed manufactured home is a 1995 model that is 14 feet by 60 feet; that he experienced difficulty finding a manufactured home that would fit on the lot without the need for a variance; and that the existing porch will be removed.

Mr. Hill submitted pictures for the Board to review.

Gary Walls was sworn in and testified in support of the Application and testified that he wanted to confirm the proposed manufactured home will meet the side yard and rear yard setback requirements.

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.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11484 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it is 50 feet by 100 feet;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty and hardship were not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance necessary to afford relief; and
6. The variance requested represents the least modification of the regulation at issue.

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

Case No. 11485 – Gloria Burton – A private road east of Wolfe Street, 920 feet south of Tenth Street in the Town of Laurel (911 Address: 32011 Wolfe Street, Laurel, DE) (Tax Map I.D. 4-32-8.10-89.00)

An application for variances from the rear 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.

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.

Gloria Burton was sworn in and testified requesting a variance of 18.1 feet from the twenty (20) feet rear yard setback requirement and a variance of 18.6 feet from the twenty (20) feet rear yard setback requirement for an existing dwelling; that she purchased the Property in 2012 from Mountaire Farms; that the dwelling was built in 1974; that there have not been any additions to the dwelling; that the dwelling was once converted to an office; that she renovated the structure's

interior and it is a dwelling now; that she is attempting to sell the Property but cannot do so without a variance; that the history of the Property makes it unique; that the difficulty was not created by the Applicant; that the variances will not alter the essential character of the neighborhood; that the Property is located outside the Town of Laurel in a rural area; that the use is not detrimental to the public welfare; that the variances requested are the least modifications of the regulation at issue; that the Property has been sold two (2) other times without a variance; that the Property was previously owned by Central Grain and then sold to Mountaire Farms; that the adjacent property is wetlands and cannot be developed; that the grain storage bins have been removed from the Property; and that the Property has access off of Wolfe Street.

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. 11485 for the requested variance based on the record made at the public hearing and for the following reasons:

1. There is a uniqueness to the Property;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty and hardship were 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. 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. Rickard – yea, and Mr. Mills – yea.

OLD BUSINESS

Case No. 11477 – Tim Pulice – east of Road 432 (Governor Stockley Road) 1,900 feet north of Road 329 (E Piney Grove Road) (911 Address: None Available) (Tax Map I.D. 1-33-10.00-34.02)

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

The Board discussed the case, which has been tabled since October 20, 2014.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Case No. 11477 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 by majority vote that the special use exception be **granted for the reasons stated**. Motion carried 3 - 1.

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

Meeting Adjourned 9:20 p.m.