



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF NOVEMBER 7, 2011

The regular meeting of the Sussex County Board of Adjustment was held on Monday, November 7, 2011, 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. Ronald McCabe, Mr. John Mills, Mr. Brent Workman, and Mr. Jeff Hudson, with Mr. Richard Berl – Assistant County Attorney, and staff members, Mr. Lawrence Lank – Director, Mrs. Susan Isaacs – Chief Zoning Inspector, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to approve the Revised Agenda with Old Business Case No. 10878 – Juust Sooup Ministries, Inc. to be discussed prior to the Public Hearings. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of October 3, 2011 and the Minutes of October 17, 2011 as circulated. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Findings of Facts of September 26, 2011. Vote carried 5 – 0.

OLD BUSINESS

Case No. 10878 – Juust Sooup Ministries, Inc. – south of Route 18 (Lewes Georgetown Hwy) 195 feet east of Road 290 (Cool Spring Road).

A special use exception to allow the serving of foods at a custom cooking facility approved as a home occupation (not as commercial use).

Mrs. Isaacs presented the case. Mr. Berl stated for the record that this case was filed under Section 115-210(A)(3)(i) which allows for the Board to determine whether a proposed use not specifically included in the Zoning Code is “in keeping with” other uses which are specifically permitted. In other words, no law can address every situation that might arise, or every use that is proposed, and with that in mind, the Board is given the power to decide in the first instance whether a proposed use is in keeping with another permitted use, then you need to

decide if a special use exception should be granted, applying the traditional statutory test in that regard.

In this instance, the Director has approved the property for the use as a non-commercial home occupation as defined in Section 115-4. Specifically, “custom baking” is permitted as a home occupation, which was the basis for the Director’s approval. However, that same definition of home occupation limits the activity to family members on the premises, and prohibits any group assembly or activity. The Applicant is only permitted to cook on the premises for off-premise delivery, and has requested that it be permitted not only to cook meals, but to serve them

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on the premises, and you must decide whether that use is in keeping with other permitted home occupations in an AR-1 district.

Under the Code, a “home occupation” includes, but is not limited to, the following:

- (a) an art or craft studio;
- (b) salons or barber shops limited to one chair;
- (c) dressmaking or custom baking;
- (d) professional offices for doctors, dentists, lawyers, and the like;
- (e) private instruction or tutoring limited to one or two pupils at a time;
- (f) family daycare homes.

Section 2 under home occupations reads as follows: “A home occupation, however, shall not be interpreted to include nursing homes, convalescent homes, rest homes, restaurants, tea rooms, tourist homes or similar establishments.”

Mr. McCabe stated he is not in favor of granting the request since the use is too similar to a restaurant, therefore does not meet code.

Mr. Workman stated that he is not in favor of granting the request since he also feels it is similar to restaurant and does not meet the code.

Mr. Hudson stated that he is not in favor of granting the request since it does not meet the requirements of the Zoning Ordinance.

Mr. Mills stated that he is not in favor of granting the request since it exceeds the permitted use of a “home occupation” and feels it was irresponsible of the builder to construct a building with this type of use in mind.

Mr. Callaway stated that he is not in favor of granting the request since it does not meet the requirements of the Zoning Ordinance and feels the Applicant should apply for either a Conditional Use or Change of Zone through the Planning and Zoning Commission and County Council.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **denied since it does not meet the standards for granting a special use exception and exceeds the requirements for a home occupation.** The vote by roll call; Mr. McCabe – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea. Vote carried 5 – 0.

PUBLIC HEARINGS

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Case No. 10889 – Timothy & Diane Clark – west of Route 54, north of Oak Road, being Lot 18 within Keenwik on the Bay development.

A variance from the front yard and side yard setback requirements.

Mrs. Isaacs presented the case. Timothy and Diane Clark were sworn in and testified requesting a 5-foot variance from the required 30-foot front yard setback requirement and a 4.5-foot variance from the required 10-foot side yard setback requirement for a proposed attached garage; that the proposed attached garage will measure 22'x 22'; that the development allows a 5-foot side yard setback requirement and a 25-foot front yard setback requirement; that the Homeowner's Association is in support of the application; that the proposed garage will be 37-foot from the street; that the neighbor's support the application; that it will not alter the character of the neighborhood; and that the shed has been moved into compliance and may be removed in the future.

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

Mrs. Isaacs stated that the office received 3-letters in support of the application.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variances be **granted since it will not alter the character of the neighborhood and since there have been numerous variances granted in the development.** Vote carried 5 – 0.

Case No. 10890 – Sea Breeze, LP – south of Route 1 (Coastal Highway), west of Dodd Avenue, being Lot G18 within Sea Air Village a Mobile Home park.

A variance from the minimum lot coverage and a variance from the separation requirement between units in a mobile home park.

Mrs. Isaacs presented the case. David Hutt, Attorney, was present on behalf of the Applicant, with Cathy Kreaker, who was sworn in and testified requesting a 1.18%-variance from the required 35% minimum lot coverage in a mobile home park and a 1.5-foot variance from the 10-foot separation requirement between sheds in a mobile home park; that the Board

approved a variance in August 2010 for the manufactured home; that the lot measures 2,897-square-foot in size and is 40-foot wide; that the park is a non-conforming park; that the variance is necessary to enable reasonable use of the property; that there are numerous sheds in the park and will not alter the character of the neighborhood; that it was not created by the Applicant; that the proposed shed will measure 6' x 8'; and that this is the minimum variance to afford relief.

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

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Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted since it meets the standards for granting a variance**. Vote carried 5 – 0.

Case No. 10891 – Colby & Danielle Dransfield – south of Road 277 (Angola Road), east of Woodland Circle, being Lot 62 & p/o Lot 63 within Angola By The Bay development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Elizabeth Soucek, Attorney, was present on behalf of the Applicant and testified requesting a 1-foot variance from the required 10-foot side yard setback requirement for an existing dwelling, a 6.4-foot variance from the required 10-foot side yard requirement for an existing deck, and a 0.1-foot variance from the required 5-foot side yard setback requirement for an existing shed; that the lot measures 75' x 110'; that the dwelling was built over 40-years ago and is not detrimental to the neighborhood; that the dwelling was one of the first to be built in the development therefore the variance will not alter the character of the neighborhood; that to bring the dwelling into compliance would create an unnecessary hardship; and that they are seeking the minimum variances to afford relief.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variances be **granted since it meets the standards for granting a variance**. Vote carried 5 – 0.

Case No. 10892 – Thomas M. and Amanda Rosenthal – southwest of Road 62 (Whaley's Road), north of Road 64 (Whitesville Road).

A variance from the height requirement.

Mrs. Isaacs presented the case. Thomas and Amanda Rosenthal were sworn in and testified requesting a 4-foot variance from the required 4-foot height requirement for a fence around an inground pool; that they live on a 100-acre parcel; that there is an existing pond on the property that does not require any fencing; that there are no immediate neighbor's; that neither

the State or their insurance company require any fencing around the pool; and that they submitted pictures.

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

Mrs. Isaacs stated that the office received 1-letter in support of the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted since it meets the standards for granting a variance**. Vote carried 4 – 1.

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Case No. 10893 – Tom Di’Obilda – east of Route 16 (Broadkill Road), southeast corner of Bayshore Drive and Arizona Avenue, being Lot 15 Block N within North Shores development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. John Sergovic, Attorney, was present on behalf of the Applicant, with Tom Di’Obilda and Laurie Bronstein, who were sworn in and testified requesting a 7.9-foot variance from the required 15-foot side yard setback requirement for a proposed deck and a 3-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that the lot measures 50’x 100’; that most lots in the development have a 30-foot wide building area; that the corner lot setback requirement creates a hardship; that it was not created by the Applicant; that it will not alter the character of the neighborhood; and that it is the minimum variance to afford relief.

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

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variances be **granted since it will not alter the character of the neighborhood and since it is the minimum variance to afford relief**. Vote carried 5 – 0.

Case No. 10894 – Jenstar of Delmarva, LLC – east of Route 113 (Sussex Highway) approximately 2,572 feet south of Road 64 (Whitesville Road).

A special use exception to place a temporary manufactured home type structure for a sales office.

Mrs. Isaacs presented the case. John Sergovic, Attorney, was present on behalf of the application, with Jeff Finney, who was sworn in and testified requesting a special use exception to place a temporary manufactured home type structure for a sales office; that the Board approved this use in December 2006 for a period of five years; that they are seeking an extension; that the units have been placed on permanent foundations; that all axles and hitches have been removed; and that they submitted pictures.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of five (5) years, since it meets the standards for granting a special use exception**. Vote carried 5 – 0.

Case No. 10895 – Danny and Roberta Verrette – north of Route 54, west of Laws Point Road, being Lot 18 Block F Section B within Swann Keys development.

A variance from the front yard and side yard setback requirements.

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Mrs. Isaacs presented the case. Danny Verrette was sworn in and testified requesting a 0.3-foot variance from the required 8.8-foot front yard setback average for an existing dwelling, a 5.3-foot variance from the required 10-foot side yard setback requirement for an existing bump out and deck/porch, and a 4.4-foot variance from the required 10-foot side yard setback requirement for an existing second floor deck; that he built the dwelling in 2003; that he had the dwelling raised to comply with required flood zone requirements; that this also increased the size of his existing garage; that the existing structure has never been altered, only raised on the lot; that once the dwelling was raised the existing chimney and steps now encroach; that it will not alter the character of the neighborhood; that it is necessary to enable reasonable use of the property; and that he submitted pictures.

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

Mrs. Isaacs stated that the office received 18-letters in support of the application.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variances be **granted since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 10896 – Suzanne Bowers – east of Route 24, south of White Pine Drive, being Lot 22 within Pines At Long Neck development.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Elizabeth Soucek, Attorney, was present on behalf of the Applicant, Suzanne Bowers, who was sworn in and testified requesting a 4.3-foot variance from the required 30-foot front yard setback requirement for an existing front porch; that the porch was built in 1997; that a building permit and a Certificate of Compliance were issued for the front porch; that to remove or remodel the porch would be detrimental to the Applicant's health; that there are similar variances in the development; that it will not alter the character of the neighborhood; and that the shed is being removed.

The Board found that 2-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 2-letters in support of the application.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted since it meets the standards for granting a variance and since the Certificate of Compliance was issued.** Vote carried 5 – 0.

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Case No. 10897 – Michael and Kathy Newcomb – northeast of Road 258 (Hudson Road), east of Hudson Street Extended, being Lot 27 within Creek Falls Farm Phase 3 development.

A variance from the minimum lot width requirement.

Mrs. Isaacs presented the case. Kathy Newcomb was sworn in and testified requesting a 14.99-foot variance from the required 100-foot lot width requirement for a parcel; that there are 110-homeowners in the development; that 107 of those lots are ¾-acre in size; that there were 3 large lots in the development when the development was created; that two of the three lots have already subdivided into smaller lots; that they would like to subdivide their lot; that the existing cul-de-sac prevents them from meeting the lot width requirement; and that it will not alter the character of the neighborhood.

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

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood and since it is the minimum variance to afford relief.** Vote carried 5 – 0.

Case No. 10898 – Barry Weighall and Jeanne Walsh – west of Route 5, northeast corner of Zachary Taylor Ct and Betsy Ross Lane, being Lot 23 within Independence development.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Barry Weighall and Jeanne Walsh were sworn in and testified requesting a 4.89-foot variance from the required 25-foot front yard setback requirement for a proposed extension to an attached garage; that the existing garage was built in 2003; that the propose extension will measure 9' x 18'; that they have approval from the Architectural Review Board and the Homeowner's Association; that it will not adversely affect or substantially impair the use of surrounding property; that it 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.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood and since it is the minimum variance to afford relief**. Vote carried 5 – 0.

OTHER BUSINESS

Case No. 10710 – Liberty Towers, LLC – southwest of Little Assawoman Bay, 1,600 feet northeast of Road 58B.

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A special use exception to place a telecommunications tower and a variance from the maximum height requirement for a tower.

Request for a time extension.

Mrs. Isaacs read a letter from the Applicant requesting a 1-year time extension.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the time extension be **granted for a period of 3-months**. Vote carried 5 – 0.

Case No. 10482 – Wyatt F. and Elizabeth A. Hammond – Route 16, east of Bay Front Road, being Lot 49, Block 12, Broadkiln Beach.

A variance from the front yard and side yard setback requirements.

Request for a time extension.

Mrs. Isaacs read a letter from the Applicant requesting a 1-year time extension.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the time extension be **granted for a period of 3-months**. Vote carried 5 – 0.

Case No. 10698 – Joanna C. Pappas – north of Route 24, 1,073 feet northeast of Road 313A.

A special use exception to operate a veterinary hospital and a variance from the minimum lot size and setback requirements for a veterinary hospital.

Request for a time extension.

Mrs. Isaacs read a letter from the Applicant requesting a 1-year time extension.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the time extension be **granted for a period of 1-year**. Vote carried 5 – 0.

Meeting Adjourned 8:50 p.m.