



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF OCTOBER 17, 2011

The regular meeting of the Sussex County Board of Adjustment was held on Monday, October 17, 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, 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 as circulated. Vote carried 5 – 0.

It is noted that the Minutes for September 26, 2011 meeting were approved on October 3, 2011.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Findings of Facts of August 22, 2011 and September 12, 2011.

Mr. Berl read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

PUBLIC HEARINGS

Case No. 10879 – Richard Culver – north of Road 511 (Jackson Road) approximately 1,800 feet west of Road 501 (St. George Road).

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Richard Culver, Jr. and Steven Adkins were sworn in and testified requesting a 41.4-foot variance from the required 50-foot side yard setback requirement for an existing manure shed; that the manure shed was built in 1993; that his parents owned the property in 1993; that he and his brothers have inherited the property and are subdividing the land; that the manure shed has always encroached this side yard property line; that a Certificate of Compliance was issued; and that the adjacent property is farm land.

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 variance be **granted since it meets the standards for granting a variance**. Vote carried 5 – 0.

Case No. 10880 – Carleen Morris – south of Route 20, northwest of Nanticoke Circle, being Lot 45 within Nanticoke Acres Annex development.

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A special use exception to operate a daycare facility.

Mrs. Isaacs presented the case. Carleen Morris was sworn in and testified requesting a special use exception to operate a daycare facility; that she has had a home daycare since 2006; that her current hours are 7:00 a.m. to 11:00 p.m., Monday through Friday; that she wants to increase the number of children; that she is asking to care for 9 children; that she does not need additional employees; that her daughter cares for the children when she cannot; and that she has a horseshoe drive and adequate parking for parents.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted with the stipulation that her hours will be 7:00 a.m. to 11:00 p.m., Monday through Friday, and that she can care for 9 children, since it will not substantially affect the uses of the adjacent and neighboring properties**. Vote carried 5 – 0.

Case No. 10881 – Andrew & Kim Biasotto – south of Road 363, southeast of Marina Park Drive, being Lot 8 within Plantation Park Marina development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Megan Hudson, Attorney, was present on behalf of the Applicant, Andrew Biasotto, who was sworn in and testified requesting a 0.5-foot variance from the required 10-foot side yard setback requirement for an existing dwelling and a 2.6-foot variance from the required 5-foot side yard setback requirement for an existing shed; that the Applicant purchased the property August 18, 2011; that the lot is narrow in size; that a Certificate of Compliance was issued in 1993; that a variance will enable reasonable use of the property; that it will not alter the character of the neighborhood; that it is the minimum variance to afford relief; that they submitted pictures; and that the Applicant plans to remove the shed in the spring.

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 for the dwelling only, since the shed will be removed, and since the application meets the standards for granting a variance.** Vote carried 5 – 0.

Case No. 10882 – William Michael Davis & Richard E. Bryant – north of Hebron Road, west of Worcester Road, being Lot 25 within Canal Point development.

A variance from the side yard setback requirement.

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WITHDRAWN SEPTEMBER 27, 2011

Case No. 10883 – Peggy Holt – west of Route 17 (Roxana Road) approximately 1,350 feet north of Road 353 (Burbage Road).

A variance from the minimum lot width requirement for two (2) parcels.

No one appeared on behalf of this application.

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

Case No. 10884 – Coastal Way Exchange, LLC – northeast intersection of Route 1 (Coastal Highway) and Kings Highway.

A variance from the buffer requirement in a combined Highway Corridor Overlay Zone District and a variance from the minimum number parking spaces requirement.

Mrs. Isaacs presented the case. David Hutt, Attorney, was present on behalf of the Applicant, with Bruce Geyer, who was sworn in and testified requesting a 13.3-foot variance from the required 20-foot buffer requirement and a 6-space variance from the required parking space requirement; that previous structures were the offices of Dr. Earl Bradley; that the previous structures were non-conforming; that the structures were demolished; that the proposed structure will be approximately 5,000-square-foot in size; that there are numerous non-conforming structures in the area with mixed uses; that the proposed building will not alter the character of the neighborhood; that it was in the best interest of the community to demolish the non-conforming buildings; that the proposed building cannot be built in strict conformity without a variance; that this is the minimum variance to afford relief; and that they submitted a proposed site plan.

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. 10885 – Gaylord & Elizabeth Leonard – west of Route 1 (Coastal Highway), corner of Andrew Avenue and 1st Street, being Lot 16, Block E, within Ann Acres development.

A variance from the corner side yard setback requirement.

Mrs. Isaacs presented the case. Gaylord Leonard was sworn in and testified requesting a 5-foot variance from the required 15-foot corner side yard setback requirement for a proposed

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addition; that he has owned the property since the 1970's; that there are numerous non-conforming dwellings in the development; that the proposed addition will not alter the character of the neighborhood; that his lot is unique since it is a corner lot; that the variance is necessary to enable reasonable use of the property; that the proposed addition will be approximately 40-foot from the road and will not block anyone's vision; that it is the minimum variance to afford relief; and that his neighbors have no objection to the application.

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

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

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

At the conclusion of the public hearings, the Chairman referred back to this case. 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**. Vote carried 4 – 1.

Case No. 10886 – Home Depot USA, Inc. – west of Route 1 (Coastal Highway) approximately 368 feet south of Road 276 (Shady Road).

A variance from the minimum number of parking spaces requirement.

Mrs. Isaacs presented the case. Doug Liberman was sworn in and testified requesting a 58-parking space reduction from the minimum parking space requirement; that the existing Home Depot has 907-required parking spaces; that the auto parts store will have 47-required parking spaces; that the required parking spaces per the Zoning Ordinance far exceed the need for the existing Home Depot; that the Home Depot will still have 881-parking spaces available; that the proposed location of the auto parts store and parking area is already segregated from the existing Home Depot store and parking area; that the variance is necessary to enable reasonable use of the property for both stores; that the Zoning Ordinance requirements create the hardship, not the Applicant; that the auto parts store will meet all required parking requirements; 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. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted since it meets the standards for granting a variance**. Vote carried 5 – 0.

Case No. 10887 – Victor Williamson – west of Main Street, south of Earlee Avenue, being Lot 3 Section 2-A within Passwaters Estates.

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A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Penny Williamson was sworn in and testified requesting a 12-foot variance from the required 15-foot side yard setback requirement for a proposed pole building; that the proposed building will measure 24'x 32'; that the lot is unique in size and that the side property is angled; that the proposed building cannot meet the required setback requirements due to the existing dwelling, septic system and trees on the lot; that it will not alter the character of the neighborhood; that the neighbors are in support of the application; that she owns the adjacent property; and that the proposed building is needed for storage.

Shirley Keel was sworn in and testified in opposition to the application and stated that she lives on the street; that she would like to know the proposed height of the building since the Applicant's own a large motor home; that she would like to know how the Applicant will access the building questioning if the building will be used for a repair business; and that if there are other parties that jointly own the surrounding properties and not solely the Applicant.

In rebuttal, Penny Williamson, stated that the proposed building will be a standard detached garage height; that it will not be used to store their motor home; that the building will be used for storage purposes only; that they will access the building from their existing driveway; and that her husband is the sole owner of the surrounding property.

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

The Board found that 1-party appeared in opposition to the application.

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

Case No. 10888 – Arthur Lenzi – east of Route 5 (Oak Orchard Road), southwest of Forest Drive approximately 700 feet northwest of Delaware Avenue and Basin Road, being Lot 16 within Blue Hen Oyster Farms development.

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

Mrs. Isaacs presented the case. Bill Schaab, Attorney, was present on behalf of the Applicant, with Arthur and Mary Lenzi who were sworn in and testified requesting a 20-foot variance from the required 30-foot front yard setback requirement and a 2-foot variance from the required 10-foot side yard setback requirement for a proposed manufactured home; that the development was created in the 1960's; that the lot measures 54'x 90'; that the previous unit was granted a variance in 1983; that the previous unit was a single-wide; that the Applicant wants to

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place a double-wide unit on the lot; that the Applicant already owns the unit and it is located in Pot Nets Seaside; that the variance will allow for off-street parking; that there are numerous variances in the development; that the lot is unique in size; that the property cannot be otherwise developed without a variance; that the variance will enable reasonable use of the property; that it will not alter the character of the neighborhood; that it is the minimum variance to afford relief; and that they submitted pictures.

Thomas McKinney was sworn in and testified in support of the application and stated that he owns the adjacent lot; that they welcome the Applicant's as their new neighbors; and that the previous owners were not good neighbors.

The Board found that 1-party appeared in support of the application.

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

Motion by Mr. McCabe, 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.

OLD BUSINESS

Case No. 10863 – Charles & Patricia Lempke – south of Route 54, southwest of Tyler Avenue, being Lot 26 within Cape Windsor development.

A variance from the maximum height requirement.

The Board discussed the case which has been tabled since September 26, 2011.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried that the variance be **granted since it will not alter the character of the neighborhood, since there have been numerous variances in the area, and since it is the minimum variance to afford relief and that it will enable reasonable use of the property**. The vote by roll call; Mr. McCabe – yea, Mr. Workman – yea, Mr. Callaway – yea, Mr. Mills – nay, and Mr. Hudson – nay.

Vote carried 3 – 2.

Meeting Adjourned 8:45 p.m.