



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF OCTOBER 18, 2010

The regular meeting of the Sussex County Board of Adjustment was held on Monday October 18, 2010, 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 with the correction that Case No. 10690 and Case No. 10697 be moved from Old Business to the Hearing portion of the Revised Agenda. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of the October 18, 2010 meeting as circulated. Vote carried 5 – 0.

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. 10712 – Walter D. and Iva B. King – north of Road 454A, 1,570 feet southeast of U.S. Route 13, being Lot 1.

A variance from the minimum lot width requirement for a parcel.

Mrs. Isaacs presented the case. Ronald & Tammy King were sworn in and testified requesting a 17-foot variance from the required 150-foot lot width requirement; that his father owns the property; that the proposed lot will be for him and his wife; that they plan to place a modular dwelling on the property; and that the existing dwelling will be too close to the proposed line without the requested variance.

Mr. Mills suggested that the Applicant adjust the property line in order to comply with the lot width requirement and the setback requirements from the existing dwelling.

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 case be **left open to allow the Applicant to better prepare his case or to make adjustments to the proposed property line so that it complies with setback requirements**. Vote carried 5 – 0.

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Case No. 10713 – Anthony and Donna Savini – south of Road 38, 210 feet east of Road 228A, being Lot 10.

A special use exception to operate a day care facility.

Mrs. Isaacs presented the case. Donna Savini was sworn in and testified requesting a special use exception to operate a day care facility; that she currently runs a large family day care in her home; that she plans to purchase the property next door and open a Early Childhood Education Center; that the center will care for approximately 26 - 28 children; that she will have 4 – 5 employees; that the hours of operation will be 7:30 a.m. to 5:30 p.m., Monday through Friday; that the age of children will range from infants to school age; that the dwelling is on a 1.45-acre parcel; that there will be plenty of parking and room for parents to drop off and pick up their children; that there will be a fenced-in playground area; that DNREC has approved the existing septic system for this use; that she plans to do only minor interior renovations to the dwelling to accommodate the center; and that her neighbor has no objection to the application.

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 special use exception be **granted since it will not substantially affect adversely the uses of the adjacent and neighboring property**. Vote carried 5 – 0.

Case No. 10714 – Stephen R. Mihalik – north of Road 47, north of Road 302A.

A special use exception for a garage/studio apartment and a variance from the maximum square footage requirement for an apartment.

Mrs. Isaacs presented the case. Stephen and Karen Mihalik were sworn in and testified requesting a special use exception for a garage/studio apartment and a 320-square-foot variance from the required maximum 800-square-foot for an apartment; that

the proposed apartment will be for his daughter and her fiancé; that the proposed building is replacing a building that collapsed due to the snowstorm; that the apartment will be long and narrow in size; that they want to expand the square footage to allow for windows and give egress to the apartment; and that it will not alter the character of the neighborhood and is the minimum variance to afford relief.

The Board found that 2 parties appeared in support of the application.

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

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Motion by Mr. Mills, seconded by Mr. Workman, 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. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until November 1, 2010**. Vote carried 5 – 0.

Case No. 10715 – Leroy R. Moyer – south of Road 277 (Angola Road), west of Holly Way East, being Lot 8 and ½ of Lot 7, Block L, Section 2 within Angola By The Bay development.

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

Mrs. Isaacs presented the case. Leroy Moyer and Joan Rice were sworn in and testified requesting a 0.2-foot variance from the required 10-foot side yard setback requirement for a dwelling, a 0.5-foot variance from the required 20-foot rear yard setback requirement for a dwelling, a 0.5-foot variance from the required 20-foot rear yard setback requirement for a proposed attached garage, a 4-foot variance from the required 10-foot side yard setback requirement for a proposed attached garage and a 4.3-foot variance from the required 5-foot rear yard setback requirement for a detached shed; that the proposed garage will be attached to the dwelling with a roof over the existing walkway creating a breezeway; that the shed will be removed once the proposed garage is completed; that the dwelling was built in 1982; that he purchased the property with the dwelling already constructed; that he was not aware a Certificate of Compliance was never issued for the dwelling; that the proposed garage will provide much needed storage; that the proposed garage will not alter the character of the neighborhood; that the neighbors have no objection to the application; and that he submitted pictures and a letter from the Homeowner's Association supporting the application.

The Board found that 2 parties appeared in support of the application.

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

Motion by Mr. Mills, seconded by Mr. Hudson, 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. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until November 15, 2010**. Vote carried 5 – 0.

Case No. 10716 – Umberto V. Pomilio, III, Custodian – east of Road 16, east of Bayshore Drive, being Lot 9, Block A within Old Inlet Beach Section I.

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A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Umberto and Miriam Pomilio were sworn in and testified requesting a 5-foot variance from the required 15-foot side yard corner setback requirement; that the existing cottage is part of a family compound; that due to legal action the cottage must be moved; that the cottage measures 30' x 24'; that the variance will provide the same view of the bay; that if they were to turn the cottage they would incur extra costs to remodel the cottage due to the shift; that it was not created by the Applicant due to the co-ownership of the cottage and the movement of the cottage; that there have been numerous variances in the area; that it will not alter the character of the neighborhood; and that it is the minimum variance to afford relief.

John Yost was sworn in with Tim Willard, Attorney, and testified in opposition to the application and stated that he owns an adjacent property; that the proposed location with the variance will greatly reduce their view of the bay; that he purchased the property in 2001 and plan to retire here; that he did take into consideration a dwelling may be built on the property; that the existing pedestrian access and a dwelling that meets the required setback requirements would still allow an adequate view; that the cottage can be shifted to comply with required setbacks; and that they submitted pictures.

In rebuttal, Umberto and Miriam Pomilio, stated that the opposition is his sister and her husband; that they also own the adjacent lot on the bay side; and that they had first option to purchase the lots.

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

The Board found that 2 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until November 1, 2010**. Vote carried 5 – 0.

Case No. 10717 – Michael and Robin Spann – north of Route 54, east of Laws Point Road, being Lot 31, Block F, Section B within Swann Keys development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Darryl Greer was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for an attached shed and a 4-foot variance from the required 10-foot side yard setback requirement for an HVAC unit; that he submitted a new survey to the Board; and that the Applicant has made some changes and now also needs a front yard variance.

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Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled to allow the Applicant to re-apply to include the front yard variance**.
Vote carried 5 – 0.

Case No. 10718 – Gurry L. Dove – east of Road 327 (Dogwood Acres Road), southwest intersection of Suntan Court and Dogwood Estates Drive, being Lot 42 within Dogwood Estates development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Gurry and Frances Dove were sworn in and testified requesting a 5.1-foot variance from the required 15-foot side yard setback requirement for a proposed lean-to; that the proposed lean-to will measure 12'x 24'; and that the septic system is on the interior side of the existing garage.

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 **left open to allow the Applicant to better prepare their case**.
Vote carried 5 – 0.

Case No. 10690 – Russell W. Johns – north of Road 48, 141 feet east of Anna Drive.

A variance from the minimum lot size requirement to place a manufactured home.

This case had been left open since September 20, 2010 to allow the Applicant to better prepare his case.

No one appeared on behalf of this application.

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

Case No. 10697 – Saverio and Deborah Pulice – west of Road 412 north of Lakeview Drive, being Lot 22, Section 1 within Lakeview Estates development.

A variance from the side yard setback requirement.

This case had been left open since October 4, 2010 to allow the Applicant to better prepare his case.

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Mrs. Isaacs presented the case. Saverio Pulic and Janell Megee were sworn in and testified requesting a 2.8-foot variance from the required 15-foot side yard setback requirement for a proposed addition; that the proposed addition cannot be seen from the road; that the existing dwelling was built only 15-foot from the property line; that when he purchased the property the dwelling already existed; that the proposed addition must measure 13'.8"x 24' to accommodate a billiard table; that there is an existing sunroom on the rear of the dwelling; that it will not alter the character of the neighborhood; that the opposition owns a vacant property across the street; that the opposition has also erected a fence that blocks the view of the lake; and that the Homeowner's Association does not have any recorded covenants.

The Board found that 5 parties appeared in support of the application.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until November 1, 2010**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 10703 – Stephen and Amy Pierson – north of Road 298, 1,454.18 feet northeast of Big Oak Lane.

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

The Board discussed the case which has been tabled since October 4, 2010.

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

OTHER BUSINESS

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

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Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the request for a time extension be **granted for a period of one (1) year from the date of the Finding of Fact which is November 12, 2010**. Vote carried 5 – 0.

Case No. 10465 – Country Rest Home, Inc. – south of Route 16, east of Road 585.

A special use exception to expand a convalescent home.

Request for a time extension.

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

Mr. Berl stated that the Board could not consider a time extension due to the fact that the approval for the special use exception had expired September 28, 2010.

Based on Mr. Berl's statement the Board could not vote on the request.

Case No. 10457 – William P. and Phyllis B. Fischer – west of Coastal Highway, north of Elizabeth Avenue, being Lot 8, Block C within Ann Acres development.

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

Request for clarification.

Mrs. Isaacs read a letter from the Applicant asking for clarification from the Board as to whether they could continue with construction due to changes in the structure from when the variances were approved.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the request for clarification be **granted for a period of one (1) year since it will not alter**

the existing foundation and since there will be no further encroachment on the sides where variances were needed. Vote carried 5 – 0.

Meeting Adjourned 9:10 p.m.