

MINUTES OF OCTOBER 7, 2013

The regular meeting of the Sussex County Board of Adjustment was held on Monday, October 7, 2013, 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. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members, Ms. Melissa Thibodeau – Zoning Inspector II, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes of August 19, 2013 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Finding of Facts for August 19, 2013 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. 11273 – Zerby LLC – southeast corner of the intersection of Rehoboth Avenue Extended and Route One. (Tax Map I.D. 3-34-12.19-84.00, 85.00, 86.00)

An application for variances from the front yard setback requirements for a through lot.

Ms. Thibodeau presented the case. Jeff Zerby was sworn in to testify about the Application.

James Fuqua, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant is requesting variances of fifty (50) feet from the sixty (60) feet front yard setback requirements for a through lot for a proposed retail building. Mr. Fuqua submitted exhibits to the Board. Mr. Fuqua stated that the Applicant owns the Property which consists of three (3) adjacent parcels totaling 32,666-square-feet in size; that the Property is zoned General Commercial (C-1); that the Property has road frontage on Rehoboth Avenue Extended and Route One; that the Rehoboth Professional Center borders the Property on the east; that the Property comes to a point and is located at the main entrance to Rehoboth Beach; that the Property has an unusual shape; that a coffee shop, warehouse and two (2) older dwellings are located on the Property; that all of the existing buildings are non-conforming structures; that the Applicant plans to demolish all existing structures and build a modern commercial retail building on the Property; that the Applicant plans to design a structure to serve as a landmark for the

entrance of Rehoboth Beach; that, due to the fact that the Property is located within Route One Combined Highway Corridor Overlay Zone (“CHCOZ”), a sixty (60) feet setback requirement and landscape buffer apply; that the Applicant would be required to have a sixty (60) feet setback from both Route One and Rehoboth Avenue Extended; that these setback requirements create a severe hardship and make it impossible to build any structures on the Property; that the CHCOZ was designed for projects such as the Tanger Outlets to maintain distance from Route One and to have landscaping buffers along Route One; that the variance will allow for a ten (10) foot setback around the Property; that the variance request is consistent with the goals of the CHCOZ Ordinance; that there will be a ten (10) feet sidewalk around the perimeter of the Property; that a proposed five (5) feet landscape buffer has been proposed to the Delaware Department of Transportation (“DelDOT”) and is subject to the approval of DelDOT as the landscape buffer would be located in DelDOT’s right of way; that the entrances to the site will be modified per DelDOT’s approval; that DelDOT has indicated it has no objection to the concept plan which included the proposed variance request; that the Property is unique in size and shape; that the variances will enable reasonable use of the Property; that the Property cannot be developed in strict conformity; that the difficulty has not been created by the Applicant as the Applicant did not create the lot; that the size of the Property has been lessened over the years by DelDOT; that the visibility of traffic will not be harmed; that the variance, if granted, will not alter the character of the neighborhood; that the variances, if granted, will not be detrimental to the public welfare; that the neighbor who owns the Rehoboth Professional Center has no objection to the Application; that the variances requested are the minimum variances to afford relief; that the Planning and Zoning Commission has to approve the site plan; that deliveries will be made through the front entrances of the proposed retail stores; that the proposed project will meet the required parking space requirements; and that the Applicant is a lifetime resident of Sussex County and wants to create an attractive entrance to Rehoboth Beach.

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

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

Ms. Thibodeau read a letter of support to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11273 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The 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 least modifications of the regulation at issue;

6. The variances sought are the minimum variances 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. 11274 – Laf Erickson & Gundula Erickson – northeast of Wingate Road (Road 343) 975 feet northwest of Omar Road (Road 54). (Tax Map I.D. 1-34-10.00-62.09)

An application for a variance from the minimum lot width requirement for a parcel.

Mr. Sharp stated that the Sussex County Tax Map Parcel Number for the Property was misidentified on the Application as being Tax Map Parcel Number 1-34-10.00-62.00 when the proper Tax Map Parcel Number is 1-34-10.00-62.09. Mr. Sharp stated that the advertising and notices for the hearing were based on the incorrect Tax Map Parcel Number and that the Application must be re-advertised and rescheduled for another hearing. Mr. Sharp recommended that the Board hear the case tonight since there may be persons who are present and are interested in the Application and leave the record open to allow for more comments that may come in after the Application is re-advertised and rescheduled for a new public hearing.

Ms. Thibodeau presented the case. Laf Erickson was sworn in to testify about the Application.

James Fuqua, Esquire, presented the case to the Board on behalf of the Applicants and stated that the Applicants are requesting a variance of seventy-five (75) feet from the required one hundred and fifty (150) feet lot width requirement for a parcel; that the wrong Sussex County Tax Map Parcel Number was incorrectly listed on the Application and that the original survey noted the wrong Tax Map Parcel Number; that the Property contains 10.56 acres and is located on Wingate Road north of Route 54; that the Applicants propose to subdivide the Property into two (2) parcels identified as Lots 3 & 4 on the survey; that the proposed Lot 4 will be 3.24 acres and has 175 feet of road frontage; that the proposed Lot 3 will be 7.32 acres and has 75 feet of road frontage; that the County Code requires that a lot have at least 150 feet of road frontage; that the proposed Lot 3 will have greater width towards the rear of the Property as it moves away from the road; that the Applicants are not trying to create a small lot; that the situation is unique because there is 10.56 acres of land but only 250 feet of road frontage; that the lot area that will be 75 feet wide will not be built on nor can it be built on due to an existing Delmarva Power and Light Right of Way; that the Applicants plan to use the 75 feet wide portion of Lot 3 for a driveway; that the proposed lots are larger than other lots in the area; that the variance will not alter the character of the neighborhood; that the variance requested is the minimum variance to afford relief; that the reason for the 150 feet lot width requirement was to

prevent driveways from being too close together; that the Applicants may install one (1) or two (2) driveways pursuant to DelDOT regulations; and that DelDOT has the final approval for the entrance.

Mr. Erickson, under oath, confirmed the statements made by Mr. Fuqua. Mr. Erickson testified that he owns Sussex County Tax Map Parcel Numbers 1-34-10.00-62.00, 62.08, and 62.09; that he has proposed real estate contracts on all three properties; and that a neighbor is purchasing the proposed Lot 4 so the Property was subdivided to suit the purchaser.

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 to allow the Planning & Zoning Department to re-advertise the hearing and to determine the date of the next public hearing**. 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. 11275 – Ramez Ghattas & Reshma Narula – east of Route One (Coastal Highway) at the east end of Sugar Hill Road (cul-de-sac) 815 feet northeast of Sea Del Drive and being Lot 29 within Sea Del Estates development. (Tax Map I.D. 1-34-9.00-379.00)

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

Ms. Thibodeau presented the case. Bruce Mears and Ramez Ghattas were sworn in and testified requesting a variance of 1.3 feet from the required ten (10) feet side yard setback requirement for an existing dwelling. Mr. Mears submitted exhibits for the Board to review.

Mr. Mears testified that the Property is an ocean-front lot; that the Applicants started the project in April 2013; that the Property is odd in shape; that the Department of Natural Resources and Environmental Control (“DNREC”) moved the building restriction line creating an issue if the original dwelling had to be torn down; that the original dwelling does not meet the required setbacks; that a Certificate of Compliance was issued on the original dwelling; that the Applicants plan to add on to the existing dwelling; that, when the Applicants submitted the plans to Sea Del Estates, the encroachment was discovered; that the encroaching portion of the dwelling will not affect any ocean views of neighboring properties; that the dwelling will be constructed with modern architecture; that the variance will not alter the character of the neighborhood; that the Applicants recently purchased the Property; that the original Certificate of Compliance made no notation of the encroachment; that the existing structure must stay in place due to DNREC restrictions or the house would need to be removed, in which case, the lot would be unbuildable; that the existing structure will be renovated; that the difficulty was not created by

the Applicants; that the Property cannot otherwise be developed; that a public dune crossing to the beach runs along the side of the Property; that the variance requested is the minimum variance to afford relief; that the Applicants do not seek to increase the size of the encroachment; and that the existing structure will not be expanded into the setback area.

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

Ms. Thibodeau read into the record one (1) letter of support to the Application from a neighbor.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11725 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique in shape and the Certificate of Compliance was issued in 1979;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants;
4. That the Applicants believed that they were in compliance with the Sussex County Zoning Code;
5. The variance will not alter the essential character of the neighborhood;
6. The variance sought is the minimum variance necessary to afford relief; and
7. The variance sought is 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 5 – 0.

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

OLD BUSINESS

Case No. 11260 – Charles R. Tollinche – southwest of Road 273 (Country Club Road) being south of White Oak Road, 225 feet southwest of West Side Drive, and being Lot 41 Block 19 within Rehoboth Beach Yacht and Country Club development. (Tax Map I.D. 3-34-19.00-72.00)

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

Ms. Thibodeau stated that the office has still not received the requested affidavit.

Mr. Sharp advised the Board that spoke to the Applicant's attorney and the affidavit will be submitted by the October 21, 2013 meeting.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to **leave the open case until October 21, 2013 to allow for the submittal of the requested affidavit.** Motion carried 5 – 0.

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

Case No. 11267 – Fahmi Smadi – northwest of Road 224 (Fleatown Road) 150 feet southwest of Road 214 (Cabbage Pond Road) and east of Cabbage Way, a Subdivision Street. (Tax Map I.D. 2-30-13.00-166.02)

An application for a special use exception to retain a manufactured home type structure for storage and security for a period of five (5) years.

The Board reviewed the pictures that were submitted and the Board discussed the Application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until October 21, 2013.** Motion carried 5 – 0.

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

OTHER BUSINESS

Case No. 10884 – Coastal Way Exchange – northeast intersection of Route 1 (Coastal Highway) and Kings Highway. (Tax Map I.D. 3-34-6.00-71.00)

An application for a variance from the buffer requirement in a Combined Highway Corridor Overlay Zone district and a variance from the minimum number of parking spaces requirement.

A request for a time extension.

Ms. Thibodeau read a letter from the Applicant requesting a time extension. The Board discussed the request.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to **approve the requested time extension for a period of one (1) year.** Motion carried 5 – 0.

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

Meeting Adjourned 8:15 p.m.