



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF SEPTEMBER 10, 2012

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 10, 2012, at 7:00 p.m. in the County Council Chambers, County Administrative 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 Everett Moore – County Attorney, and staff members Mrs. Susan Isaacs – Chief Zoning Inspector, and Mrs. Jennifer Norwood – Recording Secretary.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of August 6, 2012 and August 20, 2012 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Finding of Facts for August 6, 2012 and August 20, 2012. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 11034 – NV Homes – east of Holland Glade Road, west of Gloucester Drive, being Lot 60 within Canal Point development. (Tax Map I.D. 3-34-13.00-1507.00)

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Kenneth Yuso and Ted Roberti were 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 a 2.9-foot variance from the required 25-foot front yard setback requirement for an existing porch. Mr. Fuqua submitted exhibits to the Board and stated that the rear of the property is adjacent to open space and drops off; that the development is an approved Residential Planned Community and has 25-foot front yard setback requirements; that the dwelling built on this site was a new design available; that the surveyor contracted to stake the property for the dwelling used the wrong footprint; that the mistake was not realized until a final placement survey was completed; that the situation is unique since the

Applicant has built over 135 dwellings in the development; that the Applicant takes every precaution to prevent setback violations; that to remove a portion of the porch would destroy the appearance of the dwelling; that the variance will not alter the character of the neighborhood; that the Homeowner's Association and the developer have no objection to the application; and that this is the minimum variance to afford relief. Mr. Yuso, under oath, confirmed the statements by Mr. Fuqua.

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. 11034 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The placement of the porch into the setback area was unintentional due to the surveying error;
2. The property is unique since it drops off in the rear;
3. The variance will enable reasonable use of the property;
4. The variance, if granted, will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance to afford relief; and
6. The variance represents the least modification of the regulation at issue.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances 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. 11035 – Lynn Wilson & Robert Wilson – southwest of Route 1 (Coastal Highway) east of Venetian Drive, being Lot B-15 within Seabreeze development. (Tax Map I.D. 3-34-20.17-5.00)

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Lynn Wilson and Robert Wilson were 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 12.13-foot variance from the required 30-foot front yard setback requirement for a proposed dwelling; that the original dwelling was constructed in the 1960's by Lynn Wilson's parents; that Lynn Wilson and her siblings inherited the property when her parents passed away; that Lynn Wilson purchased the property from her siblings; that the property is located on a dead end street; that a cul-de-sac creating the encroachment only exists on paper it has never been constructed; that the Applicants have demolished the original house and intend to place a new dwelling on the Property; that the proposed dwelling will be 6.7 feet from the recorded location of the cul-de-sac; that the proposed dwelling is in character with the dwellings in the neighborhood; that the proposed dwelling will not interfere with any views in the neighborhood; that the proposed dwelling will be within that same footprint as the original dwelling; that the lot is unique due to the cul-de-sac and the canal

adjacent to the rear property line; that the dwelling across the street was granted a variance due to the cul-de-sac; that the variance will enable reasonable use of the property; that the difficulty was not created by the Applicant; that it will not alter the character of the neighborhood; that it is the minimum variance to afford relief. Mr. Fuqua submitted exhibits to the Board in support of the Application. Lynn Wilson, under oath, confirmed the statements by Mr. Fuqua.

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.

Mrs. Isaacs stated that the office received 1-letter of opposition to the application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be taken under advisement. Motion carried 5- 0 .

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11035 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 the location of the recorded, but not yet built, cul-de-sac;
2. The difficulty was not created by the Applicants;
3. The variance will enable reasonable use of the property as the proposed dwelling is within the footprint of the original dwelling;
4. The variance, if granted, will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance to afford relief.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 11036 – Coy L. Thomas, Jr. & Jenifer L. Thomas – south of Road 49 (Sloan Road) southwest of Pinewater Drive, being Lot 7 within Pinewater Farm development. (Tax Map I.D. 2-34—17.12-19.00)

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Dwayne Mosley was sworn in to testify about the Application. Douglas Marshall, Esquire, presented the case to the Board and stated that the Applicants are requesting a 0.4-foot variance from the required 15-foot side yard setback requirement for an attached garage and a 3.3-foot variance from the required 15-foot side yard setback requirement for an existing non-conforming dwelling; that the lot measures 100' x 300';

that the previous owner constructed the attached garage; that the garage was constructed to match the angle of the existing dwelling; that due to the angle the structure does not meet the required setback requirement; that the Certificate of Compliance was issued by the Planning & Zoning Department for the attached garage; that the difficulty was not created by the Applicants; that the variance will enable reasonable use of the property; that it will not alter the character of the neighborhood; and that it is the minimum variance to afford relief. Mr. Mosley affirmed the statements of Mr. Marshall.

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. 11036 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The lot is unique since it narrow in size and the dwelling is non-conforming;
2. The difficulty was not created by the Applicant;
3. The variance will enable reasonable use of the property;
4. The variance, if granted will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance to afford relief; and
6. The variance requested represents the least modification possible of the regulation in issue.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances 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. 11037 – Phyllis Saunders – north of River Road approximately 433 feet east of Point View Road (Tax Map I.D. 2-34-34.11-1.00)

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Phyllis Saunders and William Saunders were sworn in and testified requesting an 11.5-foot variance from the required 40-foot front yard setback requirement for an existing deck. Mrs. Saunders testified that they were approved in January 2012 for an 11.5-foot variance for a set of steps; that the rear of the property consists of wetlands; that they are requesting the same variance to permit a deck instead of the steps; that they built a deck to allow better access to the dwelling; that the deck was necessary because the door to the house opens in such a manner that additional room is necessary to maneuver into the house; that the dwelling is built high to meet flood zone requirements for the property; that the lot is unique in size and buildable area is narrow due to the existing marsh; that the property cannot be built in strict conformity; that the difficulty was not created by the Applicant; that the variance 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.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11037 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The lot is narrow in size due to the marsh in the rear of the lot necessitating a higher foundation;
2. The variance will enable reasonable use of the property;
3. The difficulty was not created by the Applicant;
4. The variance, if granted will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance to afford relief.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 11038 – Marcus Dodge & Sharon Dodge – north of Route 54 (Lighthouse Road) northwest of Blue Teal Road, being Lot 25 Block C Section A within Swann Keys development. (Tax Map I.D. 5-33-12.16-426.00)

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Marcus Dodge and Sharon Dodge and Brett Reilly, of Tapa Homes, were sworn in and testified requesting a 9.2-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling and air conditioning unit. Mr. Reilly testified that the lot is 40 feet wide; that the unit will measure 26 feet wide; that the variance will allow for a 10 foot driveway; that there are numerous variances in the development; that uniqueness of the lot is that it is 40 feet wide and that most lots in the development are 50 feet wide; that the variance will enable reasonable use of the property; that it will not alter the character of the neighborhood; that the proposed use will conform to the uses in the neighborhood; that it is the minimum variance to afford relief; and that the property will have stone between the unit and the property line for zero-maintenance.

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 the Variance Application No. 11038 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The lot is narrow making it unique in size;
2. The variance will enable reasonable use of the property;
3. The difficulty was not created by the Applicants because the lot is so narrow;
4. The variance, if granted will not alter the character of the neighborhood;

5. The variance sought is the minimum variance to afford relief; and
6. The variance will not impair the uses of neighboring and adjacent properties.

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. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11039 – Phillip Zion & Allison Zion – east of Road 347 (White Neck Road) east of Skimmer Road, being Lot 68 within Bay Forest Club development. (Tax Map I.D. 1-34-8.00-696.00)

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Phillip Zion and Allison Zion were sworn in and testified requesting a 1.05-foot variance from the required 5-foot side yard setback requirement for an existing outside shower. The Applicants submitted a package of exhibits to the Board. Mr. Zion testified that the Applicants purchased the property in 2007; that there was an existing outside shower at that time but it was built poorly and needed to be replaced; that the Homeowner's Association will not allow an outside shower at any other location on the property other than its current location; that the new outside shower is within the same footprint as the existing outside shower; that the previous outside shower was not attached to the dwelling; that the existing shower measures 4 feet x 8 feet; that the lot is unique because it is narrow in size; that the shower cannot be built in strict conformity with the Sussex County Zoning Code; that the difficulty was not created by the Applicants; that the variance will enable reasonable use of the Property; that the variance will not alter the character of the neighborhood as there are similar outdoor showers in the neighborhood; that neighbors support this Application; and that the variance is the minimum variance to afford relief.

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

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

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11039 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The situation is unique since the outside shower cannot be built elsewhere per the Homeowner's Association;
2. The variance will enable reasonable use of the property;
3. The difficulty was not created by the Applicants;
4. The variance, if granted will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 11040 – Christopher Rodgers & Brenda D. Rodgers – north of Blackstone Avenue, south of Martins Lane (a thru lot), being Lot 4 within Silver Lake Manor development. (Tax Map I.D. 3-34-20.05-318.00)

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

Mrs. Isaacs presented the case. Brenda Rodgers was sworn in and testified requesting a 29.8-foot variance from the required 30-foot front yard setback requirement and a 0.9-foot variance from the required 5-foot side yard setback requirement for an existing shed; that the property is shaped like a parallelogram; that the dwelling had to be built on an angle; that the previous shed measured 10 feet x 12 feet; that the new shed measured 10 feet x 16 feet; that the shed was placed in the same area as the previous shed; that the rear of the Property abuts to Martins Lane which is mostly used by foot traffic; that there are dwellings also encroaching into the setback requirement from Martins Lane; that there is no location on the property where the shed could be placed in compliance with the setback requirements; that a building permit was obtained by the builder; that she was not aware of the setback requirements; that a variance has been granted for the dwelling and porch; and that she can provide an address for the builder.

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

Mrs. Isaacs stated that the office received 5 letters of support to the application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11040 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The lot is unique in shape;
2. The variances will enable reasonable use of the Property as it will enable storage space for the Applicants;
3. The difficulty was not created by the Applicants;
4. The variances, if granted will not alter the character of the neighborhood; and
5. The variances sought are the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variances be **granted for the reasons stated and that the builder be sent a letter from Counsel**. Motion carried 5 – 0.

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

Case No. 11041 – Kerry Wertz – south of Route 54 (Lighthouse Road) south of Wilson Avenue, being Lot 19 within Cape Windsor development. (Tax Map I.D. 5-33-20.18-143.00)

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Kerry Wertz was sworn in and testified requesting a 5.8-foot variance from the required 10-foot side yard setback requirement for a proposed attached garage; that the property is only 40-foot wide; that the proposed location of the attached garage is to keep from blocking his neighbor's view of the water; that the storage is needed to store his motorcycle and boats; that the existing storage area is not large enough due to the existing furnace and stairs; that he wanted to install a shed but he could not find a location for the shed where it will not block the views of his neighbors; that the proposed attached garage will measure 12 feet x 16 feet; that variance will allow the proposed attached garage to be constructed in line with the existing dwelling; that it will not alter the character of the neighborhood; that most lots in the development have structures which are ten (10) feet from the street and his proposed garage would be fifteen (15) feet from the street; and that all sheds in the development are on the street side of the lots.

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

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

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Rickard and carried unanimously that the case be **tabled until September 24, 2012**. Motion carried 5 – 0.

Case No. 11042 – Charles L. Williams – northwest of Road 291 (Martins Farm Road) approximately 2,800 feet east of Route 5 (Harbeson Road). (Tax Map I.D. 3-34-9.00-1.03)

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Charles Williams was sworn in to testify about the Application. John Brady, Esquire, presented the case to the Board and stated that the Applicant is requesting a 0.4 foot variance from the required 15 foot side yard setback requirement for an existing pole building; that the building was constructed in 2007; that the Applicant is disabled due to a work accident; that the Applicant sold a portion of his property to a neighbor; that a Certificate of Compliance was issued for the pole building; that the encroachment was discovered when a survey was submitted for a Conditional Use Application; that he submitted three (3) packs of Saltine crackers to demonstrate the distance of the requested variance; that the adjacent property owner on the side of the encroachment has no objection to the Application; that the existing manufactured home sits at an angle on the property; that the building was measured from the side of the manufactured home and this created the encroachment; that the angle of the manufactured home makes the situation unique; that the building has been on the lot for five (5) years shows it does not alter the character of the neighborhood; that the variance, if

granted, will not impair the uses of adjacent properties; that the variance will not be detrimental to the public welfare; that the difficulty was not created by the Applicant; that it is necessary to enable reasonable use of the Property; and that this is the minimum variance to afford relief. Mr. Williams, under oath, confirmed the statements by Mr. Brady and testified that there is a concrete floor to the building.

Margaret Foulke was sworn in and testified in opposition to the Application and stated that she owns the adjacent property; that simple math shows the building would not meet the required setback requirement; that the pole building could have been placed anywhere in the back yard but the Applicant chose to place it at the end of his driveway; that the building exceeds 900 square-feet and she feels the Applicant should have applied for a special use exception to have that size building; that the garage is over 1,800 square feet; that the driveway was placed to accommodate the proposed use of the building; and that she has a friend that is a surveyor and had the Applicant asked the surveyor could have staked out the location for the building.

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

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

Mrs. Isaacs stated that the office received 2 letters in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until September 24, 2012**. Motion carried 5 – 0.

Case No. 11043 – Home Depot USA Inc. – south of Route 1 (Coastal Highway) approximately 386 feet east of Road 276 (Shady Road). (Tax Map I.D. 3-34-6.00-526.00)

A special use exception for a tent to exceed the maximum three (3) day requirement and a special use exception for this event to be annually for a five (5) year period.

Mrs. Isaacs presented the case. Edward Wade was sworn in and testified requesting a special use exception for a tent to exceed the maximum three (3) day requirement and a special use exception for this event to be annually for a five (5) year period; that the proposed tent would be located in front of a Home Depot store located on the Property; that the tent will be constructed in high quality; that the tent will be used starting the second Friday in September until the fourth Monday in October to be held annually for a period of five (5) years; that the tent will be used for sales of high end designer rugs; that the tent will be placed in front of the store; that the use will not substantially affect adversely the uses of the adjacent and neighboring properties; that they will have adequate parking available; and that they will have no additional signage on the property.

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 Special Use Exception Application No. 11043 for a period of five (5) years 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 the adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for a period of five (5) years for the reasons stated**. Motion carried 5 – 0.

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

OTHER BUSINESS

Case No. 10828 – Bayshore Inc. – north of Road 358 (Sandy Cove Road) south of Possum Street, being Lot 287 within Bayshore Mobile Home Park.

A variance from the separation requirement between units in a mobile home park.

Request for a time extension.

Mrs. Isaacs read a letter from the Applicant requesting a one (1) year time extension.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the request for a time extension be **granted for a period of one (1) year**. Motion carried 5 – 0.