



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF SEPTEMBER 12, 2011

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 12, 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.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of August 22, 2011 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. 10848 – Charles V. Rector** – northeast of Road 361, 100 feet southeast of Road 368.

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

Mrs. Isaacs presented the case. Charles Rector was sworn in and testified requesting a 2,020.6-square-foot variance from the required 20,000-square-foot minimum lot size requirement and a 13.86-foot variance from the required 150-foot lot width requirement for Parcel A, and a 16.33-variance from the required 150-foot lot width requirement for a parcel; that the existing parcel is 1-acre with an existing dwelling; that they want to subdivide the parcel and build a new dwelling on the proposed vacant lot; that the lot is unique in size; that it cannot otherwise be developed without a variance; that when he purchased the lot the previous owner told him it could be subdivided; that the property is just outside of town limits; that there are similar lots within the town limits; that the property has the capability for 2-sewer hook- ups; and that the neighbors support 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 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. McCabe, and carried unanimously that the variances be **denied since it does not meet the standards for granting a variance**. Vote carried 5 – 0.

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**Case No. 10849 – Lisa Desombre** – southwest of Road 280B (Conley's Chapel Road) 310 feet west of Route 277 (Robinsonville Road).

A special use exception to operate a daycare facility.

Mrs. Isaacs presented the case. Lisa Desombre was sworn in and testified requesting a special use exception to operate a daycare facility; that she currently has a home daycare; that she wants to increase the number of children to 14; that her hours are 9:00 a.m. to 12:00 p.m. Monday through Friday; that in the summer the hours are 9:00 a.m. to 2:00 p.m.; that she will have an employee; that there is adequate parking and drop off area; and that there is no adverse effect on the community.

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 since it will have not substantially affect the uses of adjacent and neighboring properties**. Vote carried 5 – 0.

**Case No. 10850 – John C. Murray** – south of Route 1 (Coastal Highway) east of Ann Avenue, being Lot 11 Block A within Ann Acres development.

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

Mrs. Isaacs presented the case. John Murray was sworn in and testified requesting a 2.8-foot variance from the required 10-foot side yard setback requirement, a 4.3-foot variance from the required 10-foot side yard setback requirement and a 10-foot variance from the required 30-foot front yard setback requirement; that he purchased the property in 2003; that he enclosed the existing deck in 2005; that the Planning & Zoning Inspector made him aware of the encroachment when on the site for another permit; that a builder obtained the permit and that a second builder actually constructed the enclosed porch; that a Certificate of Compliance was never issued; that it is unique due to the fact that it is already constructed; that it would be a hardship to remove the porch; that it cannot be developed without a variance; that it will not alter the character of the neighborhood; and that he submitted a picture.

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**.  
Vote carried 5 – 0.

**Case No. 10851 – Rehoboth Professional Ctr LLC** – east of Route 1 (Coastal Highway) 100 feet west of Rehoboth Avenue Extended.

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A variance for additional signage.

Mrs. Isaacs presented the case. Richard Haxton and Jay Frederick were sworn in and testified requesting a 47.57-foot variance for additional wall signage; that the existing sign for the Applicant cannot be seen from the road; that the proposed sign will be visible from the main entrance; that there have been other variances for signs granted on this property; and that he submitted pictures.

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. McCabe, and carried unanimously that the variance be **granted as requested for 47.57-square-foot variance**. Vote carried 5 – 0.

**Case No. 10853 – Delmarva Christian Service Camp** – west of Road 449 approximately 850 feet north of Road 450.

A special use exception to place a multisection manufactured home that is more than five (5) years old.

Mrs. Isaacs presented the case. David L. Bennett was sworn in and testified requesting a special use exception to place a manufactured home more than five (5) years old; that the proposed unit is a 1985, 14'x 70'; that the previous unit has been removed; that the caretaker for the camp will reside in the unit; that the proposed unit is older than the previous unit; and that the proposed unit will be in the same location as the previous unit.

James Gorlich was sworn in and testified in opposition to the application and stated that he would be opposed to the manufactured home being out near the road; and that he has no objection to the unit being placed in the same location as the previous unit.

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. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until September 26, 2011**. Vote carried 5 – 0.

**Case No. 10854 – Ten Pin, LLC c/o Christian Hudson** – northeast of Route 24 (John J. Williams Highway) approximately 1,360 feet east of Plantations Road.

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A special use exception to place a billboard.

Mrs. Isaacs presented the case. Tim Willard, Attorney, was present on behalf of the Applicant, with Christian Hudson and Glen Piper who were sworn in and testified requesting a special use exception to place a billboard; that the property is commercially zoned; that the proposed billboard will meet all required setback requirements; that the property has been approved for 72-townhouses; that the Applicant owns the adjacent properties; that the billboard will not negatively impact property values; that there are no current leases for the proposed billboard; that the billboard will be a steel mono-pole structure and will have landscaping a the base; and that they submitted a proposed site plan.

Scott Burdette was sworn in and testified in opposition to the application and stated that he lives on an adjacent lot to the rear of the property; that he feels the billboard will have a negative effect on his property; that he would like to know what lot Mr. Piper appraised in his development Summercrest; that he would rather see 72-townhomes in the area; that he feels the billboard will be a distraction to drivers; and that the approval of this special use will set a precedent.

In rebuttal, Glen Piper, stated that he appraised property in Maplewood Subdivisoin not Summercrest; and that the proposed billboard is more than the required 300-foot from any neighboring dwellings.

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. 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 special use exception be **granted with the stipulation that the Applicant must show a rental/lease agreement prior to issuance of a building permit, that the proposed landscaping be provided and that a buffer of trees must be planted at the rear of the property as proposed**. Vote carried 5 – 0.

**Case No. 10855 – Ten Pin, LLC c/o Christian Hudson** – northeast of Route 24 (John J. Williams Highway) approximately 1,060 feet east of Plantations Road.

A special use exception to place a billboard.

Mrs. Isaacs presented the case. Tim Willard, Attorney, was present on behalf of the application and testified that they would like to incorporate the testimony from the previous case;

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that the proposed billboard will be located on Parcel C; and that they would like to propose a buffer of trees along the rear property line.

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. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted with the stipulation that the Applicant must show a rental/lease agreement prior to issuance of a building permit, that the proposed landscaping be provided and that a buffer of trees must be planted at the rear of the property as proposed.** Vote carried 5 – 0.

**Case No. 10856 – Rehoboth Beach Film Society** – northeast of Route 1 (Coastal Highway) east of Melson Road.

A special use exception to place a tent for a period of five (5) years.

Mrs. Isaacs presented the case. Sue Early was sworn in and testified requesting a special use exception to place a tent for a period of five (5) years; that the tent is used for the Rehoboth Beach Independent Film Festival; that the tent is 50'x 90' and used for ticket sales, merchandise sales and a lounge area between films; that the festival is held in November; that the tent will go up on a Monday and be removed the following Monday; and that the Board has approved this use in the past.

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 for a period of five (5) years since it meets the standards for granting a special use exception.** Vote carried 5 – 0.

**Case No. 10857 – Walter Cunningham & Lynn Deremer** – north of Road 287 (Kendale Road) 595 feet east of Road 285 (Beaver Dam Road).

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Walter Cunningham was sworn in and testified requesting a 3.1-foot variance from the required 15-foot side yard setback requirement for an existing pole building; that he purchased the lot in 2009; that he used an existing tree line to measure from for the pole building; that a Certificate of Compliance was issued for the pole building; and that a survey showed the encroachment.

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Greg Kelly was sworn in and testified in support of the application and stated that he is the adjacent neighbor; that the trees are on his property; and that the pole building has no negative affect to his property.

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

### **OTHER BUSINESS**

**Case No. 10643 – Liberty Towers, LLC** – west of Road 78.

A special use exception for a communication tower and a variance from the maximum allowable height requirement for a tower.

Request for a time extension.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the time extension be **granted for a period of three (3) months from September 21, 2011**.  
Vote carried 5 – 0.

### **OLD BUSINESS**

**Case No. 10839 – Lawrence & Harriet Batis** – north of Road 58B west of Bayview Circle West, being Lot 194 within Bayview Landing development.

A variance from the side yard setback requirement.

The Board discussed the case which has been tabled since August 22, 2011.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until September 26, 2011**. Vote carried 5 – 0.

**Case No. 10811 – Dewitt Flem** – west of Road 562 (Progress School Road), 2,750 feet, south of Road 404.

A special use exception to place a manufactured home on a medical hardship basis.

Mrs. Isaacs read a letter from the Applicant asking to withdraw his application.

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Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the request to withdraw be **granted**. Vote carried 5 – 0.

**Meeting Adjourned 9:05 p.m.**