



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF SEPTEMBER 13, 2010

The regular meeting of the Sussex County Board of Adjustment was held on Monday September 13, 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 as circulated. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of the August 16, 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. 10675 – I. G. Burton Co. – northeast of Route One, 1,800 feet northwest of Road 271.

A special use exception for outdoor display or promotional activities.

Mrs. Isaacs presented the case. Irvin Burton was sworn in and testified requesting a special use exception for outdoor display or promotional activities; that they plan to use the K-Mart parking lot; that he plans to have an event in October and July; that they need a total of 5-days for each event; that they are seeking the Board's approval since the site has already had 3 boat displays per year; and that there will be approximately 200-cars on display.

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 special use exception be **granted for a period of five (5) years and that the**

Applicant must notify the Planning & Zoning Department of upcoming events at least thirty (30) days in advance. Vote carried 5 – 0.

Case No. 10676 – Jed T. James – west of Road 497, north of Sharptown Road.

A special use exception to retain a manufactured home on less than five (5) acres.

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Mrs. Isaacs presented the case. Jed T. James was sworn in and testified requesting a special use exception to retain a manufactured home on less than five (5) acres; that his uncle is selling him the existing farm; that his uncle's daughter currently lives in a manufactured home on the property; that the unit has been on the lot since 1984; that the daughter has lived in the unit for 10-years; that the unit will remain on a 2-acre parcel; and that the Planning & Zoning Commission has approved the subdivision.

Sandra Spence was sworn in and testified in support of the application; that she read the Zoning Ordinance referencing restrictions to manufactured homes; and that she feels it is not necessary to have such a large parcel for a manufactured home.

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. Hudson, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 10677 – Brooke E. Lloyd – southeast of Phillips Road, 160 feet southwest of Road 297A, being Lot 7 within Clifton and Rust Lots.

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

Mrs. Isaacs presented the case. Brooke & Mark Lloyd were sworn in and testified requesting a 7-foot variance from the required 30-foot front yard setback requirement, a 6.5-foot variance from the required 10-foot side yard setback requirement for each side of the lot, and a 9.5-foot variance from the required 10-foot rear yard setback requirement for a proposed dwelling; that she purchased the property in 2005; that the dwelling was built in the 1950's; that the existing dwelling is approximately 700-square-foot and sits on the property line; that the proposed one story dwelling will be approximately 1,680-square-foot; that she researched raising and remodeling the existing dwelling and it is not cost effective; that there will be parking underneath the dwelling; that the proposed steps to the deck will come out from under the home and turn so they will not further encroach; that she is not sure where the A/C unit will be located; and that she submitted pictures.

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 case be **left open to allow the Applicant to report any further variances needed to include the A/C unit**. Vote carried 5 – 0.

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Case No. 10678 – John and Debra Zatwarnytsky – southeast of New Road, northeast of Kansas Court, being Lot 28 within Sand Dunes Village.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. John Zatwarnytsky was sworn in and testified requesting a 7-foot variance from the required 10-foot side yard setback requirement for a proposed detached garage; that the proposed detached garage will measure 26' x 32'; that he owns the adjacent lots; that the variance is needed to allow access into the proposed garage from the existing driveway; that he plans to store his 26-foot boat and have a workshop area in the garage; that there have been numerous variance in the development; that he submitted letters of support from the neighbors; and that he does not want to combine the two parcels or downsize the garage to meet setback requirements.

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

Mrs. Isaacs stated that the Applicant submitted 12-letters 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. Workman, and carried unanimously that the variance be **denied since it does not meet the standards for granting a variance**. Vote carried 5 – 0.

Case No. 10679 – Ralph Picard – south of Route 54, east of Wilson Avenue, being Lot 3 within Cape Windsor development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Ralph Picard was sworn in and testified requesting a 3-foot variance from the required 10-foot side yard setback requirement for stairs, roof

overhang and fire place bump out; that the Applicant was approved for a variance on June 21, 2010; that they want to change the original plan for the steps on the rear of the property; that the property owner feels the original plan will be out of character with the neighborhood; that the approval of this variance will allow her to build the steps as others in the neighborhood have; and that dwelling can be built without this additional variance.

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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 case be **tabled until September 20, 2010**. Vote carried 5 – 0.

Case No. 10680 – Donald Erickson – northwest intersection of Road 270A and Parsonage Road.

A special use exception for offsite parking.

Mrs. Isaacs presented the case. John Barwick was sworn in and testified requesting a special use exception for offsite parking; that the lot is behind the former Webster Furniture store; that potential businesses looking at the Webster Furniture parcel are interested in this lot for additional parking to accommodate their more restrictive requirements for parking; that the proposed site will offer an additional 45-parking spaces; that the parking lot will meet all DelDOT requirements; that there will be a pedestrian crosswalk in place; and that the lot will be leased for 30-years.

Valerie Driscoll was sworn in and testified in opposition to the application and stated that the lot is surrounded by residential property; that the intersection is already very congested; that there are multiple lanes that flow into only 2 lanes to gain access to the residential lots and the other businesses in the area; that she is concerned for the additional traffic that this proposed business will bring to the area; that the proposed business may use the parking lot for tent sales; and that she would prefer to see the lot used for residential property.

Sandra Spence was sworn in and testified in opposition to the application and stated that there are trees and fences on the opposite side of the intersection; that she has received numerous calls of residents in opposition to this application; and that she read 115-210A-2A from the Zoning Ordinance into the record.

Mr. Berl stated that the section of the Ordinance she read does propose that the offsite parking is in fact designed to relieve congestion.

In rebuttal, John Barwick, stated that the proposed entrance for the parking lot will meet all DelDOT requirements; that they had to perform an ADT analysis to submit to DelDOT; and that the proposed parking lot is adjacent to the existing parking lot.

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

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

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

The Board took a 10-minute Recess

Case No. 10681 – Lois Quigley (Estate of Caroline Yannish) – north of Fay Avenue, 425 feet west of Road 535, being Lots 9 and 10 within Kenmore Park.

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. Gordon Ramey was sworn in and testified requesting a 14-foot variance from the required 20-foot rear yard setback requirement for an existing detached garage; that the garage was on the lot when the Applicant purchased the property; that the encroachment was discovered by a survey done for a settlement of the Applicant's estate; that the variance is needed to enable reasonable use of the property; that it was not created by the Applicant; and that the garage is not out of character with the neighborhood.

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 since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

Case No. 10682 – William and Shirley Holloway – east of Road 38, 2,315 feet south of Road 224.

A variance from the minimum lot width and square footage requirements for a parcel.

Mrs. Isaacs presented the case. William Holloway and Bryan Elliot were sworn in and testified requesting a 72-foot variance from the required 150-foot lot width requirement and a 10,148-square-foot variance from the required 32,670-square-foot lot size requirement; that the property is zoned AR-1 with an approved Conditional Use for the existing auto repair business; that he has owned the property for 34-years; that he has

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run a business there for 14-years; that the bank will not finance him a residential loan for the proposed dwelling due to the business on the property; that he needs to subdivide the lot in order to build a new dwelling for his family; that the property cannot meet the lot size requirement due to the location of the existing business and the storage area needed for cars for the existing business; and that the 2 small sheds on the lot will be moved to the rear of the lot and will meet setback requirements.

Mark Johnson was sworn in and testified neither in support or opposition to the application and stated that he was concerned that another dwelling could be built on the property where the business is located; and that if the existing manufactured home was going to be removed.

The Board stated that the existing manufactured home will be removed and that the parcel the business is on could not accommodate a dwelling.

Motion Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until September 20, 2010**. Vote carried 5 – 0.

Case No. 10683 – Michael Golden – west of Road 357, 107 feet north of Wood Lane.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Michael Golden and Bryan Elliott were sworn in and testified requesting a 12-foot variance from the required 40-foot front yard setback requirement for a proposed dwelling; that he purchased the property in 1986; that he and his son started to remodel the existing dwelling; that his son passed away in 1995 and all construction stopped; that he now wishes to tear down the existing dwelling and build a new dwelling; that the location of the proposed dwelling will be the same as the existing dwelling; that the proposed location will line up with existing dwellings on the street; and that by obtaining this variance it will allow the Applicant to remain in character with the neighborhood.

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. 10684 – Joel Wharton – southeast of Road 421, south of Road 439.

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

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Mrs. Isaacs presented the case. Joel Wharton was sworn in and testified requesting a variance from the minimum lot size requirement to place a manufactured home; that he owns and operates a chicken farm; that he wants to place a manufactured home on the property for part time farm help and security; that the year of the proposed manufactured home will be a 2002; and that it will not substantially adversely affect the adjacent neighborhood.

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 variance be **granted for a 2002 manufactured home since it will not alter the character of the neighborhood**. Vote carried 4 – 1.

Case No. 10685 – Steven M. Adkins – southwest of Road 497, 855 feet east of Road 495.

A variance from the setback requirements for poultry houses and manure shed.

Mrs. Isaacs presented the case. Steven Adkins was sworn in and testified requesting a 7.4-foot variance from the required 50-foot front yard setback requirement for a 3 chicken houses, a 16.1-foot variance from the required 50-foot side yard setback requirement for a chicken house, a 23.7-foot variance from the required 50-foot side yard setback requirement for a chicken house, a 23.7-foot variance from the required 50-foot side yard setback requirement for a chicken house and a 23-foot variance from the required 50-foot rear yard setback requirement for a manure shed; that the property owner plans to subdivide the property; that the proposed property line will run along an existing ditch on the property; that the chicken houses are over 25-years old; that the chicken house on Lot 1 will be removed; and that the dwelling on the property will not meet the 200-foot setback requirement after the subdivision of the property.

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 for the Applicant to measure the distance and possible variance needed for the existing dwelling**. Vote carried 5 – 0.

Case No. 10686 – Vincent Overlook LLC – south of Road 88, southwest corner of Vincent Village Drive and Beulah Boulevard, being Lot 106 within Vincent Overlook development.

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A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. John Long was sworn in and testified requesting a 1.2-foot variance from the required 15-foot side yard setback requirement for an existing dwelling; that they purchased the development due to the previous owner going bankrupt; that all improvements already existed on the property; that a Certificate of Compliance was issued on the dwelling; and that the encroachment was discovered by a survey done for settlement.

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

Case No. 10687 – John and Beverley Malloy – southwest of Route 22, north of Jasper View Lane, being Lot 25 within Massey's Landing Mobile Home Park.

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

Mrs. Isaacs presented the case. Beverley Malloy was sworn in and testified requesting a 7.3-foot variance from the required 20-foot separation requirement between units in a mobile home park; that her husband and nephew built the deck; that they were not aware of the separation requirement; that the owner of the adjacent unit has no objection to the application; that the owner of the unit no longer lives in the unit and plans to demolish it; that the park owner has no plans of placing another unit on the adjacent lot; and that they had a variance to place the unit on their lot in 2004.

John Walsh was sworn in and testified in opposition to the application and stated that he is not against the application; that he knows the Fire Marshall's office objects strongly to any reduction in separation requirements in case of a fire; and that the possibility of another manufactured home could be placed on the adjacent lot is a concern.

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

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Motion by Mr. Hudson, 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.

OLD BUSINESS

Case No. 10631 – Hertrich Properties V, LLC – southwest of Road 485 and U. S. Route 13.

A special use exception to replace billboards, a variance from the maximum allowable square footage for a billboard, and a variance from the setback requirement from a dwelling, church, school, public lands or another sign.

The Board discussed the case which has been tabled since August 16, 2010.

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the special use exception and variances be **granted.** Vote carried 5 – 0.

OTHER BUSINESS

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 a time extension.

Mrs. Isaacs read a letter from the Applicant requesting a time of extension of six (6) months.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the request for time extension be **granted for a period of six (6) months.** Vote carried 5 – 0.

Meeting Adjourned 10:22 p.m.