



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF SEPTEMBER 20, 2010

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 20, 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 September 13, 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. 10688 – Doggies At The Beach – north of Route 24, 939 feet southwest of Route One.

A variance from the setback requirement for a dog day care facility.

Mrs. Isaacs presented the case. James Reiter was sworn in with Chase Brockstedt, Attorney, and testified requesting a 140.01-foot variance from the required 200-foot setback requirement and a 6.6-foot variance from the required 50-foot side yard setback requirement for open pens for a commercial dog kennel; that the business has been operating at this location since March 2007; that the dogs are under full-time supervision; that there are 3 indoor play areas for the dogs; that the dogs are only out in the pen area long enough to use the bathroom; that the dogs are only allowed outside between the hours of 7 a.m. to 7 p.m.; that they recently extended the fenced in area to better accommodate the dogs; that they did not obtain any building permits for the fencing; that the fenced in area is crucial to his business; that without it he would need more staff to walk the dogs; that the surrounding area is not safe for walking dogs; and that they clean the outside area regularly.

Renee Butler Wright was sworn in and testified in support of the application and stated that she owns 2 dogs that attend the dog day care facility and that the fenced in area for the dogs was a huge factor in her decision to take the dogs to this facility.

Bill Luxx was sworn in and testified in support of the application and stated that business has been very successful in the commercial district, and that it provides a service and jobs to the community.

Robert Wittick was sworn in and testified in support of the application and stated that he is the landlord of this property; that the Applicant has been a great tenant; and that in this difficult economic time the business has still been able to thrive at this location.

Mrs. Isaacs stated that the office received 137 letters in support of the application.

Mrs. Isaacs read a letter from the Maplewood Homeowner's Association which stated that they are in opposition due to current issues, but would have no objection to the application if the dogs were not permitted out before 8 a.m.

Mike Seraphin was sworn in and testified in opposition to the application and stated that he lives directly behind the facility; that his property line is only 75-foot from the dog day care facility; that he was told by the owner that the fenced in area was only to be used for the employees during their breaks; that he has heard dogs as early as 5:45 a.m.; that the surrounding building creates an echo chamber when the dogs bark; and that the waste from the dogs is simply hosed out of fenced in area and leaves a constant puddle and odor.

Bonnie Defino was sworn in and testified in opposition to the application and stated that she lives behind the facility; that there is excessive barking and yelping throughout the day; that there is a foul odor in the summer; and that she is opposed to the extension of the fenced in area to allow for more dogs.

In rebuttal, James Reiter stated that he has never heard any of these complaints prior to tonight's hearing; that the extension of the fence is only to better accommodate the existing number of dogs not increase the number of dogs at the facility; that another neighbor that lives directly behind the facility has no objection to the application; that there facility cares for approximately 30 dogs a day; that the business is open 7-days a week; that they use Simple Green to clean the area and it will leave a green color in the water; and that he feels when dogs are out too early and the fenced in area is not cleaned properly it is an issue with an employee not following the rules.

In rebuttal, Mike Seraphin stated that the property owner that did not complain takes her dogs to the dog day care, and that the facility is open 24-hours a day.

The Board found that 3 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 October 4, 2010**. Vote carried 5 – 0.

Case No. 10689 – First State Signs – southwest of Route One, east of Sea Air Avenue.

A variance for additional ground sign and a variance from the side yard setback requirement for a sign.

Mrs. Isaacs presented the case. Dale McAllister was sworn in and testified requesting a variance for a second ground sign and a 8.13-foot variance from the required 20-foot side yard setback requirement for a sign; that all 3 parcels are owned by the same owner; that the new bank was built on the front parcel; that the bank blocks any view of the building on the back parcel; that there is currently no tenant for the existing building; that they feel the proposed sign will attract a tenant; that the existing bank and liquor store have ground signs; that the existing businesses did not want to share any signage with a future tenant; and that the proposed location is to help with traffic flow in and out of the parking lot.

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

Motion by Mr. Hudson, seconded by Mr. Mills, 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 variances be **denied and to allow the Applicant to re-apply for an off-premise sign and to waive the application fee**. 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.

Mrs. Isaacs presented the case. Russell Johns was sworn in and testified requesting an 8,590-square-foot variance from the required 32,670-square-foot lot size requirement to place a manufactured home; that he wants to place a double-wide manufactured home on the property; that the existing dwelling is too small and not worth repairing; and that a manufactured home is more affordable.

Peter Beaman was sworn in and testified in opposition to the application and stated that he owns the adjacent property; that there is a manufactured home on the property for a medical hardship that has never been removed; that the unit has been on

the property for over 20-years; that another unit in the area was placed for farm help and is no longer lived in yet is still on the property vacant; and questioned if the proposed unit meet setback requirements.

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

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. Workman, seconded by Mr. McCabe, and carried unanimously that the case be **left open until October 21, 2010 to allow the Applicant to better prepare his case.** Vote carried 5 – 0.

Case No. 10691 – Kim Swann – east of Route One, north of Admiral Road, being Lot 14 within Tower Shores development.

A variance from the minimum lot size requirement for multi-family units.

Mrs. Isaacs presented the case. Kim Swann was sworn in with Jim Fuqua, Attorney, and testified requesting a 1,260-square-foot variance from the required 6,000-square-foot minimum lot size requirement for a proposed duplex unit; that the property was purchased in the 1960's by the Applicant's parents; that the existing dwelling was built in the 1960's; that the parents have left the property to the children; that the Applicant has applied for a Conditional Use through the Planning & Zoning Commission; that there are multiple Conditional Use approvals in the area for multi-family units; that for over a period of 25-years the area has been developed to mainly accommodate multi-family units; that the Homeowner's Association is in support of the application; that the proposed unit will meet all setback requirements; and that the use will not alter the character of 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. Workman, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood**.
Vote carried 5 – 0.

Case No. 10692 – Ronald A. Young – north of Route 54, northwest of Swann Drive, being Lot 35 and 36 within Swann Keys development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Ronald Young was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for a proposed detached garage; that he had to combine the two lots in order to build the proposed detached garage; that his dwelling has been on the lot almost 1-year; and that the garage is needed to store his pontoon boat and two antique cars.

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. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood and there have been numerous variances granted in the area**. Vote carried 4 – 1.

Case No. 10693 – Daniel and Cynthia More – south of Angola road, west of Dogwood Drive, being Lot 22, Block K, Section 2 of Angola By The Bay development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Daniel More was sworn in and testified requesting a 3.8-foot variance from the required 10-foot side yard setback requirement; that he wants to build a 5'x 14' roof over an existing deck; that the roof is needed to provide adequate protection from the weather; that the existing roof provides no protection from the elements and he has had to replace the door and carpet; that this is the main entrance into the existing dwelling; that the proposed roof will not extend further than the existing deck; and that the Homeowner's Association is in support of the application.

David Lurty was sworn in and testified in support of the application and stated that he sold the Applicant the dwelling; that it is the main entrance to the dwelling; and that the proposed roof will not alter the character of the neighborhood.

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.

Case No. 10694 – Douglas A. and Toni Lynn Nolt – east of Route One, southwest of Road 270A and north of Second Street, being Lot 9 and 10, Section D within Tru-Vale development.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Douglas and Toni Lynn Nolt were sworn in with Bill Schab, Attorney and testified requesting a 17.7-foot variance from the required 30-foot front yard setback requirement; that they submitted deed restrictions and pictures; that the Applicant has owned the property for two years; that all property owners in the development are in support of the application; that the cost to move the unit into compliance is estimated at \$22,460.00; that all the units in the development are placed close to the road; that he measured from the road not the property line; that they have not continued any work to the unit since they discovered the encroachment; and that the septic system also prohibits the unit from meeting the required setbacks.

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

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

Mrs. Isaacs stated that the office received 19 letters in support of 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. 10695 – Tobe and Deborah Henry – west of Route One, east of Alda Lane, being Lot 59, Section 2 within Bayview Park development.

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

Mrs. Isaacs presented the case. Tobe Henry and William Saunders were sworn in and testified requesting an 8-foot variance from the required 30-foot front yard setback requirement, a 5.5-foot variance from the required 10-foot side yard setback requirement, a 5-foot variance from the required 10-foot side yard setback requirement and a 4.1-foot variance from the required 10-foot rear yard setback requirement; that he purchased the property in June 2003; that variances were granted to the previous owner; that he built a screen porch on the existing deck; that he then contacted his builder to obtain the building permit giving him the information on the previous granted variances; that a final placement survey was done to obtain the Certificate of Compliance which is when he was told he would need to obtain a variance for the screen porch; that the Homeowner's Association supports the application; and that his neighbors have no objection to the application.

Dick Fox was sworn in and testified in support of the application and stated that he did not understand the need for a front yard variance when the Applicant has not built anything new on the front of the dwelling.

The Board explained to Mr. Fox the survey submitted showed that a variance was needed due to the fact the existing structure did not meet setback requirements.

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. McCabe, seconded by Mr. Workman, and carried unanimously that the variances be **granted since it will not alter the character of the neighborhood and is the minimum variance to afford relief**. Vote carried 5 – 0.

Case No. 10696 – Gary and Jill Extract – northeast of Road 275, west of Goldfinch Turn, being Lot 90 within Summercrest development.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Matt Dotterer and Gary Extract were sworn in and testified requesting a 7'4 1/4"-variance from the required 30-foot front yard setback requirement for a proposed deck and screen porch; that they were denied for a recent variance request on this property; that they have reduced the request of the variance in this application; that the Homeowner's Association supports the application; that the dwelling was built to the rear of the property leaving no additional room for any addition; that he was told at the time of purchase that he could build a deck and screen porch with no problem; and that they submitted pictures.

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

Mrs. Isaacs stated that the office received a petition with 12-signature in support of the application.

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

Motion by Mr. Hudson, seconded by Mr. Workman and carried unanimously to hear the case since it is different from previous application. Vote carried 5 – 0.

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. 10677 – Brooke E. Lloyd – southeast of Phillips road, 160 feet southwest of Road 297A, being Lot 7 within Clifton and Ruts Lots.

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

The Board discussed the case which has been tabled since September 13, 2010.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted for an 8.6-foot front yard variance, a 6.5-foot side yard variance for both sides and a 5-foot rear yard variance since it meets 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.

The Board discussed the case which has been tabled since September 13, 2010.

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 4 – 1.

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.

The Board discussed the case which has been tabled since September 13, 2010.

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. 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.

The Board discussed the case which has been tabled since September 13, 2010.

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

OTHER BUSINESS

Case No. 10452 – Bryan D. and Angela M. Dattilo – north of Road 505, 3,000 feet west of Road 509.

A special use exception to retain a manufactured home on less than ten (10) acres and a variance from the minimum lot width requirement for a parcel.

Request for a time extension.

Mrs. Isaacs read a letter from the Applicant requesting a six (6) month extension .

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 10:16 p.m.