



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF SEPTEMBER 26, 2011

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 26, 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. Hudson, and carried unanimously to approve the Revised Agenda with the correction to move Case No. 10866 – Michael Myers to second on the Revised Agenda. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of September 12, 2011 as circulated. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Findings of Facts of August 8, 2011. 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. 10839 – Lawrence & Harriett 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.

Mrs. Isaacs presented the case which has been tabled since August 22, 2011 to subpoena the contractor.

Jerry Schaeffer was sworn in and testified that he obtained the building permit for the Applicant; that he was unable to attend the hearing due to his father's illness; that he was told the shed only had to be 5-foot from the property line; that he was never told the setback requirement would change once the shed was attached to the dwelling; that this is the first violation he has

been made aware of since he has been a builder; and that he wants to comply with the Board's decision.

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. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be

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granted since it will not alter the character of the neighborhood and since it is the minimum variance to afford relief. Vote carried 5 – 0.

Case No. 10866 – Michael Myers – west of Road 18 (Cannon Road) approximately 1,413 feet south of road 561 (Wesley Church Road).

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

Mrs. Isaacs presented the case. Shannon Carmean, Attorney, was present on behalf of the Applicant, and testified requesting a 3,303-square-foot variance from the required 32,670-square-foot lot size requirement to place a manufactured home; that the Applicant purchased the property in March 2011; that he purchased the property with the understanding that a manufactured home could be placed on the property; that his Real Estate Agent called Planning & Zoning and was also told a manufactured home could be placed on the property; that when the Applicant tried to obtain the placement permit he was advised the lot was too small and that he could not place a manufactured home on the lot; that he tried to purchase more property from the adjacent property owner, however the property has 2 very large liens and could not be released; that he is now conveying that additional property back to the original owner; that he has exhausted all avenues to prevent the need for a variance; that the proposed unit does not alter the character of the neighborhood; that it was not created by the Applicant; that the property cannot be otherwise developed; that it is the minimum variance to afford relief; that the proposed unit will be a 28' x 70' new manufactured home with a block foundation; and that they submitted pictures and a petition of support.

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

Case No. 10858 – Martha Jane Horn – south of Road 536 (Woodland Road) approximately 335 feet west of Private Road (Walker Road).

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

Mrs. Isaacs presented the case. Frank Horn, Jr. was sworn in and testified requesting a 15-foot variance from the required 20-foot rear yard setback requirement and a 10.5-foot variance from the required 15-foot side yard setback requirement for an existing metal building; that his parents had the building built in 1996; that his father has passed and his mother needs to sell the property; that a survey done for settlement showed the encroachment; and that a building permit and Certificate of Compliance were issued for the building.

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The Board found that 2 parties appeared in support of the application.

Mrs. Isaacs stated that the office received 1 letter 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 variances be **granted since it meets the standards for granting a variance**. Vote carried 5 – 0.

Case No. 10859 – Bennett D. Robertson, Lynn D. Widdowson & Bryce L. Widdowson – southeast of Road 490, northeast of Armiger Drive North, being Lot 9 Phase 3 within Hill N Dale development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Lynn Widdowson was sworn in and testified requesting a 10-foot variance from the required 15-foot side yard setback requirement for a proposed pole building; that the Homeowner's Association will not allow the proposed building to be less than 15-foot from the side yard property line; that the proposed building will meet the 15-foot side yard setback requirement; and that they have a new survey done to show the proposed location.

The Board members advised the Applicant that since they will now meet the setback requirement they no longer need the requested variance.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **denied since it is no longer necessary**. Vote carried 5 – 0.

Case No. 10860 – Arthur Lee Donovan – northwest of Road 562 (Progress School Road) approximately 300 feet south of Route 404 (Seashore Highway).

A special use exception to place a multisection manufactured home that is more than five (5) years old and a variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Arthur Lee Donovan and Ronald Hart were sworn in and testified requesting a special use exception to place a manufactured home that is more than five (5) years old and a 10-foot variance from the required 15-foot side yard setback requirement for an existing pole building; that they plan to attach a manufactured home to the existing dwelling; that an attached carport will connect them; that there is a new septic and well on the property; that they will have matching siding; that the stove will be removed from the existing dwelling; and that they no longer need the variance for the pole building.

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

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Mrs. Isaacs state that the office received 1 letter in support of the application.

Motion by Mr. Workman, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted since it will not alter the character of the neighborhood and that the variance be denied since it is unnecessary**. Vote carried 5 – 0.

Case No. 10861 – Henlopen Homes, Inc. – east of Road 619 (Old Shawnee Road) approximately 1,157 feet south of Road 619A (Bontrager Road).

A special use exception to replace a nonconforming multisection manufactured home.

Mrs. Isaacs presented the case. Trent Collins was sworn in and testified requesting a special use exception to replace a nonconforming multisection manufactured home; that they purchased the property with an existing nonconforming manufactured home; that the tenant recently moved out and they removed the existing manufactured home; that they want to replace the unit with a double-wide; that there are similar homes in the area; that the proposed unit will not alter the character of the neighborhood; and that he submitted pictures.

The Board members 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 special use exception be **granted since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 10862 – Gilbert and Joan Hofheimer – south of Route 1 (Coastal Highway), north of Andrew Avenue, being Lot 8 within Ann Acres development.

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

Mrs. Isaacs presented the case. Randy Burton was sworn in and testified requesting a 10-foot variance from the required 30-foot front yard setback requirement and a 2.8-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that the

Applicant purchased the property 9-years ago; that they want to tear down the existing dwelling and build a new dwelling; that they plan to live here permanently; that the proposed location is in keeping with the neighborhood; that there are numerous variances in the area; and that he has built 4 other dwellings in the area.

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

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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 since there have been other variances granted in the area.** Vote carried 5 – 0.

Case No. 10863 – Charles & Patricia Lempke – south of Route 54, southwest of Tyler Avenue, being Lot 26 within Cape Windsor development.

A variance from the maximum height requirement.

Mrs. Isaacs presented the case. Charles Lempke and Dismas Makori were sworn in and testified requesting a 3-foot variance from the required 42-foot maximum height requirement for existing solar panels; that the contractor obtained the building permit; that he believed the panels met all codes since the plans were stamped and a building permit was issued; that the panels passed all inspections until the Elevation Certificate showed the height encroachment; that to lower the panels after construction would cost approximately \$60,000; that it does not alter the character of the neighborhood; that it is the minimum variance to afford relief; that he submitted a packet that also included a petition with 10-signatures in support of the application.

Irma Curtis Codey was sworn in and testified in opposition to the application and stated that the first signature on the petition he submitted is her address, however it is not her signature; that she has lived in the community since 1971; that there are numerous dwellings with solar panels in the community that meet the required setback requirements; that she feels the Applicant was well aware that the panels were exceeding the height requirement; that he uses the space for outdoor living space; and that she submitted pictures.

Carol Pape was sworn in and testified in opposition to the application and stated that during construction she was surprised at the height of the solar panels; that the panels can be seen from quite a distance; that she feels he wanted to use the panels as a canopy and chose to have them at this height; that she feels the solar panels should comply with the height requirement; and that she submitted pictures.

In rebuttal, Charles Lempke, stated that the signature on the petition is the opposition's husband's and he lives at the same address; that the roof top patio has always been used as an outdoor living space; that most dwellings can be seen from quite a distance; that the solar panels are not detrimental to the surrounding properties; that it will be a considerable hardship to lower the solar panels; that this is the minimum variance to afford relief; and that he and the builder were certain the panels were being constructed in compliance to all County Codes.

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

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

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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. McCabe, seconded by Mr. Workman, and carried unanimously that the case be **tabled until October 17, 2011**. Vote carried 5 – 0.

Case No. 10864 – Kathleen Tirella – northeast of Route 54, southwest of Bayview Circle East, being Lot TH-50 within Bayview Landing development.

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. Kathleen Tirella and John Nuttle were sworn in and testified requesting a 5-foot variance from the required 20-foot rear yard setback requirement for a proposed screen porch and to relocate the HVAC unit; that she owns an interior townhome; that there is an existing concrete slab; that she would like to construct a screen porch over the existing concrete slab; that the HVAC unit currently sits on the concrete slab; that they would like to relocate it to the rear of the property and off the concrete slab; that the proposed screen porch will not alter the character of the neighborhood; that the rear yard is adjacent to a common area in the development; and that her neighbor's 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 variance be **granted for a 5-foot variance to include the relocation of the HVAC unit and since it meets the standards for granting a variance**. Vote carried 5 – 0.

Case No. 10865 – Cady Bell and Nichole Davick – north of Road 270A (Munchy Branch Road), west of Pilot Drive, being Lot 19 within Breakwater Estates development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Larry Fifer, Attorney, was present on behalf of the Applicant, and testified requesting a 1-foot variance from the required 10-foot side yard setback requirement for an existing dwelling; that the Applicant purchased the property in May 2011; that a survey done for settlement showed the encroachment; that the dwelling was built in the 1990's; that a Certificate of Compliance was issued; that the lot is unique in size; that the property is fully developed and the variance is needed to enable reasonable use; that it does 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.

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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 since it is the minimum variance to afford relief**. Vote carried 5 – 0.

Case No. 10867 – Voyd and Betty Harmon – northeast of Road 310A (Warwick Road) approximately 1,282 feet west of Road 313A (Downs Landing Road).

A variance from the minimum lot width requirement for a parcel.

Mrs. Isaacs presented the case. Voyd Harmon and Teresa Harmon were sworn in and testified requesting a 4.67-foot variance from the required 150-foot lot width requirement for a parcel; that they want to subdivide to allow another family member to build a dwelling; that they were not able to obtain a survey before the hearing; and that there is an existing dwelling on 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. Hudson, and carried unanimously that the case be **left open to allow the Applicant to submit a survey**. Vote carried 5 – 0.

OLD BUSINESS

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

A special use exception for offsite parking.

Request for a time extension.

Mrs. Isaacs read a letter from the Applicant requesting a 1-year time extension.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the request for a time extension be **granted for a period of one (1) year**. 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.

The Board discussed the case which has been tabled since September 12, 2011.

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Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted since it will not substantially affect the uses of adjacent and neighboring properties**. Vote carried 5 – 0.

Case No. 10831 – West Rehoboth Community Land – east of Route 1 (Coastal Highway) north of Dunbar Street being part of Lot 90 within West Rehoboth development.

A variance from the maximum square footage requirement for a multifamily structure.

The Board discussed this case which has been tabled since August 8, 2011.

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the variance be **denied since it does not meet the standards for granting a variance**. Vote carried 5 – 0.

Meeting Adjourned 9:15 p.m.