

## MINUTES OF AUGUST 18, 2014

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 18, 2014, 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. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members, Ms. Kelly Passwaters – Zoning Inspector II, and Mrs. Jennifer Norwood – Recording Secretary.

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

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

### **PUBLIC HEARINGS**

**Case No. 11416 – Louis J. Travalini** – west of Road 347 (White’s Neck Road) 240 feet south of Road 349 (Old Mill Road) (911 Address: None Available) (Tax Map I.D. 1-34-8.00-420.00)

An application for a special use exception requesting a determination, in a case of uncertainty, for accessory buildings on a vacant lot.

Ms. Passwaters presented the case which is a continuation of a public hearing held on July 7, 2014 regarding this Application. Mr. Sharp explained that the Application initially was advertised for the incorrect special use exception and the Application was re-advertised for a different special use exception and not for a request for a variance.

Louis Travalini was sworn in and testified requesting a special use exception requesting a determination, in a case of uncertainty, for accessory buildings on a vacant lot; that there have been no changes to the Application since the July 7, 2014 public hearing; that the two (2) structures on the Property measure 24 feet by 80 feet and 33 feet by 41 feet; that the accessory structures will be used for the Applicant’s personal use and not for business use; that he originally wanted to use the accessory structures for a business, but the Delaware Department of Transportation (“DelDOT”) and State Fire Marshal requirements were too expensive; that the Applicant and family members own the adjacent vacant properties; that he owns the lot to the north of the Property and the lot to the rear of the Property; that his daughter owns the lot on the south side of the Property; that there are similar structures in the area; that there is a daycare located on the adjacent property; that he plans to store classic cars in the structures; that the structures are already on the Property; that he obtained the structures from Jim’s Hideway and put them on the Property because the accessory structures were going to be demolished if not moved right away; that he also moved a manufactured home on a nearby property to keep it from demolition; that the adjacent property has been designated for family members and that is why he did not combine the lots to

correct the issue; and that the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

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 taken under advisement. Motion carried 5 – 0.

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

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 8, 2014. Motion carried 5 – 0.

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

**Case No. 11435 – Dr. Tristan Kruger** – east of Route One (Coastal Highway) west of Dune Road, 60 feet south of Bayberry Road and being Lot 8 Block F within Middlesex Beach (911 Address: 41 Dune Road, Middlesex Beach, Delaware) (Tax Map I.D. 1-34-17.16-62.00)

An application for a variance from the front yard setback requirement.

Ms. Passwaters presented the case. Dr. Tristan Kruger was sworn in and testified requesting a variance of five (5) feet from the thirty (30) feet front yard setback requirement for a proposed second story deck; that he inherited the Property from his father four (4) years ago; that his father purchased the Property in 1965; that the dwelling is in poor condition and needs repair; that other homes in the neighborhood are much larger than this dwelling; that he intends to add a second story and garage to the dwelling; that the community has a twenty-five (25) feet setback requirement and many of the homes in Middlesex Beach were built to that setback line; that the existing structure was built to meet the twenty-five (25) feet setback requirement; that the Property cannot be built in strict conformity without tearing down the entire structure; that Middlesex Beach Homeowners Association approves of the Application; that the original pilings and front façade of the building will remain; that the Property is unique because the dwelling was constructed to the community's 1962 setback line; that the variance is the minimum variance necessary to afford relief; that the variance will enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the dwelling was built prior to the enactment of the Sussex County Zoning Code which created the front yard setback; that the variance will not alter the character of the neighborhood; that the use does not impair the uses of the adjacent and neighboring properties; that the variance will not be detrimental to the public welfare; that the proposed garage will be

within the existing footprint of an existing deck; and that the structures will not encroach any further into the front yard setback area than the existing structure.

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. 11435 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it is only sixty (60) feet wide;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance necessary 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 variance 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. 11436 – Nicholas Caggiano** – south of Savannah Road (Business Route 9) 1/10 mile west of Orchard Road (911 Address: 17725 Coastal Highway, Lewes, Delaware) (Tax Map I.D. 3-34-6.00-23.00)

An application for a variance from the side yard setback requirement.

Ms. Passwaters presented the case. Richard Haxton and Michael Glick were sworn in and testified requesting a variance of ten (10) feet from the twenty (20) feet side yard setback requirement for a proposed on-premise sign. Mr. Haxton submitted exhibits to the Board to review.

Mr. Haxton testified that the proposed two-sided sign will be used for tenants in the Ocean One Business Park; that the proposed sign will be located on the east side of the entrance to the Property; that a stormwater management pond is located on the west side of the entrance to the Property; that the adjacent property on the west side of the Property has an existing tree line that would block the view of the sign; that it is not feasible to place the sign on the west side of the entrance; that the proposed sign will be on the part of the Property closest to Savannah Road; that the Property is unique due its narrow frontage along Savannah Road; that the proposed location of the sign will enable traffic to find the entrance safely; that the sign will not alter the character of

the neighborhood; that the difficulty was not created by the Applicant; that the variance is the minimum variance to afford relief; and that the sign will be a two-sided sign.

Mr. Glick testified that the trees are owned by an adjoining property owner; that the Property has been approved for a total of four (4) buildings; that the buildings are designed where they could be subdivided; that all tenants would be named on the sign; and that the sign will be approximately seventeen (17) feet tall.

Mr. Haxton testified that the sign will be under 200 square feet; that the Property is unique due to the location of the stormwater management pond; that the pond cannot be relocated; that the sign is outside the area of the easement held by the Delaware Department of Transportation (“DelDOT”); that the variance is necessary to enable reasonable use of the Property; and that the proposed sign meets all other setback requirements and does not exceed the maximum square-footage or maximum height requirement for an on-premise sign.

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

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11436 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The limited available spaces makes the Property unique;
2. The location of the tree line and stormwater management pond also create a unique situation;
3. The variance is necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood; and
6. The variance sought is the minimum variance necessary 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. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11437 – Creative Concepts of Bethany** – northern intersection of Route One (Coastal Highway) and Savannah Road and east of Tulip Road (911 Address: None Available) (Tax Map I.D. 3-35-22.00-93.00)

An application for a special use exception to place an off-premise sign and variances from the minimum side yard setback, height requirement and the square footage requirement for an off-premise sign.

Ms. Passwaters presented the case. Lynn Rogers and Darlene Matthes were sworn in and testified requesting a special use exception for a billboard, a variance of thirty-five (35) feet from the fifty (50) feet side yard setback requirement for a billboard, a variance of twenty-five (25) feet from the twenty-five (25) feet maximum height requirement for a billboard, and a variance of 300 square-feet from the 300 square-feet maximum allowable square footage for a billboard.

Ms. Matthes testified that the Applicant plans to add retail space to the north side of the Property; that the existing on-premise sign needs to be moved in order to complete this expansion; that the existing billboard was approved in 2009 to be used as an on-premise sign; that the Property originally had three (3) billboards when first purchased by the Applicant; that the Applicant plans to remove the existing on-premise sign and replace it with the proposed off-premise billboard on the south side of the Property; that the location of the proposed billboard will allow room for the additional retail addition; that the billboard could not be seen due to the building if the billboard was only twenty-five (25) feet tall; that the proposed height of the billboard will allow it to be visible; that the billboard also needs to be increased in size so that it can be seen by southbound traffic along Route 1; that the proposed billboard will not substantially adversely affect the neighborhood; that the only neighboring property is a stormwater management pond for the Villages at Five Points; that the area is primarily commercial; that the Property is unique because it is oddly shaped; that the variances will enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the variances will not alter the essential character of the neighborhood; that the Property is located adjacent to a very busy intersection; that there are similar billboards in the area; that the variances are the minimum variances necessary to afford relief; that the sign will not be detrimental to the public welfare; that the height variance is necessary to clear the top of the building and prevent the proposed billboard from impairing the view of traffic; that any additional signage needed for the new retail space will not exceed the required height and square footage requirements; that the Applicant has four (4) leases for the billboard contingent on the approval of the Board; that the building is thirty-five (35) feet tall; that the billboard would be difficult to read at twenty-five (25) feet tall; that the current sign is twenty-eight (28) feet tall; that the Applicant is aware that any sign for an on-premise sign will need to comply with the Sussex County Zoning Code; that the planned retail space will need a sign as well; and that DelDOT has been consulted about the proposed sign.

Mr. Rogers testified that the sign is similar in height and size to other signs in the area.

Ms. Matthes submitted exhibits for the Board to review.

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/Variance Application No. 11437 for the requested special use exception and requested variances based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties and for the following reasons:

1. The Property is oddly shaped making it unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The height and size of the billboard is necessary to be visible on both sides of the adjacent highway;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances necessary to afford relief; and
7. The variances represent the least modifications of the regulations at issue.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception and 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. 11438 – Kris S. Meck** – south of Road 277 (Angola Road) south of Linden Way, 450 feet south of Woodland Circle and being Lot 10 and 11 Block S Section 2 within Angola-By-The-Bay (911 Address: 23046 Linden Way, Lewes, Delaware) (Tax Map I.D. 2-34-11.20-355.00)

An application for a variance from the rear yard setback requirement.

Ms. Passwaters presented the case. Kris Meck was sworn in and testified requesting a variance of 9.72 feet from the twenty (20) feet rear yard setback requirement for a proposed dwelling; that the Property is located in the Angola by the Bay development; that the Property is pie shaped making it unique and difficult to build a dwelling in strict conformity with the Sussex County Zoning Code; that the Homeowners Association has approved the proposed dwelling; that the variance is necessary to enable reasonable use; that the Applicant will not be able to place the proposed dwelling on the Property without the variance; that the difficulty was not created by him; that the variance will not alter the character of the neighborhood; that the odd sizes and shapes make it difficult to place a single family dwelling on lots in the neighborhood and other lots have been granted similar variances; that the proposed dwelling is similar to others in the neighborhood; that the dwelling will not be detrimental to the public welfare; that neighbors are supportive of his proposed dwelling; that the variance requested is the minimum variance necessary to afford relief; that the rear yard is adjacent to an open area; and that there are large trees and brush in the open area.

The Board found that one (1) party appeared in support of the Application.

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

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11438 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is pie-shaped which is unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The lot was not created by the Applicant;
5. The variance will not be detrimental to the public welfare;
6. The variance will not alter the essential character of the neighborhood; and
7. The variance sought is the minimum variance necessary 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. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

**Case No. 11439 – Ernie Tyler and Denise Tyler** – south of Route 54 (Lighthouse Road) and being southwest of Maple Lane, 1,500 feet south of Cedar Road and being Lot 34 within Keen-wik Subdivision (911 Address: 38400 Maple Lane, Selbyville, Delaware) (Tax Map I.D. 5-33-19.16-44.00)

An application for variances from the front yard and side yard setback requirements.

Ms. Passwaters presented the case. Ernest Tyler was sworn in and testified requesting a variance of five (5) feet from the thirty (30) feet front yard setback requirement for a proposed dwelling and a variance of five (5) feet from the ten (10) feet side yard setback requirement for a proposed HVAC unit; that he purchased the Property in 1967; that the existing dwelling was built in 1976 and is in poor condition; that the Applicants have retired and moved to the Property permanently; that the existing dwelling needs to be replaced; that the Homeowners Association required a twenty (20) feet rear yard setback; that the Applicants have changed their original house plans to better accommodate all the required setback requirements, including the Homeowners Association setbacks; that the Homeowners Association has a twenty-five (25) feet front yard setback and a five (5) feet side yard setback requirement; that the proposed dwelling is the best fit for the lot; that the proposed dwelling has been reduced in size and cannot be reduced any further; that the side yard variance is for the HVAC unit; that the Property is unique because it is surrounded by water on two (2) sides; that the difficulty has not been created by the Applicants; that there have been similar variances granted in the development; that the variances are necessary to enable reasonable use of the Property; that the variances will not be detrimental to the public welfare; that the variances will not alter the character of the neighborhood; that the variances will not impair the uses of adjacent and neighboring properties; that the variances are the least

modifications of the regulations at issue; that the variances are the minimum variances to afford relief; and that he has tried several different ways to place the dwelling on the Property but he cannot place the dwelling on the Property without a variance.

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

Ms. Passwaters read one (1) letter of support into the record.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11439 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique in shape and surrounded by water on two (2) sides;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The variances are necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicants;
5. The Homeowners Association restrictions limit the building envelope;
6. The variances will not be detrimental to the public welfare;
7. The variances will not alter the essential character of the neighborhood; and
8. The variances sought are the minimum variances necessary to afford relief.

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

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

**Case No. 11440 – Charles Wienhold & Susan Wienhold** – north of Route 54 (Lighthouse Road) and east of Canvasback Road 1,200 feet north of Swann Drive and being Lot 31 Block D within Swann Keys Subdivision (911 Address: 37018 Canvasback Road, Selbyville, Delaware) (Tax Map I.D. 5-33-12.16-392.00)

An application for variances from the side yard setback requirement.

Ms. Passwaters presented the case. Adam Rones and Charles Wienhold and Susan Wienhold were sworn in and testified requesting a variance of eight (8) feet from the ten (10) feet side yard setback requirement for proposed steps and landing, a variance of eight (8) feet from the ten (10) feet side yard setback requirement for an HVAC platform, a variance of five (5) feet from the ten (10) feet side yard setback requirement for a proposed modular dwelling, a variance of seven (7) feet from the ten (10) feet side yard setback requirement for steps and landing, and a

variance of three (3) feet from the ten (10) feet side yard setback requirement for a modular dwelling.

Mr. Roness testified that the Property is located in Swann Keys which was originally developed with narrow lots; that Swann Keys has evolved into a community with larger homes; that the proposed modular dwelling will measure 28 feet by 66 feet with a second floor deck on the waterside of the lot; that the lot is small and narrow creating a small building envelope thereby making it unique; that the Property is only forty (40) feet wide; that the variances are necessary to enable reasonable use of the Property; that the proposed dwelling will be consistent with other dwellings in the neighborhood; that the difficulty was not created by the Applicants; that the variances will not alter the essential character of the neighborhood; that the variances requested are the minimum variances necessary to afford relief; that the variances are consistent with the neighborhood; that the proposed modular dwelling is a one-story four (4) bedroom structure; and that other dwellings in the area are two-story dwellings.

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. 11440 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is only forty (40) feet wide which makes it unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood;
5. The variances sought are the minimum variances necessary to afford relief; and
6. The variances represent the least modifications of the regulations at issue.

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

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

**Meeting Adjourned 9:10 p.m.**