# MINUTES OF AUGUST 19, 2013

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 19, 2013, 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. Melissa Thibodeau – Zoning Inspector II, and Mrs. Jennifer Norwood - Recording Secretary.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of July 15, 2013 as circulated. Motion carried 5 – 0.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously to approve the Finding of Facts for July 15, 2013 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. 11248 – Beatrice Antonini** – north of Route 54 east of Canvasback Road and 1,030 feet north of Swann Drive and being Lot 27D within Swann Keys development. (Tax Map I.D. 5-33-12.16-396.00)

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

Ms. Thibodeau presented the case. Beatrice Antonini was sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant is requesting a variance of five (5) feet from the ten (10) feet side yard setback requirement for a proposed dwelling, a variance of nine (9) feet from the ten (10) feet side yard setback requirement for a proposed set of steps, a variance of 8.1 feet from the ten (10) feet side yard setback requirement for a proposed HVAC unit, and a variance of 3.4 feet from the ten (10) feet side yard setback requirement for a proposed stoop with a roof; that the Property is located within the Swann Keys development; that a manufactured house has been located on the Property for more than twenty (20) years; that the Applicant used the Property for a summer home and recently became a full-time resident in September 2012; that the lot is undersized as it measures forty (40) feet by one hundred and four (104) feet; that the Property abuts a lagoon in the rear; that the Applicant plans to remove the existing manufactured home; that the proposed two-story dwelling will measure twenty four (24) feet by fifty five (55) feet; that a variance is necessary to place the dwelling on the lot; that the proposed dwelling will be

10.6 feet from the side yard boundary; that the proposed steps and HVAC are on the north side of the Property; that the steps on the north side of the Property will be used for emergency access only; that the steps on the south side of the Property will be covered with a roof and the steps will lead to the main entrance of the dwelling; that the Applicant plans to erect a fence along the north side Property line to minimize noise; that the Property is unique due to its size; that the Property can only accommodate a single-wide dwelling but the community is transitioning to a stick-built home community; that the variances will enable reasonable use of the Property; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that the variances will not alter the character of the neighborhood as the proposed dwelling will be in conformity with other dwellings in the neighborhood; that the difficulty has not been created by the Applicant; that the variances requested are the minimum variances necessary to afford relief; that there have been over eighty (80) variances granted in the development; that there have been twenty-nine (29) variances granted on Canvasback Road including one on an adjacent lot and one on a lot across the street from the Property; and that the proposed location of the dwelling, steps and HVAC will be the same distance from the north side property line as the existing manufactured home, steps and HVAC. Ms. Antonini, under oath, confirmed the testimony of Mr. Fuqua. Mr. Fuqua submitted exhibits for the Board to review.

The Board found that three (3) parties appeared in support of the Application.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11248 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it is an undersized lot;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant as the Applicant did not create the lot;
4. The variances will not alter the essential character of the neighborhood because other similar variances have been granted in the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that 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. 11249 – Andrew K. Peruchi** – north of Hollymount Road (Road 48) 250 feet west of Joseph Lane and across from Phillips Branch Road (Road 302) being Lot 7 within Angolaville development. (Tax Map I.D. 2-34-11.00-83.00)

An application for a variance from the minimum lot width requirement for a parcel.

Ms. Thibodeau presented the case. Andrew Peruchi was sworn in and testified requesting a variance of fifty (50) feet from the one hundred fifty (150) feet lot width requirement for a parcel. The Applicant submitted a survey of the Property. Mr. Peruchi testified that he acquired the Property in 2009; that, prior to his purchase of the Property, a narrow strip of land shown on a survey was combined with Lot 7 in Angolaville; that the original deed showed two (2) separate lots; that he seeks to re-subdivide the two (2) parcels into separate lots; that the parcel the Applicant seeks to subdivide from Lot 7 measures 100 feet wide by 793 feet deep; that the parcel is unique in size; that the existing dwelling will meet setback requirements; that any structures constructed on the proposed parcel will meet required setback requirements; that the variance will enable reasonable use of the properties; that the proposed parcel cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the difficulty was not created by the Applicant; that the proposed variance will not alter the character of the neighborhood; that the proposed variance will not adversely affect adjacent properties because any dwelling would be constructed within the proper setback requirements; that the proposed variance will not be detrimental to the public welfare; that the proposed variance is the least modification of the regulation at issue; that the variance sought is the minimum variance necessary to afford relief; that the proposed parcel was used by his grandfather for a garden and was purchased in 2000; that the dwelling on Lot 7 was constructed in 1972; that no structures or additions have been added to Lot 7 since the additional land was acquired and combined with Lot 7; and that there are no structures on the proposed lot.

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

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11249 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The lot is unique because it is long and narrow in size;
2. Lot 7 was joined together with another parcel even though Lot 7 is part of a development and the other parcel is not;
3. The 100 feet parcel was never intended to be part of Lot 7;
4. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
5. The difficulty was not created by the Applicant;
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. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 11250 – Valerion Hodges** – southwest of Route 54 west of Tyler Avenue and 300 feet south of Lincoln Drive and being Lot 45, Block 5 within Cape Windsor development. (Tax Map I.D. 5-33-20.14-38.00)

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

Ms. Thibodeau presented the case. Valerion Hodges and Jacqueline Hodges were sworn in and testified requesting a variance of five (5) feet from the ten (10) feet side yard setback requirement for a proposed dwelling, porch and deck; a variance of five (5) feet from the twenty (20) feet rear yard setback requirement for a proposed screen porch and second floor deck; and a variance of eight (8) feet from the ten (10) feet side yard setback requirement for a proposed HVAC platform and HVAC units. Valerion Hodges submitted pictures to the Board for review. Valerion Hodges testified that they recently purchased the Property which is located in the Cape Windsor development; that the existing manufactured home needs to be removed due to damage from Hurricane " Sandy"; that the lot measures fifty (50) feet by ninety (90) feet; that the undersized lot makes it difficult to construct an average size dwelling in strict conformity with the Sussex County Zoning Code; that Cape Windsor was developed as a community for singlewide mobile homes but has transitioned to a community for single family dwellings; that there is no on street parking within Cape Windsor; 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 character of the neighborhood as the proposed dwelling is consistent with other homes in the neighborhood; that the Homeowners Association has approved the proposed plan, pending the Board's approval; that the variances are the minimum variances necessary to afford relief; that the requested variances represent the least modification of the regulation at issue; that adjacent houses each have a porch and second floor deck; that the proposed rear deck will be in line with the neighboring homes in the development; and that the proposed location will allow for off street parking, which is required by the development.

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. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11250 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it is only fifty (50) feet wide;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;

4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

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. 11251 – Charles Curtis Brown** – southeast of County road 535 (Middleford Road) 100 feet west of Walnut Drive, being Lot 109 within North Shores development. (Tax Map I.D. 3-31-6.00-315.04)

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

Ms. Thibodeau presented the case. Charles Curtis Brown was sworn in and testified requesting a variance of five (5) feet from the ten (10) feet side yard setback requirement and a variance of fifteen (15) feet from the twenty (20) feet rear yard setback requirement for a proposed detached garage. Mr. Brown testified that the Property is located in the North Shores development and was created in 1962; that the Applicant seeks approval to place a garage on the Property; that the existing dwelling was moved onto the Property in 1978; that he purchased the Property in 1987; that the garage cannot be placed on the opposite side of the Property or be moved to comply with the required setbacks due to the location of the existing septic system and drain field; that the difficulty has not been created by the Applicant; that the variances will not alter the essential character of the neighborhood; that the proposed detached garage will be brick in the front in order to match the existing brick dwelling; that the proposed location of the garage will line up with the existing driveway; that the neighbors have no objection to the Application; that the variances are not detrimental to the public welfare; that the variances are the minimum variances necessary to afford relief; that the Property is small; and that the attached carport will be removed and the garage will take its place.

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

Ms. Thibodeau stated that the Office of Planning & Zoning received four (4) letters of support to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11251 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the location of the existing septic system and drain field;
2. The car port will be removed;
3. The variances are necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicant;
5. The variances will not alter the essential character of the neighborhood;
6. The variances sought are the minimum variances necessary to afford relief; and
7. The variances represent the least modification possible of the regulation 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. Workman – yea, Mr. Rickard – yea, Mr. Hudson – yea, Mills – yea, and Mr. Callaway – yea.

**Case No. 11252 – Diana Moran** – north of Route 54, east of Laws Point Road, 930 feet north of Swann Drive, Lot 25, Block E within Swann Keys development. (Tax Map I.D. 5-33-12.16-306.00)

An application for variances from the side yard setback requirement.

Ms. Thibodeau presented the case. Diana Moran and Thomas Moran were sworn in and testified requesting a variance of 0.1 feet from the five (5) feet side yard setback requirement for an existing shed; a variance of 5.5 feet from the ten (10) feet side yard setback requirement for an existing deck; a variance of 9.8 feet from the ten (10) feet side yard setback requirement for an existing landing; and a variance of 6.2 feet from the ten (10) feet side yard setback requirement for an existing manufactured home. Diana Moran testified that they purchased the Property located in Swann Keys on July 3, 2013; that the manufactured home was placed on the Property in 1981 and a Certificate of Compliance was issued for the manufactured home; that the dwelling has never been moved; that all structures existed when they purchased the Property; that the Property is unique because it is only forty (40) feet wide; that a surveyor advised them variances were needed to bring the Property into compliance; that they are not planning to move or replace the existing dwelling; that the difficulty was not created by the Applicants; that the variances will not alter the character of the neighborhood; and that the variances are the minimum variances necessary to afford relief.

Thomas Moran testified that they removed six (6) inches of the existing steps located on the north side of the Property; and that the shed will not be moved.

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. 11252 for the requested variances based on the record made at the public hearing and for the following reasons:

1. A Certificate of Compliance was issued for the Property which led the Applicant to believe that the Property was in compliance with Sussex County Zoning Code;
2. The Property is unique in size as it is only forty (40) feet wide;
3. The variances is necessary enable reasonable use of the Property;
4. The difficulty was not created by the Applicant;
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.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that 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. 11253 – Gregory Ryan & Alberta Capria-Ryan** – east of Route 5, west of Rivers Edge Road, 300 feet north of Shore Court, being Lot 71 Phase 2 within Stonewater Creek development. (Tax Map I.D. 2-34-17.00-428.00)

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

Ms. Thibodeau presented the case. Gregory Ryan and Alberta Capria-Ryan were sworn in and testified requesting a variance of two (2) feet from the fifteen (15) feet side yard setback requirement for an existing attached garage. Gregory Ryan testified that the Applicants purchased the Property in July 2013; that the previous owners built the attached garage in May 2008; that a Certificate of Compliance was issued in August 2008; that the lot is unique in shape since it is more narrow at the rear property line than at the front property line; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the difficulty was not created by the Applicants; that it would be an extreme economic hardship to bring the structure into compliance; that the variance does not alter the character of the neighborhood; that the survey in June 2013 showed the encroachment; that the front of the garage is in compliance with the setback requirements; that the gradual angle of the Property creates the encroachment; that the variance requested is the minimum variance to afford relief; and that the variance will not be detrimental to the public welfare.

The Board found that two (2) parties 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. 11253 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its wedge shape and the location of a thirty (30) feet utility easement;
2. The difficulty was not created by the Applicants;
3. The variance is necessary to enable reasonable use of the Property;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance 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. Workman – yea, Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11254 – William Draine** – north of Road 297 (Mount Joy Road) 1,400 feet east of Road 305 (Hollyville Road). (Tax Map I.D. 2-34-21.00-47.00 & 47.02)

An application for a special use exception to retain and operate a driving range for a period of five (5) years.

Ms. Thibodeau presented the case. William Draine was sworn in and testified requesting a special use exception to retain and operate a driving range for a period of five (5) years. Mr. Draine submitted an exhibit for the Board to review. Mr. Draine testified that the Property was approved for a special use exception in 2008 and he seeks to renew this approval for another five (5) years; that he has operated the business since 2005; that he gives private golf lessons and practice time for his students; that the course is not open to the public; that the course is not used at night and has no lighting; that there are no noise problems associated with this use; that he maintains the landscaping; that he does not allow any negative behavior on the Property; that the Property is large enough to keep golf balls from entering neighboring properties; that there is adequate parking available for the students; that he has approximately sixty (60) students and will have no more than four (4) students on the course at a time; that use of the course is permitted by appointment only; that he has no intention of increasing or expanding the business; that his neighbors have no objection to the Application; that the use has not nor will it substantially adversely affect the uses of adjacent and neighboring properties; that neighboring property is owned by Sussex County for future Inland Bay wastewater project development; and that he lives next door to the Property.

Ronald Samms was sworn in and testified in support of the Application and testified that he is a student of the Applicant; that his golf game has vastly improved; and that he supports the Application.

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.

Ms. Thibodeau stated that the Office of Planning & Zoning received two (2) letters of support to the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Special Use Exception No. 11254 for the requested special use exception based on the record made at the public hearing for a period of five (5) years because the use does not substantially affect adversely the uses of the adjacent and neighboring properties with the condition that the use be consistent with its prior use and does not expand.

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted, for the reasons stated, for a period of five (5) years with the condition that the use be consistent with its prior use and does not expand**.

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. 11255 – Cape Investment, LLC** – northeast of Delaware Route One 700 feet northwest of Old Mill Road (Road 265A). (Tax Map I.D. 3-34-1.00-12.00)

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

Ms. Thibodeau presented the case. Ken Christenbury was sworn in to testify about the Application. Gene Bayard, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant is requesting a variance of twenty five (25) feet from the thirty (30) feet rear yard setback requirement for a lot in a C-1 General Commercial District adjacent to an AR-1 Agricultural Residential zoned property.

Mr. Bayard stated that the Property is zoned C-1 General Commercial District; that the Property is the site of the Meineke store; that the business is growing and the Meineke headquarters have requested that two (2) more service bays be constructed; and that the Applicant plans to relocate the existing storage building to the rear of the Property and needs a variance from the rear yard setback in order to do so.

Mr. Christenbury testified that the proposed location is the only available space for the building due to location of other buildings and the Storm Water Management area on the Property; and that there is no other place on the Property to place the storage facility.

Mr. Bayard stated that a neighboring property owner supports the Application; that the Applicant plans to install a fence between the property lines where the variance is needed; that the uniqueness to the Property is that there is no other location for the building; that the success of the business has created a practical difficulty; that the difficulty was not created by the Applicant; that the stormwater regulations have limited the space for the relocation of the storage facility; that the variance will not alter the essential character of the neighborhood; that the variance sought is the minimum variance necessary to afford relief; that the building will be approximately 2,000 square feet; that the neighbors are in support of the Application; that there are other commercial businesses in the area; that the use is consistent with other uses in the neighborhood; and that parts, vehicles, and automotive materials will be stored in the facility

Mr. Christenbury confirmed the statements made by Mr. Bayard.

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

Ms. Thibodeau stated that the Office of Planning & Zoning received one (1) letter in support of the Application.

Mr. Rickard stated that the he would move that the Board recommend approval of Variance Application No. 11255 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The physical conditions of the Property create a unique situation;
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 requested variance represents the least modification possible of the regulation at issue.

Motion by Mr. Rickard, seconded by Mr. Mills, 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.

**Meeting Adjourned 9:00 p.m.**