



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF JANUARY 3, 2011

The regular meeting of the Sussex County Board of Adjustment was held on Monday, January 3, 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. 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 December 20, 2011 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. 10744 – Wellers Tire Service, Inc.** – west of U.S. Route 13 intersection east of U.S. Route 13A.

A variance from the front yard setback requirement for sales display.

Mrs. Isaacs presented the case. James Weller was sworn in and testified requesting a 60-foot variance from the required 60-foot front yard setback requirement for display of merchandise on parcels 11, 92.01 & 93 and a 40-foot variance from the required 40-foot front yard setback requirement for sale of utility trailers on parcel 92.01 only; that the Board approved this request a few years ago, however it was only for the display of utility trailers; that he wants to display all merchandise at the edge of his property line; that due to the economy in the past couple of years he has had to expand his inventory to include other merchandise than just utility trailers; that he was not aware of any violation of this approval until recently; that he has brought all sign violations into compliance; and that he has moved all merchandise into compliance pending this hearing.

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

Motion by Mr. Workman, seconded by Mr. Mills, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

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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 variances be **granted a 59-foot variance from the required 60-foot front yard setback requirement and with the stipulation that any merchandise exceeding 7-foot in height must be setback 10-foot from the property line and that the 40-foot variance from the 40-foot front yard setback requirement was granted.** Vote carried 5 – 0.

**Case No. 10745 – Tammy L. and Frank D. Crawford** – west of Road 420, 0.27 mile north of Road 419, being Lot 8.

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

Mrs. Isaacs presented the case. Tammy and Frank Crawford were sworn in and testified requesting a 10-foot variance from the required 15-foot side yard setback requirement and a 15-foot variance from the required 20-foot rear yard setback requirement for a proposed pole building; that the pole building will measure 40' x 60'; that per the Homeowner's deed restrictions all accessory structures must be built at the rear of the property; that the proposed pole building will line up with the existing driveway; that their septic drain field is on the opposite side of the rear property; that there is a similar building a few properties over; that the property is long and narrow in size and the rear property line runs at an angle making the lot size unique; that the Homeowner's Association restrictions were not created by the Applicant; that the existing attached garage is too small; that the proposed building will store all of their vehicles and other equipment; and that they submitted pictures.

Thomas and Cynthia Ayd were sworn in and testified in opposition to the application and stated that they own the adjacent property to the side and rear of the Applicant's property; that they are concerned about run off since the Applicant has elevated the grade on his property; that the Applicant has filled in an existing ditch that is actually on his property; that the Applicant has removed trees from his property without his permission; and that the Applicant owns a trucking business and they are concerned the business will be run from this proposed building.

In rebuttal, Tammy and Frank Crawford, stated that they had permission from the previous owner Michael Richardson to fill in the ditch; that the ditch was never

maintained; that DelDOT has installed a pipe where the ditch was to help with drainage from both properties; that DelDOT is requiring him to install a swale; and that they have maintained the surrounding property and ditch for 8-years.

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. McCabe, seconded by Mr. Workman, and carried unanimously that the case be **tabled until January 24, 2011**. Vote carried 5 – 0.

**Case No. 1076 – Ryan Homes** – northeast of Road 299, north of Road 47.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Mike Ciabattoni was sworn in and testified requesting a 1.7-foot variance from the required 20-foot front yard setback requirement for an existing porch; that during the design and construction of the existing dwelling a mistake was made; that the mistake went unnoticed until a final placement survey was done; that the variance will not alter the character of the neighborhood; that to comply would create unreasonable difficulty since it is already built; that this is the minimum variance to afford relief; and that he submitted pictures and a survey.

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. 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. 10747 – Wayne Rust** – west of Road 295, north of Road 47.

A special use exception to retain a manufactured home for storage purposes.

Mrs. Isaacs presented the case. Wayne Rust was sworn in and testified requesting a special use exception to retain a manufactured home for storage purposes; that he owns a horse farm; that there is an existing barn on the property; that he uses the unit to store his old harnesses and other racing items for his horses; that the unit is more secure than

the barn; that there is no running water and no bath or kitchen in the unit; that it does have electric; and that most of the residents on adjacent properties are family members.

The Board found that no parties appeared in support of or in opposition to the application. It was noted that one party raised his hand in opposition, but waved off testifying.

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Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted with the stipulation there be no kitchen in the unit and since it will not substantially affect adversely the uses of the adjacent and neighboring property**. Vote carried 5 – 0.

**Case No. 10748 – Bunting Construction Corporation** – intersection of Mary Road and Pepper Avenue, being Lot 8 and part of Lot 24 within Indian Beach Surf Club.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Coleman Bunting, Jr. and James Moorhead were sworn in and testified requesting a 1.41-foot variance from the required 30-foot front yard setback requirement for a proposed 2<sup>nd</sup> floor deck extension; that the proposed decking will allow easier access between the two existing decks; that the property is considered a corner due to a paper street; that the street has never been developed and is covered with trees; that it will not alter the character of the neighborhood; that the adjacent properties have similar encroachments; that it is the minimum variance to afford relief; and that there will be no visual impact to 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. 10749 – Darlene Smialek** – north of Route 54, northeast of Blue Bill Drive, being Lot 39, Block G within Swann Keys development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Darryl Greer was sworn in and testified requesting a 4.5-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling and a 7.7-foot variance from the required 10-foot side yard setback

requirement for a proposed HVAC unit; that there are similar variances in the development; that she wants to maintain her side yard for access to the water; that she may build a garage on the property in the future; and that she plans to retire to the area.

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

Mrs. Isaacs read a letter to the Board in opposition to the application.

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

**Case No. 10750 – Ronald and Melodye Payne** – east of Road 453, north of Road 454B, being Lot 5-A.

A variance from the minimum lot width requirement for a parcel, minimum square footage for a parcel, and front yard setback requirement.

Mrs. Isaacs presented the case. Ronald and Melodye Payne were sworn in and testified requesting a 124.99-foot variance from the required 150-foot lot width requirement, a 0.161-foot variance from the required 32,670-square-foot minimum lot size requirement for Lot 5A-1, a 0.249-foot variance from the required 32,670-square-foot minimum lot size requirement for Lot 5A-2, a 29-foot variance from the required 40-foot front yard setback requirement for a non-conforming dwelling, and a 13-foot variance from the required 40-foot front yard setback requirement for a non-conforming building; that the bank is requiring the property be subdivided in order for the Applicant to obtain a loan; that the building has been on the lot for over 50-years; that the dwelling was built over 100-years ago; and that they submitted a letter referencing the standards for granting a variance.

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

**Case No. 10751 – O T Collins Family Limited Partnership** – north of Route 26, 618 feet east of Route 17.

A special use exception for a billboard, a variance from the setback requirements, maximum square footage and height requirements.

Mrs. Isaacs presented the case. Susan and Gene Collins and Joan Townsend were sworn in and testified requesting a special use exception for a billboard, a 21-foot variance from the required 300-foot separation setback requirement from dwelling, a 30-

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foot variance from the required 300-foot separation setback requirement from a dwelling, a 75-foot variance from the required 300-foot separation setback requirement from a dwelling, a 122-foot variance from the required 300-foot separation setback requirement from a manufactured home, a 140-foot variance from the required 300-foot separation setback requirement from a dwelling, a 600-square-foot variance from the required 600-foot maximum square-footage requirement for a billboard, and a 6.5-foot variance from the required 25-foot maximum height requirement for a billboard; that the billboard already exists on the property; that DelDOT is purchasing a portion of this property to expand Route 26; that this will be the second time DelDOT has taken a portion of this property; and that this was not created by the Applicant.

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 and that the variances be **granted since it was not created by the Applicant and since it will not alter the character of the neighborhood.**

Vote carried 5 – 0.

**Case No. 10752 – Del-Coast Design & Build, LLC** – north of Road 275, southeast of Mute Swan Lane, being Lot 7 within Summercrest development.

A variance from the front yard setback requirement for a through lot.

Mrs. Isaacs presented the case. Pamela McDonald was sworn in and testified requesting a 3-foot variance from the required 30-foot front yard setback requirement for a through lot; that the screen porch was built 2-years ago; that the wrong setback requirements were on the building permit; that they were not aware of the encroachment until after construction; that only a portion of the porch encroaches into the setback requirement; and that the variance will not alter the character of the neighborhood.

The Board members 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. 10737 – John and Wendy Godwin** – north of Route 54, Blue Bill Drive, being Lot 21, Block G within Swann Keys development.

A variance from the side yard setback requirement.

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Mrs. Isaacs presented the case. John Godwin was sworn in and testified requesting an 8-foot variance from the required 10-foot side yard setback requirement for a proposed manufactured home and HVAC units; that the variance is needed to allow ample parking on the property; that the development does not allow parking on the street; that the lot size was not created by the Applicant; that there have been numerous variances granted in the development; that the variance will not alter the character of the neighborhood; that it will be the minimum variance to afford relief; that he submitted medical records to show a handicap ramp will be required in the near future; and that the adjacent property has a 5-foot setback.

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

Mrs. Isaacs stated that the office received 2-letters in opposition to the application.

Motion by Mr. McCabe to approve the request died for lack of a second.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be **tabled until January 24, 2011**. Vote carried 5 – 0.

**Case No. 10738 – Alfred H. Johnson** – northwest of Route 13A, north of Garden Lane, being Lot 55 within Green Acres development.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Alfred and Blanche Johnson and Walter Guy and Guy Baynard were sworn in and testified requesting a 5-foot variance from the required 30-foot front yard setback requirement for an addition; that the addition is an extension of their living room; that their builder measured incorrectly; that the builder stated he measured from the center of the road; that there are no front yard property markers; that the foundation was already complete when they were made aware of the encroachment; that the Homeowner's Association made them aware of the encroachment; that the

Homeowner's Association advised them to come before the Board of Adjustment with the County; that they were surprised when the Homeowner's Association was in opposition to the application; that the variance will not alter the character of the neighborhood; that it is not detrimental to adjacent properties; that there have been other variances in the development; and that it will be the minimum variance to afford relief.

Donald Smith and Walter Landing were sworn in and testified in opposition to the application and stated that they did speak to the homeowner about the encroachment; that there are rear yard property markers; that they asked the builder to stop construction; that

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the builder stated he would beat the Homeowner's Association and the obtain the variance; that all the dwellings in the development meet the required setbacks; and that they feel the builder and homeowner should have found property markers or gotten a survey prior to construction.

The Board found that 3 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 2 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until January 24, 2011**. Vote carried 5 – 0.

### **OTHER BUSINESS**

**Case No. 10716 – Umbert V. Pomilio, III, Custodian** – east of Road 16, east of Bayshore Drive, being Lot 9, Block A within Old Inlet Beach Section I.

A variance from the side yard setback requirement.

Request for rehearing.

Mr. Berl advised the Board that a rehearing was not necessary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the request for rehearing be **denied**. Vote carried 5 – 0.

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