MINUTES OF OCTOBER 3, 2011

The regular meeting of the Sussex County Board of Adjustment was held on Monday, October 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, Mr. Lawrence Lank – Director, 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 Agenda as circulated. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to approve the Minutes of September 26, 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. 10868 – Theodore and Judie Sulecki – south of Route 54, east of Madison Avenue, being Lot 8 within Edgewater Acres development.

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

Mrs. Isaacs presented the case. Glenn Griffin was sworn in and testified requesting a 0.8-foot variance from the required 10-foot side yard setback requirement for an existing second floor screen porch, a 4.2-foot variance from the required 10-foot side yard setback requirement for a proposed set of steps to the second floor, and a 4.8-foot variance from the required 20-foot rear yard setback requirement for a proposed porch; that the existing porch was built in 2005 and was issued a Certificate of Compliance; that the proposed steps will allow the Applicant to gain access to the rear yard without re-entering the dwelling; that it will not alter the character of the neighborhood; and that he submitted pictures.

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

Case No. 10869 – Robert & Barbara Kacmarick – east of Route 1 (Coastal Highway), south of Collins Avenue, being Lot 13 within Indian Beach Surf Club development.

A request appealing the Directors decision for the front yard average setback and/or a variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Lawrence Lank was sworn in and stated that the Applicant was required to apply for a variance for additional construction; that the average front yard setback requirement determined for the dwelling cannot be applied to additional construction according to the Zoning Ordinance 115-182 c.

Mary Shrider-Fox, Attorney, was present on behalf of the Applicant, with Robert Kacmarick who was sworn in and testified requesting an appeal of the Director's decision and/or a 7.3-foot variance from the required 30-foot front yard setback requirement for a proposed deck; that the front yard setback was established by average in 1997 prior to construction of the Applicant's dwelling; that they feel that since a front yard setback was established by a survey any additional construction should be held to the established setback average; that the variance request has been requested should the Board decide not to overturn the Director's decision; that the requested variance will not alter the character of the neighborhood; that the average determined for the lot makes it unique; that it cannot be otherwise developed; that the proposed deck will connect two smaller deck areas; that without the variance parking spaces will be lost; and that they submitted pictures.

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 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 Board supports the Director's decision, and that the variance be granted since it meets the standards for granting a variance**. Vote carried 5 – 0.

Case No. 10870 – Alan Rothfeld – south of Route 54, east of Walnut Avenue, being Lot 7 within Keenwick development.

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

Mrs. Isaacs presented the case. Alan Rothfeld was sworn in and testified requesting a 3.2-foot variance from the required 30-foot front yard setback requirement, a 0.6-foot variance from the required 10-foot side yard setback requirement and a 3.9-foot variance from the required 10-foot side yard setback requirement for proposed additions; that he wants to expand his existing dwelling; and that the Homeowner's Association approves the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to leave the case open to allow the Applicant to better prepare his case for presentation later on this agenda. Vote carried 5 – 0.

Alan Rothfeld stated to the Board that the variances do not adversely affect the surrounding neighborhood; that they plan to move to the area and need to add on to their existing dwelling; that the building will be done in phases over the next few years; and that it is the minimum variance to afford relief.

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. Workman, 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. 10871 – Brian and Jennifer Marcozzi – north of Road 341 (Falling Point Road), north of West Lagoon Road, being Lot 63 within Dogwood Acres development.

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

Mrs. Isaacs presented the case. John Stark was sworn in and testified requesting a 9.6-foot variance from the required 30-foot front yard setback requirement, a 4.6-foot variance from the required 10-foot side yard setback requirement and a 1.4-foot variance from the required 10-foot side yard setback requirement for a proposed manufactured home; that the lot is 50'x 100'; that the proposed unit will measure 24'x 36'; that due to the size and the location of the existing septic system the proposed unit cannot comply with the setback requirements; that there are other variances in the area; that it will not alter the character of the neighborhood; and that he submitted a survey.

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. 10872 – James A. and Violet J. Johnson – north of Route 54, east of Canvasback Road, being Lot 44 within Swann Keys development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Chuck Shade was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for a proposed

manufactured home; that the Applicant wants to replace an existing single-wide with a double-wide; that the propose unit will measure 24'x 66'; that there are numerous variances in the development; that he has placed other units in the development with similar variances; and that it will not alter the character of the neighborhood.

JoAnn Furgeson was sworn in and testified in opposition to the application and stated that she lives next door; that she is concerned whether they need a 6-foot variance or a 5-foot variance; that she also had a variance for her home, however she had to alter her deck and come back before the Board; and that she also wants to know what the Applicant plans to do with the other structures on the property.

In rebuttal, Chuck Shade, stated that the deck they built for Ms. Furgeson had to be altered to meet the variance she was granted; that they have since learned from this mistake and that is why they are asking for a 5-foot variance on this application; and that all other structures on the lot will be removed.

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. 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 there are numerous variances in the development**. Vote carried 5 – 0.

Case No. 10873 – Judith, Kyle & Mallory Rhodes – east of Old Landing Road, north of Magnolia Road, being Lot 16 within Pine Valley a Mobile Home Park.

A variance from the minimum square footage for a parcel and a variance from the required lot coverage requirement.

Mrs. Isaacs presented the case. John Tarburton, Attorney, was present on behalf of the Applicant, with Judith Rhodes and JoAnn Adkins who were sworn in and testified requesting a

2,063-square-foot variance from the required 5,000-square-foot lot size requirement and a 28.05-square-foot variance from the required 35% lot coverage requirement for a manufactured home; that the Pine Valley Mobile Home Park is essentially a co-op and is owned and controlled by its tenants; that the tenants must obtain permits from the County and approval from the Board of Directors; that the Applicant obtained a permit for the new manufactured home, however the Board of Directors denied her request; that the original sketch plan of the park showed a concrete patio and driveway encroaching on Lot 16; that in July 2011 the Board of Directors had a survey done and agreed to adjust the lot lines; that the lots lines are not perpendicular creating unique lot sizes; that the lot cannot be developed in strict conformity; that the variance is needed to enable reasonable use of the property; that it has not been created by the Applicant; that it will not alter

the character of the neighborhood; that it is the minimum variance to afford relief; and that they submitted copies of surveys.

Jane Williams was sworn in and testified in support of the application and stated that she is the President of the Board of Directors; that she has lived in the park since 1977; that they are working to upgrade all the units in the park.

Carol Manion was sworn in and testified in support of the application and stated that she lives on Lot 19; and that she has no objection to the application.

The Board found that 3-parties 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 variances be **granted since it meets the standards for granting a variance**. Vote carried 5 – 0.

Case No. 10874 – JoAnn Adkins – east of Old Landing Road, north of Magnolia Road, being Lot 14 within Pine Valley a Mobile Home Park.

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

Mrs. Isaacs presented the case. John Tarburton, Attorney, was present on behalf of the Applicant, and testified requesting a 5.29-foot variance from the required 50-foot lot width requirement and a 2,436-square-foot variance from the required 5,000-square-foot lot size requirement for a lot; and that he would like to incorporate the previous testimony for Case No. 10873 into the record of this application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the testimony from Case No. 10873 be incorporated with this case. Vote carried 5 – 0.

The Board found that 3-parties appeared in support of this 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. 10875 – Mike Zilliox – south of Wil King Road, north of Acorn Drive, being Lot 17 within Oakwood Village development.

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

Mrs. Isaacs presented the case. Christina Wagner was sworn in and testified requesting a 6.4-foot variance from the required 10-foot rear yard setback requirement for an existing deck and a 2.4-foot variance from the required 30-foot front yard setback requirement for an existing dwelling; that the surveyor staked out the placement of the dwelling; that the building permit stated there was a 25-foot front yard setback requirement; that when applying for the Certificate of Compliance they discovered the deck did not meet the required setback requirements; that it will not alter the character of the neighborhood; and that there will be no adverse effect to the surrounding properties.

Mr. Lank researched the required setback requirements for the development and stated that the front yard setback requirement is 25-foot since it is a cluster subdivision, and that the Applicant will not need a front yard variance for the dwelling.

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 variance be **granted for a 6.4-foot variance from the rear yard setback requirement since it meets the standards for granting a variance and that the front yard variance request be denied since it is not necessary**. Vote carried 5 – 0.

Case No. 10876 – Lamb Ventures, LLC – east of Route 13 approximately 2,061 feet south of Route 18.

A special use exception to place two (2) billboards.

Mrs. Isaacs presented the case. Phillip Barton and Matt Phillips were sworn in and testified requesting a special use exception to place two (2) billboards; that the proposed billboards will meet all required setback requirements; that the billboard will measure 10’x 30’; that they will be wood pole structures; that they do not see any problem renting the proposed

billboards once constructed; and that the billboard 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. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted since it meets the standards for granting a special use exception with the stipulation that the Applicant must show a rental/lease agreement prior to issuance of a building permit**. Vote carried 5 – 0.

Case No. 10877 – Timothy N. MacIntyre – east of Road 453 (Robin Hood Road) approximately 191.49 feet north of Road 454 (Oak Branch Road).

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

Mrs. Isaacs presented the case. Timothy MacIntyre was sworn in and testified requesting a special use exception to use a manufactured home for storage; that the unit measures 14'x 70'; that the unit is in good condition and will not have an adverse effect to the neighborhood; that the unit will meet the required setback requirements; and that he will remove the kitchen and bath.

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 special use exception be **granted since it meet the standards for granting a special use exception with the stipulation that the kitchen and bath be removed from the unit**. Vote carried 5 – 0.

Board recessed for 10 minutes

Case No. 10878 – Juust Sooup Ministries, Inc. – south of Route 18 (Lewes Georgetown Highway) 195 feet south of Road 290 (Cool Spring Road).

A special use exception to allow the serving of foods at a custom cooking facility approved as a home occupation (not as commercial use).

Mrs. Isaacs presented the case. Dale and Ken Dunning were sworn in and testified requesting a special use exception to allow the serving of foods at a custom cooking facility approved as a home occupation (not as commercial use); that she has prepared food for the homeless, unemployed, and anyone in need of a meal for over 12-years; that she serves in church halls and has approximately 17-sites throughout the state of Delaware; that there are no fees for this service; that she prepares all the food herself; that she has volunteers that help serve the food and also help with clean-up; that she would like to use the new facility on Monday, Thursday and

Friday to serve between the hours of 11:00 a.m. to 2:00 p.m.; that she would also like to serve on holidays and special occasions; that the facility would be used for holidays such as Thanksgiving and Christmas and used for special occasions such as birthdays or other milestones in the people's lives that she serves; that she usually feeds up to 50 – 70 people daily; that there is adequate parking on the property; that approximately 6 volunteers are available to serve when needed; and that they submitted a letter supporting standards for granting a special use exception.

Mr. Lank stated for the record the previous approvals the Applicant has received since the building was constructed; that in early August he advised the builder that the site would be approved for a single-family dwelling, an attached unit to be used for a family member, hooked to the same utilities as the main dwelling and cannot have any cooking facilities; that the

Applicant can cook on site and deliver with a Home Occupation approval from the Director; and that on September 1, 2011 he told a representatives of the Builder that she could apply for a special use exception to expand the home occupation.

Paul Esposito was sworn in and testified in opposition to the application and stated that he lives on Cool Spring Road; that the area is strictly residential; and that he feels it will adversely affect the neighborhood.

John Doerfler was sworn in and testified in opposition to the application and stated that he has lived on Cool Spring Road for 25-years; that they received a letter in the mailbox on a Saturday stating that the area was being considered for a single-family dwelling; that on Monday the builders and television crews were on site; and that he is concerned about the type of people that will be coming to the soup kitchen if approved.

John Souder was sworn in and testified in opposition to the application and stated that he does support, the soup kitchen; that he worked a shift during the build; that he feels it is the wrong location for serving people on the site; that the surrounding property owners will be adversely effected by this type of use; that he is concerned people coming to the soup kitchen will loiter and live in the nearby woods to remain in the area for food; and that the entrance is on a bad curve and feels the increase in traffic will increase the danger.

Kelly Leishear was sworn in and testified in opposition to the application and stated that she lives approximately 500-foot from the Applicant's property; that she is concerned for her family's safety; that she supports the Applicant's soup kitchen; that she is opposed to serving people on the site; and that she feels more thought should have been considered on a location that could have better suited the people in need of the soup kitchen.

Mark Leishear was sworn in and testified in opposition to the application and stated that he feels the County was completely irresponsible when approving this type of construction; that the County let the building be constructed for the sake of television and now they want to implement the Codes; that he personally went through a similar use for his property and knows

what an asset to the Applicant a larger kitchen will be for her cause; that he submitted information in regard to the increased risk to surrounding properties near a soup kitchen; that a lot of the people are homeless, unemployed, have mental health issues, and other substance abuse issues; that there is no law enforcement near the area; that the soup kitchen should be located closer to an area that people without transportation can access; that he feels the people will set up homeless encampments in the nearby woods to remain close to the soup kitchen; that there is no loss to the Applicant if they are unable to serve on this site; that the Applicant can still make the food on site and take the food to her existing locations; and that he submitted pictures, a booklet supporting his findings, and a CD-Rom for the Board's review.

Brenda Hudson was sworn in and testified in support of the application and stated that she owns and lives on the adjacent and surrounding properties to the Applicant's property; that she doesn't understand how the opposition can support the applicant's cause and be against it being in their neighborhood; that if not here, then where; that the increased traffic now is people curious to see the site; that bad things can happen anywhere; and that she cannot believe that the neighbos are opposed to helping people in need.

Brooks Freeman was sworn in and testified in support of the application and stated that the increased need for this type of use was created by the County; that the Applicant is a modern day Mother Teresa and gives her all to help people in need; that she gives her all to her ministry; and that he played an audio of a song written as a tribute to the Applicant.

Mark Moore was sworn in and testified in support of the application and stated that the Applicant prepares food for 17-locations; and that he feels there should be a way this location can be used to fill the need of the Applicant.

In rebuttal, Ken Dunning, stated that he has been married for 40-years; that he works 3 jobs to support his wife's ministry; that she receives no pay and does all the prep work herself; that when she sees people in need she does what she can to fill that need; that she touches the lives of the people that come to eat her soup; and that each guest that is served is asked to sign a guest book, and then each night she prays for them.

Reverend Brangman was sworn in and testified in support of the application and stated that his church is a few doors down from the site; that he has listened to all of the testimony tonight and would like to offer a partnership with the Applicant to help people to and from the soup kitchen; and that by offering transportation he hopes to ease others concerns.

The Board found that 13-parties appeared in support of the application.

The Board found that 7-parties appeared in opposition to the application.

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

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until November 7, 2011 to allow the Board to review all the material submitted at the hearing**. Vote carried 5 – 0.

Meeting Adjourned 10:50 p.m.