

MINUTES OF MARCH 5, 2007

The regular meeting of the Sussex County Board of Adjustment was held on Monday evening March 5, 2007, 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. Callaway, Mr. Hudson, Mr. McCabe, Mr. Mills, and Mr. Workman, with Mr. Berl – Assistant County Attorney, Mrs. Thibodeau – Secretary to the Board, and Mr. Lank – Director of Planning and Zoning.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Vote carried 5-0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to table action on the Minutes of February 26, 2007 until March 19, 2007. 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. 9770 – DAVID C. LUDEMA/KENT SIGN CO. – intersection of U.S. Route 13A and Road 642.

A special use exception to place a billboard.

Mrs. Thibodeau presented the case. David C. Ludema was sworn in with James Sharp, Attorney, present on behalf of the application, and testified requesting a special use exception to place a billboard at the corner of U.S. Route 13A and Road 642.

Mr. Berl advised the applicant that they first need to address the Board with reasons as to why this application is different from the previous application filed in 2003.

Mr. Sharp and Mr. Ludema stated in their presentation and in response to questions raised by the Board that the application is different in that the neighborhood has changed; that the use will not adversely affect the neighborhood; that a warehouse is under construction for Good Will Industries; that commercial zoning exists; that the applicant did not provide any evidence in 2003 that supported his application; that the Good Will Industries site has a billboard located on the site; that the applicant contacted the Town of Bridgeville in 2003, after the Board hearing, and spoke to the Town Manager asking permission to speak to the Town Council and was advised that he could not speak to the Council; that the Bridgeville Lions Club trailer is located on the site; and that the site is located on Lot #3, not #1.

Mr. Berl stated that even though the application references Lot #1 the advertisement is acceptable since it does not include a Lot reference.

Mr. Mills stated that he does not feel that this application is any different from the application filed in 2003.

There was a consensus of the Board that the application is not different from the application filed in 2003.

Motion by Mr. Mills, seconded by Mr. Workman and carried unanimously that the application for Case No. 9770 **be denied since the case is not substantially different from the 2003 application.** Vote carried 5 – 0.

CASE NO. 9771 – CATHERINE DOYLE – 300 feet east of Road 225, south of Williams Street, being Lots 31, 32, 33 and 34.

A variance from the front yard setback requirement.

Mrs. Thibodeau presented the case. Catherine Doyle and Vincent Mackey were sworn in or affirmed and testified requesting a 2.06-foot variance from the required 25.56-foot average front yard setback; that they replaced a mobile home on the lot with a modular home at the same location; that when they requested a Certificate of Compliance they found out that the modular did not meet the setback average; that a surveyor established the average and that the average was recalculated by the Planning and Zoning staff; that she received an emergency Certificate of Compliance that terminates today and is subject to the Board decision; that Choice Homes was their contractor and installer; and that relocation of the modular would require moving utilities and foundation.

The Board found that there were no parties present in support of the application.

Mrs. Thibodeau summarized a letter from Lena Boyd on behalf of the community expressing opposition.

Mr. Berl advised the Board that since the letter did not make reference to any reasons of objection to the application the Board should not give consideration to the letter.

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the variance be **granted since the lot is unique; since a lot of non-conforming uses and setbacks exists in the development; since the applicant did not create the violation; and since it is a minimum variance to afford relief. The County Attorney shall send a letter to Choice Homes.** Vote carried 5 – 0.

CASE NO. 9772 – WALTER GLEISNER, JR. – northeast of Road 346, east of Sylvan Vue Drive, being Lot 6 within Blackwater Cove development.

A variance from the rear yard setback requirement.

Mrs. Thibodeau presented the case. Walter Gleisner, Jr. was sworn in and testified that he wants to build a garage; that the distance between his home and the garage will be real tight unless he can obtain a variance; that his septic system is located on the left side of the rear yard; and that it will be easier to get in and out of the garage if the variance is granted.

The Board found that there were no parties present in support of or in opposition to this 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**. Vote carried 5 – 0.

CASE NO. 9773 – KYLE HAMILTON/DESIGN DELMARVA – north of Road 302, west of Route 5.

A variance from the maximum height requirement.

Mrs. Thibodeau presented the case. Kyle Hamilton was sworn in and testified that they are contracting to build the community center for the Independence development; that the proposed community building contains 22,900 square feet; that a cupola is proposed on the roof in the center of the building to offset the length of the building; that there will be no use, no access, and no floor space in the cupola; that there will be a light in the cupola; that the building will be approximately 1,500 feet from Route 5 and approximately 2,000 feet from Road 302; that the building will be located in the amenity area in the center of the development.

The Board found that Mr. Hamilton submitted a rendering of the building, a site plan of the development, a floor plan of the building, elevations of the building, and a drawing of the community building within the amenity area of the development.

The Board found that there were no parties present in support of the application.

Tiffany Derrickson was sworn in and submitted and summarized a letter in opposition expressing concerns about the height variance and the developers. Ms. Derrickson also submitted a letter in opposition from Johan Poulsen.

Mrs. Thibodeau summarized a letter received in opposition from Norma Lee Burton Derrickson.

Mr. Hamilton, in rebuttal and in response to questions raised by the Board, testified that the Baywood Greens clubhouse, located within 2 miles of this site, exceeds the 42-foot height limit and was granted a variance, and that the developers are just starting site work for the development.

Motion by Mr. Workman, seconded by Mr. Hudson and carried unanimously to take this case under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case.

The Board discussed the variance requested. It was noted that there have been several variances for the height of cupolas granted for large clubhouses or community center buildings. There was a consensus of the Board that they had no objections to the variance requested.

Motion by Mr. Mills, seconded by Mr. Workman and carried unanimously that the height variance be **granted since the cupola will be unique on the community center in a large development; since the height of the cupola will tone down the length of the structure; and since the use will not alter the character of the neighborhood.** Vote carried 5 – 0.

CASE NO. 9774 – DALE PHILLIPS – west of Route 30, 1,656 feet north of Route 9.

A variance from the rear yard setback requirement.

Mrs. Thibodeau presented the case. Dale Phillips was sworn in and testified that he is requesting a variance of 47-feet from the required 50-foot setback for a manure shed from his grandfathers property line; that the location proposed for the manure shed will allow for a 60-foot spacing from existing poultry houses; that the variance will allow for future expansion of his poultry farm; and that his grandfather has no objection to the application.

By a show of hands 2 parties were present in support of the application.

The Board found that there were no parties present in opposition to this application.

Motion by Mr. Workman, seconded by Mr. Hudson and carried unanimously that the variance be **granted since it is the minimum variance to afford relief, and since there should be no negative impact on the area.** Vote carried 5 – 0.

CASE NO. 9775 – STEPHEN CALVARESE – north of Ramblewood, being Lot 23 within Fieldwood development.

A variance from the front yard setback requirement.

Mrs. Thibodeau presented the case. Stephen Calvarese was sworn in with Seth Thompson, Attorney, and testified requesting a 0.5 foot variance from the required 30-foot front yard setback; that a 1999 survey indicated that the setback was 30.0 feet; that a recent survey indicates that the setback is only 29.5 feet, indicating that a 0.5 foot variance is needed; that the applicant has chosen to exercise caution by applying for the variance and to show clean title to the property; that the property has transferred several times; that they anticipate no negative impact on the community; and that the variance is needed to allow reasonable use of the property.

Mr. Thompson submitted a copy of a 1999 deed and survey of the property indicating the setback and a copy of a recent survey for the record.

The Board found that there were no parties present in support of or in opposition to this application.

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the variance be **granted since the application meets the standards for the granting of a variance.** Vote carried 5 – 0.

CASE NO. 9776 – PETE AND MARY ANN SAPOROSA – east of Blue Teal, being Lot 16, Block B within Swann Keys development.

A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. Charles Cohen was sworn in and testified, on behalf of the applicants, requesting a 0.4 foot variance from the required 10-foot side yard setback on the south side of the dwelling; that he appeared before the Board several months ago for a variance on the north side of the dwelling; and that the dwelling already exists on the property.

The Board found that there were no parties present in support of or in opposition to this application.

Motion by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the variance be **granted since the lot is very small; since it would be difficult to develop the lot without a variance; since there should be no impact on the neighborhood; and since several variances have been granted in the development.** Vote carried 5 – 0.

CASE NO. 9777 – ROBERT PARSONS – north of Route 24, 905 feet east of Road 309.

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

Mrs. Thibodeau presented the case. Patty Parsons and Brent Parsons were sworn in and testified requesting a 25-foot variance from the required 150-foot lot width requirement; that they are proposing to divide the parcel into two lots so that Brent Parsons can build a home on the smaller lot; that a minimum of 150-foot lot width will be retained on the original parcel; that the remaining lands will still have adequate frontage and access from Road 309; and that the access to both lots will be from a shared entrance.

The Board found that there were no parties present in support of or in opposition to this application.

Motion by Mr. Hudson, seconded by Mr. McCabe and carried unanimously that the variance be **granted since the use will not alter the character of the neighborhood.** Vote carried 5 – 0.

CASE NO. 9778 – STEPHEN L. WALLO – east of Road 258, 582 feet east of Road 88.

A variance from the front yard setback requirement.

Mrs. Thibodeau presented the case. Stephen Wallo was sworn in with Heidi Balliet, Attorney, and testified requesting a 7-foot variance from the required 40-foot front yard setback requirement; that historically the lot has been improved by a dwelling for over 100-years; that the survey of the original dwelling indicates a front yard setback of 35.3-feet; that during the process of preparing for remodeling of the original dwelling termite and wood rot damage was found and the dwelling had to be removed; that the builder did not realize that a 40-foot setback was required; that it would be a hardship on the applicant to relocate the dwelling to conform to the required setbacks; that the dwelling has already been constructed; that they were not aware of the violation until they applied for a Certificate of Compliance; and that the builder applied for the building permit.

Ms. Balliet submitted a letter from Herring Creek Builders, Inc. with attached surveys of the original dwelling and the new dwelling for the record.

The Board found that there were no parties present in support of or in opposition to this application.

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the variance be **granted since the Attorney accurately described the reasons for granting a variance. The County Attorney shall send a letter to Herring Creek Builders, Inc.** Vote carried 5 – 0.

CASE NO. 9779 – BRUMBLEY MOBILE HOME PARK – east of Route One, Brumbley's Place, being Lot 17 within Estella Smith Mobile Home Park.

A variance from the separation requirement between units in a mobile home park.

Mrs. Thibodeau presented the case. W. Ralph Brumbley was sworn in and testified requesting a 5.2-foot variance from the required 20-foot separation distance between a mobile home and a shed on an adjacent lot within a mobile home park; that he replaced the unit on Lot 17 and found that the mobile home was only 14.8 feet from the shed on Lot 18; that the mobile home is 29-feet from the mobile home on Lot 18; and that the shed has been on Lot 18 since he purchased the community.

The Board found that there were no parties present in support of or in opposition to this application.

Motion by Mr. Hudson, seconded by Mr. Workman and carried unanimously that the variance be **granted the unit was a replacement for an existing unit in the same location; since the variance does not alter the character of the park; since it is the minimum variance to afford relief; and since the application meets the criteria for the granting of a variance.** Vote carried 5 – 0.

OTHER BUSINESS

CASE NO. 9379 – CINGULAR WIRELESS – south of Route 22, 1.2 miles east of Route 22C.

A special use exception to place a telecommunication tower.

Request for a time extension.

Mrs. Thibodeau summarized a letter from Robin van Laer for Bechtel Communications, agent for Cingular Wireless, requesting a time extension of six (6) months.

Motion by Mr. Mills, seconded by Mr. Workman and carried unanimously that the special use exception to place a telecommunication tower be **granted a six (6) month time extension**. Vote carried 5 – 0.

Meeting Adjourned at 8:10 p.m.