

MINUTES OF MAY 4, 2009

The regular meeting of the Sussex County Board of Adjustment was held on Monday May 4, 2009, 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. Dean Malloy and Mrs. Kelly Passwaters – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Mills, 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 April 20, 2009 meeting 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. 10384- Pat Quillen and Quillen Signs- north of Route 54, intersection east of Bennett Avenue, being Lots 7 through 15.

A special use exception to place billboards and a variance from the maximum height requirement for billboards.

Mr. Malloy presented the case. Pat Quillen was sworn in and testified requesting a special use exception to place two (2) billboards and a 10-foot variance from the required 25-foot maximum height requirement for a billboard; that he would like to erect two (2) billboards that will be placed on steel monopoles; that they will measure 12' x 24'; that when the bridge was rebuilt several years ago, the road was raised; that a height variance is needed so the billboards can be seen; that the billboard on Bennett Avenue will be removed; and that one (1) billboard will be located on the east end of the property and one (1) on the west end of the property.

Megan Mahoney, Attorney, testified in opposition to the application and stated that she is representing the Fenwick Landing community that is adjacent to the subject property; that the billboards were advertised as being in a C1 district; that the property is located in a B1 district and does not allow off premise signs; that she feels the applicant has not met the standards for granting a special use exception and variance; that the land can be otherwise developed; that the billboard can be seen without a height variance; and that she submitted photos and letters from residents in the Fenwick Landing community.

Dan Keravich was sworn in and testified in opposition to the application and stated that the bridge has been there for years; that he has safety concerns with the billboard; and that he does not want to see a lighted sign when he looks out his window.

William Pommerehn was sworn in and testified in opposition to the application and stated that he lives adjacent to the location of the possible billboard; and that he feels if a strong Nor-Easter storm comes through it could blow the billboard down.

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

The Board found that 6 parties appeared in opposition to the application.

Mr. Malloy stated the office received 11 letters in opposition to the application.

Mr. Berl asked the Board to table the case due to legal issues with advertising.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until May 18, 2009**. Vote carried 5 – 0.

Case No. 10385 – Angela Vernet- north of Road 565, 400 feet east of Road 605, being Lot 4 within Deerfield development.

A special use exception for a day care facility.

Mr. Malloy presented the case. Angela Vernet was sworn in and testified requesting a special use exception for a day care facility; that she currently operates a day care at another location; that she would like to move the facility to her home; that she will provide care for up to 12 children; that the children range in age from 2 years old to 12 years old; that the facility will be open from 6:00 a.m. to 6:00 p.m.; and that she will only have two (2) employee's.

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 will not substantially affect adversely the uses of adjacent and neighboring properties**. Vote carried 5 – 0.

Case No. 10386 – CMH Inc.- south of Road 629, east of Road 224, being Lots 3 through 8 within James P. Mayhew development.

A variance from the minimum lot size requirement to place a manufactured home.

Mr. Malloy presented the case. Steve Becker was sworn in and testified requesting a 12,340-square foot variance from the required 32,670-square foot lot size requirement for a parcel; that they would like to place a spec manufactured house as a land/home package; that he feels the home would not alter the essential character of the neighborhood; that the original property owners could not get financing so they acquired the property; and that the manufactured home would be placed on block foundation.

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 variance be **denied since the property can other wise be developed**. Vote carried 5 – 0.

Case No. 10387 – Frances A. Wisniewski- west of Route One, west of Virginia Avenue, being Lot 13, Section 3 within Bayside development.

A variance from the front yard setback requirement.

Mr. Malloy presented the case. Frances Wisniewski was sworn in and testified requesting a 5-foot variance from the required 30-foot front yard setback requirement for a 2nd floor enclosed deck; that she would like to enclose the 2nd floor deck; that the deck has been there since 1980; that she was notified by the builder that the deck encroaches into the setback; that she needs the extra space for her husband to move around the house since he is handicapped; and that the neighbors do not object.

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 case be **tabled for the office staff to determine if a certificate of occupancy was issued and if a variance was approved for the deck**. Vote carried 5 – 0.

Case No. 10388 – Regina and Albert Minzer- west of Route One, north of Janice Road, being Lot B-17 within Whispering Pines Mobile Home Park.

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

Mr. Malloy presented the case. George Rust was sworn in and testified on behalf of the application and requested a 4.6-foot variance from the required 20-foot separation requirement between units; that he constructed an addition that measures 12' x 22'; that it does not meet the separation requirement; that the neighbor does not object; that he thought the separation requirement was measured between manufactured homes; and that the deck that was previously there did not meet setback requirements.

Albert Minzer was sworn in and testified stating he has owned the manufactured home since 2005; and that the deck was on the manufactured home when he purchased it.

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. Vote carried 5 – 0.

At the conclusion of the public hearing, the Chairman referred back to the case. Motion by Mr. Hudson, 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. 10389 – Winifred Slayton- northeast of Road 637, 624 feet northwest of Road 636, being Lot 8 within Jacob W. Davis development.

A variance from the minimum lot width and lot size requirements for parcels.

Mr. Malloy presented the case. James Todd Webb was sworn in and testified on behalf of the application and requested a 43.11-foot variance from the required 150-foot lot width requirement for a parcel and a 9,654-square foot variance from the required 32,670-square foot lot size requirement for a parcel; that there are three (3) dwellings located on the parcel; that they plan to do a lot line adjustment to Mr. Slayton's land and Mrs. Slayton's land to create four (4) lots; that the four (4) lots would make the land more attractive if they were to be sold; that he has tried to give each lot equal road frontage and acreage; that he feels it will not alter the essential character of the neighborhood; and that one manufactured home will be removed.

The Board found that 2 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 case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearing, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Workman, 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. 10390 – Kathleen E. Slayton- northeast of Road 637, 709 feet northwest of Road 636.

A variance from the minimum lot width requirement and variance from the side yard setback requirement.

Mr. Malloy presented the case. James Todd Webb who was sworn in at the previous hearing testified requesting a 43.11-foot variance from the required 150-foot lot width requirement for a parcel and a 3.9-foot variance from the required 10-foot side yard setback requirement for a dwelling; that the dwelling encroaches on the western boundary of Lot 2; and that the parcel is being changed to a $\frac{3}{4}$ acre lot.

The Board found that 2 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. McCabe, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

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

Mr. Mills asked that testimony from the previous hearing be incorporated into this case. Motion by Mr. Mills, seconded by Mr. Hudson, 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. 10391 – Jason Topercer- south of Route One, 176 feet northwest of Road 276.

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

Mr. Malloy presented the case. Tom Colucci was sworn in and testified on behalf of the applicant and requested a special use exception to place two (2) windmills; that the windmills will be for the Lewes Fishhouse; that the windmills are designed for an urban setting; that the windmills will be placed approximately 150-feet from the closet building; that they will measure 42-feet in height; that the windmills are rated at 50 decibels; that they will not alter the essential character of the neighborhood; and that the windmills will be anchored by concrete block and j-bolts.

The Board found that 4 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. Workman, and carried unanimously that the case be **tabled for the office to receive an engineering certification stating the units would be secure**. Vote carried 5 – 0.

Case No. 10392 – Flexera – northeast of Road 357, east of Bayfront Drive, being Lot 25 within Quillens Point development.

A special use exception to place a windmill.

Mr. Malloy presented the case. Robert Light was sworn in and testified requesting a special use exception to place a windmill; that Mr. Light wanted to clarify that the windmills previously approved did not come down due to wind, they were removed at the request of the homeowners; that the windmill will be located at the rear of the home; that it will measure 40-feet in height; that it will be a horizontal windmill; that the windmill is rated at 47 decibels; that he does use foundation specifications that are certified; that the windmill will not obstruct any view; and that it increases property value.

Tom Farrah was sworn in and testified stating he is anticipating savings on his electric; and that he submitted a petition in support from neighbors.

Paul Wilkinson was sworn in and testified in opposition to the application and stated he is a board member of the Homeowners Association; that the Homeowners Association approved solar panels to be placed on the applicants roof; that the windmill will obstruct the neighbors view; that the windmill will only generate 13% of electricity; that according to the Flexera website the windmill that will be used on the property should be placed on at least a ½ acre lot; and that he has concerns that it will kill birds.

Gerald Campbell was sworn in and testified in opposition to the application and stated he lives adjacent to the applicant; that all utilities are underground; that the windmill would be an eyesore; and that it will decrease property value.

Russell Trout was sworn in and testified in opposition to the application and stated he lives next door to the applicant; that he would see the windmill every time he looked out his window; that he has concerns with the noise it would generate; and that he has concerns that it will kill birds.

Arthur Goodwin was sworn in and testified in opposition to the application and stated that they live on small lots; that he has lived in the subdivision for 19 years; that the windmill would affect the quality of life; and that there will be a noise and visual impact.

In Rebuttal, Mr. Light stated the manufacturer gives specifications on how and where to install the windmill; that the Homeowners Association does not enforce other restrictions in the subdivision; and that he will make sure the foundation will not move.

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

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

Mr. Malloy stated the office received 17 letters in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until the May 18, 2009 meeting**. Vote carried 5 – 0.

Case No. 10393 – Wayne K. and Mary Lou Fritz- southwest of Bowden Street, northeast of Elizabeth Street, being Lot 34 within Bowden Acres development.

A variance from the front yard setback requirement.

Mr. Malloy presented the case. Wayne Fritz was sworn in and testified requesting a 5-foot variance from the required 25-foot front yard setback requirement; that he would like to place a garage or a carport on the property; and that it is a thru lot.

Mr. Berl stated to the applicant that the application states he is applying for a variance for open unenclosed deck steps.

Mr. Fritz stated he is applying for a variance for the garage and that he called the office and the staff told him he could apply for the garage on the current application.

Mr. Berl stated that the advertising is for a front yard and due to him needing a side yard variance, the application cannot be heard. He will need to reapply for the correct variance.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled for the applicant to re-apply for the correct variance and that the applicant pay no additional fees**. Vote carried 5 – 0.

Case No. 10394 – Barbara Jean Fogarty- south of Route One, 170 feet northwest of Road 271, being Lot A-42 within Sea Air Mobile City Mobile Home Park.

A variance from the maximum allowable lot coverage in a mobile home park.

Mr. Malloy presented the case. Barbara Jean Fogarty was sworn in and testified requesting a 221.65-square foot variance from the allowable 1,218.35-square foot lot coverage; that she placed the manufactured home in November 2008; that the deck has already be constructed; that she received approval from the park management; that she was told no variance was needed as long as she met the setback requirements; and that she asked the contractor to continue with the deck because only the floor joices were up and she was afraid kids would play on it since she does not live there year around.

Dana Hanson was sworn in and testified stating he constructed the deck; that he obtained the permit; that he did not read the setback requirements on the permit; and that he is not a licensed contractor.

Jeanne Sisk was sworn in and testified in opposition to the application and stated that the Homeowners Association has received numerous calls in reference to the deck; that the park manager approves stuff that does not fit on the lots; that she has safety concerns with the deck; and that each lot is suppose to have two (2) parking spots and the applicant now only has one (1).

The Board found that 1 party appeared in support of the application.

The Board found that 4 parties appeared in opposition of the application.
(Revised)

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

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until all violations in the park are corrected**. Vote carried 5 – 0.

Case No. 10395 – John and Kim Wilkerson- southeast intersection of Road 30 and Road 31, being Lot 3.

A variance from the maximum age requirement for placement of a manufactured home.

Mr. Malloy presented the case. John and Kim Wilkerson were sworn in and testified requesting a variance from the maximum age requirement for placement of a manufactured home; that they would like to place a 1998 manufactured home; that it measures 28' x 60'; that the manufactured home is currently located on another property; that there is a singlewide located behind the property in question; that it will be placed on block foundation; and it will not alter the essential character of the neighborhood.

The Board found that 3 parties appeared in support of the application.

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

Mr. Malloy stated the office received 1 letter in opposition to the application.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variance be **granted since the applicant already lives in the home and since it will not alter the essential character of the neighborhood**. Vote carried 5 – 0.

Case No. 10396 – Laurel Grain Co.- north of Road 28, 1,219 feet west of U.S. Route 13.

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

Mr. Malloy presented the case. Burton Messick was sworn in and testified requesting a 53-foot variance from the required 150-foot lot width requirement; that they want to subdivide and do a land swap with the Southern Delaware Truck Growers Association; that the lot being subdivided is 6.74 acres; that it is all wooded land; that Lot 2 will become 7.51 acres; that it will not alter the essential character of the neighborhood; and that there will be no truck traffic on Mumford Lane.

Michelle Cubbage was sworn in and testified in opposition to the application and stated the Laurel Grain Company affects there quality of life; that Mumfords Lane is a private road that is maintained by the property owners; and that trucks will destroy the road.

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

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

Motion by Mr. Mills, 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. 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. 10397 – Lewes Pigs LLC- northeast of Route One, northwest of private drive.

A variance from the buffer requirement in a Combined Highway Corridor Overlay Zone.

Mr. Malloy presented the case. Steve Montgomery and Jim Weisgerber were sworn in and testified requesting a 4.5-foot variance from the required 20-foot Combined Highway Corridor Overlay Zone; that their restaurant is operating under a temporary certificate of occupancy; that the parking lot encroaches; and that the fire lane is larger than required, which has caused the encroachment.

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. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it will not alter the essential character of the neighborhood and since it is the minimum variance to afford relief.** Vote carried 5 – 0.

Case No. 10398 – Flexera, Inc.- southwest of Route 5, being Unit 8.

A special use exception to place a windmill.

Mr. Malloy presented the case. Finn McCabe and Cameron Haughey were sworn in and testified requesting a special use exception to place a windmill; that they would like to install a windmill at there office location; that it will be located over 200-feet from the adjacent properties; that it will be a vertical windmill; and that it will measure 45-feet in height.

The Board found that 1 party 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 special use exception be **granted since it will not substantially affect adversely the uses of adjacent and neighboring properties.** Vote carried 5 – 0.

OLD BUSINESS

Case No. 10330 – Big Debs LLC- south of Route 9, being Lots 2 and 3.

A variance for an additional wall sign and a variance from the maximum square footage requirement for a sign.

The Board discussed the case, which has been tabled since January 5, 2009.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted and that a letter be sent to the sign company.** Vote carried 5 – 0.

Case No. 10354 – Jerry E. Yates- east of Second Street, 27 feet south of Providence Road.

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

The Board discussed the case, which has been tabled since April 20, 2009.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled for the applicant to apply for a variance for the existing building and to see if proper permits and a certificate of occupancy were obtained.** Vote carried 5 – 0.

Case No. 10361 – Mountaire Farms, Inc.- south of Route 24.

A special use exception for a resource recovery plant.

The Board discussed the case, which has been tabled since March 16, 2009.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted with the stipulation that the operation will cease if the nitrate levels exceed current output levels per DNREC and since it will be located in the proper zoning and since it will not substantially affect adversely the uses of adjacent and neighboring properties.** Vote carried 3 – 0. Mr. Workman and Mr. Hudson abstained from voting due to a conflict of interest.

Case No. 10355 – AAA Storage, LP and Laura Ritter- southwest of Route 1, 2,800 feet southeast of Road 265.

A special use exception to replace existing billboards, a variance from the front yard and side yard setback requirements, and a variance from the square footage and height requirements.

The Board discussed the case, which has been tabled since April 20, 2009.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception and variances be **granted since it meets the standards for granting a special use exception and variance.** Vote carried 5 – 0.

Case No. 10381 – William Hendricks- north of Road 235A, intersection of Starlight Drive and Crescent Court, being Lot 10 within Starlight Meadows development.

A variance from the front yard setback requirement.

The Board discussed the case, which has been tabled since April 20, 2009.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted with the stipulation that a fence be erected around the pool.** Vote carried 5 – 0.

Case No. 10170 – Keith Properties, Inc.- south of Route 54, west of Fenwick Shoals Boulevard, being Lot 1, Phase I and Parcel A within Fenwick Shoals development.

A special use exception for off-premise parking.

The Board discussed the case, which has been tabled since June 16, 2008.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted**. Vote carried 5 – 0.

Meeting Adjourned @ 11:10 P.M.