

MINUTES OF SEPTEMBER 14, 2009

The regular meeting of the Sussex County Board of Adjustment was held on Monday September 14, 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, Mrs. Susan Isaacs and Mrs. Kelly Passwaters – 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. Workman, and carried unanimously to approve the Minutes of August 17, 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. 10469 – Miller and Smith Homes- east of Road 299, north of Sugar Sand Lane, being Lot B-4 within The Peninsula development.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Kathy Horsey was sworn in along with Jim Fuqua, Attorney, and testified requesting a 2.65-foot variance from the required 20-foot front yard setback requirement; that the variance is needed for Unit B4; that the garage is located on the first floor; that the unit is located on a cul-de-sac; and that it is the minimum variance to afford relief.

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

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

Case No. 10470 – Judith B. Demeno, Trustee- northwest of Route 18, east of Road 290.

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. Judith Demeno was sworn in along with Bill Schab, Attorney, and testified requesting a 20-foot variance from the required 20-foot rear yard setback requirement; that the building has possibly pre-existed zoning setback regulations; that the chicken coop has been removed; and that the Delaware Transit Corporation has agreed that the building that encroaches into the right-of-way may remain.

The Board 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 that variance be **granted since it will not alter the essential character of the neighborhood and since the Railroad, Delaware Transit Corporation has no objection.** Vote carried 5 – 0.

Case No. 10471 – John C. and Judith H. Blair- west of Road 412, north of Lake View Drive, being Lots 9 and 10, Section 1 within Lake View Estates development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. John Blair was sworn in along with Bill Schab, Attorney, and testified requesting a 1.1-foot variance from the required 15-foot side yard setback requirement; that the property has been sold; that when a survey was done, the encroachment was discovered; that it would cause a hardship to move the garage; and that the property is unique in shape.

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

Case No. 10472 – Anton W. Melda- south of Route 88, north of Overbrook Drive, being Lot 54, Block 54 Block C within Overbrook Shores development.

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

Mrs. Isaacs presented the case. Anton Melda was sworn in and testified requesting a 18.3-foot variance from the required 40-foot front yard setback requirement; that he obtained a building permit; that the shed is sitting on blocks; that he received approval

from the homeowners association; that if the shed was moved it would be located behind the house; and the it is a through lot.

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

At the conclusion of the public hearings, the Chairman referred back to the case. 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. 10473 – James and Janis Pitts- south of Route 54, west of Maple Lane, being Lot 33 within Keen Wik Subdivision 5 development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. John Coyle was sworn in and testified on behalf of the applicant and requested a 5-foot variance from the required 15-foot side yard corner setback requirement; that the applicant would like to expand the deck on the 2nd story; that they would like to add a screen porch; that they received approval from the Homeowners Association; and that it is a corner lot.

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

Mrs. Isaacs stated the office received 2 letters in favor of 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, since it is the minimum variance to afford relief and since it is an odd shaped lot**. Vote carried 5 – 0.

Case No. 10474 – Harold K. and Darlene E. Hess- south of Pine Street, 132 feet east of Route 5, being Lot B within Bookhammers Addition to Oak Orchard.

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

Mrs. Isaacs presented the case. Harold Hess was sworn in and testified requesting a 17-foot variance from the required 30-foot front yard setback requirement; that he would like to construct a 2 car garage; that it would be used to store and protect his cars from the weather; and that it is a thru lot.

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

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the variance be **granted since it is a thru lot, since it will not alter the essential character of the neighborhood and since it enables reasonable use of the property.** Vote carried 5 – 0.

Case No. 10475 – Donald Norton- west of Route One, south of Bald Eagle Road and Eighth Street, being Units 318 through 322 within Bay Vista development.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Donald Norton was sworn in and testified requesting a 18.2-foot variance from the required 30-foot front yard setback requirement; that he hired a contractor to construct a deck on the front of the house; that they measured from the street and not the actual property line; that the house is over thirty (30) years old; and that the house is less than 30-feet from Bald Eagle Road.

The Board found that 5 parties appeared in favor of the application.

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

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

Case No. 10476 – Michael Tasevoli- west of Road 348, west of Indian River Drive, being Lot 46, Section 4, Block A within Bay Colony development.

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. Michael Tasevoli was sworn in and testified requesting a 11.5-foot variance into the private building restriction line; that the house was built in 2002; that he would like to extend the deck approximately 200-square feet; that he would like to enjoy the view of the Indian River Bay; and that he received approval from the Homeowners Association.

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 **denied as the variance is not needed and the application fee be refunded.** Vote carried 5 – 0.

Case No. 10477 – Francis and Mary Finley, Trustee- south of Route 23, north of South Gloucester Circle, being Unit B8-3 within Fairfield At Long Neck development.

A variance from the separation requirement between units.

Mrs. Isaacs presented the case. Francis and Mary Finley were sworn in and testified requesting a 10-foot variance from the required 40-foot separation requirement between units for a porch; that it would be a 2nd story deck; that they received approval from the Homeowners Association; that there are other 2nd story decks on other units; that the deck will encroach on Building 6; and that the deck measures 20' x 10'.

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

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the variance be **granted since it enables reasonable use of the property, since it will not alter the essential character of the neighborhood and since other variances have been granted in the area.** Vote carried 5 – 0.

Case No. 10478 – Richard Orwig- south of Route 54, west of Swann Drive, being Lot 22, Block A within Swann Keys development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Joe Henderson was sworn in and testified on behalf of the applicant requesting an 8-foot variance from the required 10-foot side yard setback requirement; that the variance is needed for the proposed home and AC unit; and that the home will measure 24' x 70'.

The Board 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 variance be **granted since it is a small lot, since many variances have been granted in the area and since it will not alter the essential character of the neighborhood.** Vote carried 5 – 0.

Case No. 10479 – James J. Stanley, Jr.- south of Road 302A, east of Durham Street, being Lot 26, Block D within Avalon Park development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Wayne Pepper was sworn in along with Daniel Myers, Attorney, and testified requesting a 0.4-foot variance from the required 10-foot side yard setback requirement; that the house was not constructed on the lot straight; that

the house was constructed in 2006; that the certificate of occupancy was issued in 2008; and that it would cause a hardship to move the home.

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

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it will not alter the essential character of the neighborhood and since it would be a hardship to move the house.** Vote carried 5 – 0.

Case No. 10480 – Joseph and Janice Baker- north of Route 54, 1,112 feet east of Road 389.

A special use exception to continue operating a commercial dog kennel.

Mrs. Isaacs presented the case. Joseph Baker was sworn in and testified requesting a special use exception to continue operating a commercial dog kennel; that they have been operating the kennel for over twenty (20) years; that there have been no changes in the operation; and that the neighbors have no opposition.

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 special use exception be **granted for a period of five (5) years.** Vote carried 5 – 0.

Case No. 10481 – Bridle Ridge Properties, LLC- west of Road 275, north of Sandcastle Cove, being Lot 262 within Henlopen Landing Phase 4 development.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Preston Dyer was sworn in and testified requesting a 5-foot variance from the required 30-foot front yard setback requirement; that it is for Phase 4 in Henlopen Landing; that it is not completed yet; that the variance is needed due to the market conditions; and that he would like the same variance for the additional sixteen (16) interior lots.

Ruth Noriega was sworn in and testified in opposition and stated that she owns property adjacent to Phase 4; that she would like to see an adjustment in the numbers of homes constructed; and that she is now no longer in opposition.

Robert Steinbeck was sworn in and testified in opposition and stated that he purchased one of the first lots in Phase 1; and that the lots in Phase 4 are the same.

The Board found that no parties appeared in favor 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 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 case be **Tabled until the September 21, 2009 meeting.** Vote carried 5 – 0.

Case No. 10482 – Wyatt F. and Elizabeth A. Hammond- Route 16, east of Bay Front Road, being Lot 49, Block 12, Broadkilm Beach.

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

Mrs. Isaacs presented the case. Robert Nash and Wyatt Hammond were sworn in and testified requesting a 19.9-foot variance from the required 30-foot front yard setback requirement, a 7.8-foot variance from the required 10-foot side yard setback requirement and a 6.7-foot variance from the required 10-foot side yard setback requirement; that he purchased the property with the dwelling on it; that the home needs to be replaced; that he submitted a letter from the neighbor; that he would like to make it his permanent residence; and that it will be three (3) stories high.

Jane Patchell, Attorney, testified on behalf of the opposition and stated that she represents six (6) property owners; that the variance is dramatic; that the property is not unique; that the new home will alter the essential character of the neighborhood; that the property is under water when a storm hits the area; that they do not object to another home being built in the same footprint; and that they do not want to see a cantilevered deck due to safety reasons.

In Rebuttal, Mr. Hammond stated that the old home is approximately 1,040-square feet; that the footprint of the new home will be 1,138-square feet; and that he cannot downsize the home do to living reasons.

Joseph Nadu was sworn in and testified in opposition to the application and stated that the new home will be more than 1,100-square feet.

Dr. Richard German was sworn in and testified in opposition and stated that he has safety concerns; that when the storm hit last year all the homes lost there septic systems.

In Rebuttal, Mr. Hammond stated the home will have a 12' x 20' holding tank; that the holding tank is the same size as two (2) other residents; that the total square footage of the home is 3,400-square feet; and that there are other 3-story homes located along the road, but not along the beach.

The Board found that 2 parties appeared in support of the application.

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

Mrs. Isaacs stated the office received 3 letters in opposition to the application.

Motion by Mr. Workman, seconded by Mr. Mills, and carried unanimously that the case be **Tabled until the October 5, 2009 meeting**. Vote carried 5 – 0.

Case No. 10483 – David A. Bramble, Inc.- west of Road 525, 1,500 feet north of Road 526.

A special use exception to continue operating an asphalt batching recycling plant.

Mrs. Isaacs presented the case. Mike Sturdevant and John Wilkins were sworn in along with Jim Fuqua, Attorney, and testified requesting a special use exception to continue operating an asphalt batching recycling plant; that the special use exception was originally approved in 1995; that the previous special use exception was approved with ten (10) conditions; that the use includes a borrow pit, stump shredding, concrete crushing and recycling of building materials; that the plant is regulated by DNREC for emissions; that it does not affect adjacent and neighboring properties; that no violations of the conditions have been reported; that it employs five (5) full time workers; and that it has operated for the last fourteen (14) years.

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 special use exception be **granted for a period of five (5) years from the expiration date**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 10450 – Lorene C. Breasure- southeast of Road 321, 533 feet southwest of Road 323, being Parcel B.

A special use exception for a miniature golf course and to retain a golf driving range.

The Board discussed the case, which has been tabled since August 3, 2009.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be **Tabled until the September 21, 2009 meeting**. Vote carried 5 – 0.

Case No. 10461 – Zane Parker- north of Road 324, 2,445 feet east of Road 321.

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

The Board discussed the case, which has been tabled since August 17, 2009.

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 4 – 1. **REVISED 10/30/09**

Case No. 10466 – Bonita Sponsler and Harry Lartz- west of Road 327, being Lot 4 within Rolling Acres development.

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

The Board discussed the case, which has been tabled since August 17, 2009.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the case be **Tabled until November 2, 2009 for survey.** Vote carried 5 – 0.

OTHER BUSINESS

Case No. 10203 – Jacquelyn E. Porter (Shaw)- south of Road 312, 2,124 feet east of Road 312A, being Lot 11.

A variance from the side yard setback requirements.

Request for a time extension.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the request for a time extension be **granted for a period of one year.** Vote carried 5 – 0.

Meeting Adjourned at 10:15 P.M.