



Board of Adjustment

Agendas & Minutes

MINUTES OF JULY 24, 2006

The regular meeting of the Sussex County Board of Adjustment was held on Monday, July 24, 2006, 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. McCabe, Mr. Mills, Mr. Workman and Mr. Hudson, with Mr. Berl – Assistant County Attorney, Mrs. Thibodeau – Zoning Inspector, Ms. Hudson – Secretary to the Board, and Mrs. Norwood – Recording Secretary.

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. Hudson, seconded by Mr. Workman and carried unanimously to approve the Minutes of July 10, 2006 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.

Case No. 9560 – Paul and Karen Winicki – east of Route One, east of Sandpiper Road, being Lot D19 within Ocean Village development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Paul Winicki was sworn in and testified requesting a 0.9-foot variance from the required 30-foot front yard setback requirement for an existing dwelling; that he started construction on the dwelling 2-years ago; that he has had to hire a second builder to finish the construction; that the dwelling cantilevers over the pilings creating the encroachment; that the neighbor's and the Homeowner's Association support of the application; that the encroachment does not alter the character of the neighborhood; and that he submitted letters and a survey.

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 will not alter the character of the neighborhood and since it is a minimum variance to afford relief.** Vote carried 5 – 0.

Case No. 9561 – Ryan Homes – northeast of Route One, 1,220 feet northwest of Road 273, within Rehoboth Crossing development.

A special use exception to place a manufactured home type structure as a sales office.

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Ms. Hudson presented the case. Kathy Overturf was sworn in and testified requesting a special use exception to place a manufactured home type structure as a sales office; that the unit will only be needed for a period of 6-months; that there will be no kitchen in the unit; that there will be adequate parking and landscaping; and that the unit has not been placed on the property.

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 for a period of six (6) months since it will have no adverse effect to the neighborhood.** Vote carried 5 – 0.

Case No. 9562 – David P. Lundberg – west of U.S. Route 13A, 1,322 feet south of Bethel Road.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. David Lundberg was sworn in and testified requesting a 7-foot variance from the required 10-foot side yard setback requirement for a proposed detached garage; that the existing garage is 40 to 50 years old and falling down; that the proposed garage will measure 30'x 40'; that all of the existing structures will be removed other than the dwelling; that the dwelling is non-conforming; and that if the garage was to comply with the required setbacks it would not leave enough room to turn into the garage.

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. 9563 – Paul and Sherrill Jorgensen – north of Road 312, southwest of Nanticoke Avenue, being Lot 156 within Riverdale Park.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Paul Jorgensen was sworn in and testified requesting a 4.5-foot variance from the required 10-foot side yard setback requirement for a proposed addition; that he needs to extend his existing living room; that the existing

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living room measures 10'x 12'; that the dwelling is approximately 13-foot from the property line; and that the dwelling measures 20'x 35'.

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 this case. Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the case be **left open to allow the Applicant to submit an accurate drawing**. Vote carried 5 – 0.

Case No. 9564 – Ed and Lynn Lester – north of Road 312, southwest of Nanticoke Avenue, being Lot 156 within Riverdale Park.

A variance from the side yard setback requirement and a variance from the walkway requirement between a swimming pool and fence.

Ms. Hudson presented the case. Ed Lester was sworn in and testified requesting a 10-foot variance from the required 10-foot side yard setback requirement for a pool and a 3-foot variance from the required 3-foot walk space around a pool; that the pool is actually a large spa; that they have made extensive repairs to the property; that they have repaired the retaining wall on their property; that the fence will not obstruct the neighbor's view; that he submitted pictures and a letter from the pool engineer.

Donald and Theresa Leyden were sworn in and testified in opposition to the application and stated that they have concerns for their basement and their retaining wall; that due to the improvements that the Applicants have made it seems to have created a crack in their retaining wall; that they are against the variance request; and that they submitted pictures.

In rebuttal, Ed Lester, stated that he also has a basement and the pool company has assured him the pool would not effect the structure of the basement.

By a show of hands 3 parties appeared in support of the application.

By a show of hands 5 parties appeared in opposition to the application.

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Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until August 7, 2006**. Vote carried 5 – 0.

Case No. 9565 – Sony Corporation of America – southwest of Road 14, 1,050 feet southeast of Road 283.

A variance for an additional wall sign.

Ms. Hudson presented the case. Darlene Matthes was sworn in and testified requesting a variance for a second wall sign; that the sign will measure 2'x 12'; that the sign will be located on the south tower of the outlet building; that a similar variance was granted on the north tower of the outlet building; that the sign will run parallel to Route One; and that she can provide the wall size to the Board.

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 **left open to allow the Applicant to provide the height and length of the entire wall where the sign will be located**. Vote carried 5 – 0.

Case No. 9566 – The Peninsula At Longneck, LLC – east of Road 299, Marina Bay Circle, within The Peninsula development.

A variance from the maximum allowable height requirement.

Ms. Hudson presented the case. Frank Connelly was sworn in with Jim Fuqua, Attorney, present on behalf of the application, and testified requesting a 21-foot variance from the required 42-foot maximum allowable height requirement for 15 proposed buildings; that there will be 12 to 15 units in each building; that the building will have 3 floors of living space; that there will be a façade roof at 55-foot to hide the heating and air conditioning equipment; that there will be a cupola on each building that will be at 63-foot in height; that the Windswept condo section of the development was granted 52-foot

height requirement through the Planning and Zoning Commission during the RPC hearing; that The Peninsula consists of 775-acres of land and a 4-mile stretch of waterfront property; that the request is not out of character with the neighborhood; and that they submitted drawings.

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

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

Case No. 9567 – The Peninsula At Longneck, LLC – east of Road 299, south of Marina Bay Circle within The Peninsula development.

A variance from the maximum allowable height requirement.

Ms. Hudson presented the case. Frank Connelly was sworn in with Jim Fuqua, Attorney, present on behalf of the application, and testified requesting a 4.5-foot variance from the required 42-foot maximum allowable height requirement for townhouse units in the development; that the townhouses will have varying heights for aesthetic reasons; that the height of the buildings will range from 44-foot to 46-foot in height; that there is not living space above 42-foot; that the attic area is a web of roof trusses and that there will be no access to the area; and that the request 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. McCabe, 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. 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. 9568 – Frank Robert and Mary Ann Flickinger – northeast of Route One, west of Bryan Drive, being Lots 72 and 73 within Midway Estates development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Mary Ann Flickinger was sworn in and testified requesting a 1.7-foot variance from the required 30-foot front yard setback requirement for a proposed addition; that the existing dwelling sits at an angle on the property; that the property is surrounded by a road on 3-sides; and that the addition will be a bedroom.

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By a show of hands 1 party 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. Hudson, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood and since it is a minimum variance to afford relief**. Vote carried 5 – 0.

Case No. 9569 – The Whayland Co., Inc. – east of U.S. Route 13, north corner of Road 462.

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

Ms. Hudson presented the case. Mary Hager, Stanley Smith and Mary Janosik were sworn in and testified requesting a 280-square-foot variance from the required 100-square-foot maximum square footage requirement for a wall sign on each side of the building; that the owner of the property received the notice for the first hearing and did not realize they must have someone attend; that the architect did not feel a permit was necessary for a sign when the lettering was inset right into the building; that the sign on the front of the building measures 38'2"x 12'; that the sign facing the parking lot measures 55'x 12'; that the sign on the Route 13 side covers 7% of the wall; that the sign on the parking lot sign covers 5% of the wall; that the building is 600-feet long; and that the signs do not alter the character of the neighborhood.

Mr. Mills stated to the Applicant that there are numerous violations on the surrounding properties owned by the Applicant; and that the billboard that was approved by the Board just one year ago is in violation of the stipulations set by this Board.

Mary Janosik, stated that her husband has always taken care of the business until his health would no longer allow him to; and that she is not aware of the violations and she had hired the Whayland Company to handle this project.

Frank Jarody was sworn in and testified in support of the application and stated the he is the CEO for the Applicant; that they were advised the lettering would not be considered signage; that the building is 180,000-square-foot; and that he was not aware of the billboard stipulations.

By a show of hands 5 parties appeared in support of the application.

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

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Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the case be **tabled until August 7, 2006**. Vote carried 5 – 0.

The Board recessed for 5-minutes.

Case No. 9570 – Colter Construction Inc. – northwest of Route 16, north of Filmore Avenue, being Lot 4, Block 12 within Broadkill Beach development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Terrance Babbie was sworn in and testified requesting a 5-foot variance from the required 15-foot side yard setback requirement for a proposed dwelling; that the existing manufactured home will be removed; that Filmore Avenue is only a paper street; that DelDOT has no intention of creating the road; that if Filmore Avenue did not exist on paper the dwelling would comply with the required setbacks; that the lot is unique in size; that the variance will enable reasonable use of the property; that it was not created by the Applicant; that it will not alter the character of the neighborhood; 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. McCabe, 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. 9571 – Richard L. Hayes, Jr. – east of Road 611, 2,127 feet south of Road 597.

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

Ms. Hudson presented the case. Richard Hayes, Jr. was sworn in and testified requesting a 10-foot variance from the required 15-foot side yard setback requirement

and a 10-foot variance from the required 20-foot rear yard setback requirement for a proposed detached garage; that the garage will measure 40'x 50'; that if the garage complied with the required setbacks it would be too close to his existing dwelling; that the garage is needed to store his tractor-trailer; and that he can access the garage from his existing driveway from this location.

By a show of hands 1 party appeared in support of the application.

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

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Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the variances be **granted since it is the minimum variance to afford relief**.
Vote carried 5 – 0.

Case No. 9572 – Country Life Homes – northeast of Road 275, 2,250 feet southeast of Road 283, within Woods Cove development.

A special use exception to place a manufactured home type structure as a sales office.

Ms. Hudson presented the case. Carl Hicks was sworn in and testified requesting a special use exception to place a manufactured home type structure as a sales office; that the unit will measure 12'x 50'; that there will be no kitchen; that there will be adequate parking and landscaping; and that the unit will be needed for approximately six (6) months.

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

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for a period of six (6) months**. Vote carried 5 – 0.

Case No. 9573 – Fedele Marino – west of Road 347, north of Robinson Avenue, being Lot 6 within James Robinson Subdivision.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Fedele Marino was sworn in and testified requesting a 5-foot variance from the required 30-foot front yard setback requirement for an existing dwelling; that he hired a builder to construct his dwelling; that they have rearranged the dwelling to make it comply with the setbacks; that the builder obtained the building permit; that when the dwelling was completed the encroachment was

discovered; that he is not aware of how the mistake was made; and that he owns the adjacent lot on the dead end street.

By a show of hands 2 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 character of the neighborhood and since it is the minimum variance to afford relief**. Vote carried 5 – 0.

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Case No. 9574 – Ron’s Mobile Homes – east of Road 274, south of Bay Drive, being Lot 42 within Rehoboth Bay Mobile Home Park.

A variance from the side yard setback requirement and a variance from the separation requirement between units in a mobile home park.

Ms. Hudson presented the case. Jack C. Horn was sworn in and testified requesting a 13-foot variance from the required 20-foot separation requirement between units in a mobile home park, a 2-foot variance from the required 20-foot separation requirement between units in a mobile home park, and a 1-foot variance from the required 5-foot side yard requirement for a deck; that the unit meets the 10-foot setback requirements; that the steps create an encroachment with the adjacent units; and that the deck needs a variance.

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 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 to re-open this hearing to obtain more information from the Applicant. Vote carried 5 – 0.

Jack Hann was sworn in and testified in support of the application and stated the he is the owner of the unit; that he purchased the unit from Ron’s Mobile Homes; that he was told by the park to leave the existing deck in place; that he could replace just the deck boards and keep the deck in the same location; that he has been 5-months trying to move into this unit; and that the builder he hired to build the steps cannot be located.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until August 7, 2006**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 9356 – William C. Szymanski – west of Route One, north of Dodd Avenue, being Lot G-22 within Sea Air Mobile City Mobile Home Park.

A variance from the side yard setback requirement and a variance from the separation requirement between units in a mobile home park.

The Board discussed the case which has been tabled since January 9, 2006.

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Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled indefinitely until the park submits a survey**. Vote carried 5 – 0.

Case No. 9540 – Robert P. Short – west of U.S. Route 113, 1,500 feet south of Route 16.

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

The Board discussed the case which has been tabled since June 26, 2006.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled to allow the Applicant more time to find a manufactured home**. Vote carried 5 – 0.

Case No. 9547 – Gerald and Pamela Voll – northeast of Road 274, Bay Drive, being Lot 53 within Rehoboth Bay Mobile Home Park.

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

The Board discussed the case which has been tabled since July 10, 2006.

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

Case No. 9551 – Ray and Patricia Beaver – southeast of Route One, southeast of Center Avenue, being Lot D-35 within Sea Air Mobile Home City Mobile Home Park.

A variance from the side yard setback requirement, a variance from the separation requirement between units in a mobile home park, and a variance from the maximum allowable lot coverage.

The Board discussed the case which has been tabled since July 10, 2006.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled indefinitely until the park submits a survey**. Vote carried 5 – 0.

Meeting Adjourned 9:50 p.m.