



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF January 7, 2008

The regular meeting of the Sussex County Board of Adjustment was held on Monday January 7, 2008, 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 of Planning & Zoning, Mr. Norman Rickard, Mrs. Melissa Thibodeau and Mrs. Kelly Passwaters – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously to approve the Revised Agenda. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of December 17, 2007 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. 10020 – Anthony Mitchell- north of Route 9, north of Mills Chase Drive, being Lot 10 within Mills Chase development.

A variance from the separation requirement between multi-family units.

Mr. Rickard presented the case. Anthony Mitchell was sworn in and testified requesting a 5-foot variance from the required 40-foot separation requirement between multi-family units; that the deck has already been constructed; that he had his plans approved by the Homeowners Association; and that the contractor obtained the building permit.

Anthony Savini was sworn in and testified stating he was the contractor; that he obtained the building permit; that he received his contractors license in June 2007; that this is the first building permit he has obtained since receiving his license; and that he was not aware the deck was built in the setback.

Melissa Boyd-Washington was sworn in and testified stating that she owns property adjacent to the highway; that she did not receive notice that there was a hearing; that she received a call from the applicant's attorney; and that she is not opposed since it does not affect her property.

The applicant submitted a petition for a deck approval with 7 signatures.

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 hearings, the Chairman referred back to this case. Motion by Mr. Hudson, seconded by Mr. Workman, 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. 10021 – CMF Bayside Retail, LLC- east of Americana Parkway, south of Lighthouse Road, being Lot C within Bayside Resort development.

A variance for additional wall signs.

Mr. Rickard presented the case. Darin Martin was sworn in and testified requesting a variance for five (5) additional wall signs; that the signs will include two (2) Harris Teeter tag lines, Starbucks Coffee, Open 24 HRS and Pharmacy; that the Harris Teeter tag lines will not exceed 100-square feet; that the additional signs will measure 18-square feet; that they are trying to keep the same appearance for all stores; and that they would like to have as much identification as possible.

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. McCabe, seconded by Mr. Workman, 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. 10022 – Backbay Park Center, LLC- south of Bay Farm Road, 100 feet east of John J Williams Highway, being Lot 6 within Long Neck Back Bay Center Development.

A variance for additional wall signs.

Mr. Rickard presented the case. Darin Martin who was sworn in at the previous case testified requesting a variance for six (6) additional wall signs; that the signs will include two (2) Harris Teeter Logo's, two (2) Harris Teeter tag lines, Open 24 HRS and

Pharmacy; that the Harris Teeter tag lines will not exceed 100-square feet; that the additional signs will measure 18-square feet; that as of right now there is no plans for a pharmacy but they would like the approval for the future; that they are trying to keep the same appearance for all stores; and that they would like to have as much identification as possible.

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 essential character of the neighborhood**. Vote carried 5 – 0.

Case No. 10023 – Lloyd M. Tyndall, III and Gregg A. Tyndall- west of Road 249, 3,000 feet south of Route 5.

A variance from the minimum lot width requirement for parcels.

Mr. Rickard presented the case. Joan Tyndall was sworn in and testified requesting a variance from the minimum lot width requirement for parcels; that they have applied for entrance approval from Del-DOT; that they are in the final division of an estate; that the farm has been split in half; that the property has been in the family since 1912; that they would like to create 5 Lots; that they have a proposed combined entrance for 4 parcels; that the property backs up to a pond; and that the property is vacant.

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. 9972 & 10024 – Gerald Hocker- northeast of Road 17.

A variance from the setback requirements for billboards, a special use exception to place a billboard, a variance for additional signs on a billboard, and a variance from the maximum height requirement for a sign.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the information for Case No. 9972 and Case No. 10024 be incorporated into one. Vote carried 5 – 0.

Mr. Rickard presented the case. Gerald Hocker, Jr. was sworn in and testified requesting a variance from setback requirements, a special use exception to place a billboard, a variance for additional signs on a billboard and a variance from the maximum

height requirement for a sign; that they had a survey done; that they have 1,238-feet of road frontage; that only 1/3 of the property is being used for commercial use; that there are four (4) homes on the parcels and three (3) can be torn down; that they would like to use the parcels for parking after public sewer is put in; that the billboards measure 10' x 30'; and that they will be 2-sided and double stacked.

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 Case No. 9972 and Case No. 10024 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 variances and special use exception be **granted since it will not alter the essential character of the neighborhood**. Vote carried 4 – 1.

Case No. 9973 & 10025 – Gerald Hocker- northeast of Road 17, south of Route 26.

A variance from the setback requirements for billboards, a special use exception to place a billboard, a variance for additional signs on a billboard, and a variance from the maximum height requirement for a sign.

Mr. Rickard presented the case. Gerald Hocker, Jr. was sworn in at the previous case. The testimony from the previous case was adopted for these cases since it is the same.

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 Case No. 9973 and Case No. 10025 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 variances and special use exception be **granted since it will not alter the essential character of the neighborhood**. Vote carried 4 – 1.

Case No. 10026 – RW & WD Investments LLC- south of Road 487A, being Lot 9 within Easter Heights development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Willis Dewey and Randy Wothers were sworn in and testified requesting a 10.5-foot variance from the required 40-foot front yard setback

requirement; that the dwelling was constructed in 2007; that they believe that when it was measured for the front yard setback that it was measured from the road instead of the property marker; that a contract was signed for the property in October 2007; that when a survey was done the setback violation was discovered; and that they received a certificate of occupancy for the dwelling.

Mr. Rickard stated the office received 2 letters in opposition to the application.

The Board found that no parties appeared in support 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 and since a certificate of occupancy was issued.** Vote carried 5 – 0.

Case No. 10027 – Norma Smith Mecke- south of Tyler Avenue, being Lot 25 within Cape Windsor development.

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

Mr. Rickard presented the case. Nancy Shriner was sworn in and testified on behalf of the applicant requesting a 3-foot variance from the required 20-foot rear yard setback requirement, a 4.5-foot variance from the required 10-foot side yard setback requirement and a 9.5-foot variance from the required 10-foot side yard setback requirement; that the applicant has owned the property since 1976; that they would like to replace the original manufactured home; that it is a narrow lot; that they would like to place a deck on the side of the house to make access into the home easier; and that many variance have been granted in the area.

Mr. Rickard stated the office received 2 letters 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 variances be **granted since it will not alter the essential character of the neighborhood and since other variance have been granted.** Vote carried 5 – 0.

Case No. 10028 – Donald A. and Margaret M. Dzedzy- east of Indian River.

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

Mr. Rickard presented the case. Donald Dzedzy was sworn in and testified requesting a 20-foot variance from the required 30-foot front yard setback requirement and a 5-foot variance from the required 15-foot side yard setback requirement; that he has owned the property since 1997; that the existing cottage and shed will be removed; that

he would like to construct a new dwelling in the center of the lot; and that he spoke to his neighbors and got a verbal approval.

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 variances be **granted since it will not alter the essential character of the neighborhood.** Vote carried 5 – 0.

Case No. 10029 – Mary E. Updegrove- south of Road 440, 860 feet west of Road 441, being Lot 1, Section D within Timberwood Estates development.

A special use exception to retain a manufactured home on a medical hardship basis.

Mr. Rickard presented the case. Carl Walker was sworn in and testified requesting to retain a manufactured home on a medical hardship basis; that the case was previously approved in April 2002; and that it is for his grandmother.

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 for a period of 2 years since it will not substantially affect adversely the uses of adjacent and neighboring properties.** Vote carried 5 – 0.

Case No. 10030 – Evelyn M. Craft- Lot 18 within The Oaks development.

A variance from the side yard setback requirement for an accessory structure.

Mr. Rickard presented the case. Evelyn Craft was sworn in and testified requesting a 1.6-foot variance from the required 5-foot side yard setback requirement; that she has owned the property for 12 years; that she replaced the old shed with a new shed; that she hired a contractor to construct the shed; and that it is the same size as the old shed.

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. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted since it is the minimum variance to afford relief, since it will not**

alter the essential character of the neighborhood and that a letter be sent to the contractor. Vote carried 5 – 0.

Case No. 10031 – M & M Properties- west of Road 40B, 287 feet east of ditch, being part of Lots 1 & 2 within Katherine Kinsey Subdivision.

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

Mr. Rickard presented the case. Anthony Morgan was sworn in and testified requesting a 16,380-square foot variance from the required 32,670-square foot requirement for Lot 2, a 17,739-square foot variance from the required 32,670-square foot requirement for Lot 1, a 50-foot variance from the required 150-foot road frontage requirement for Lot 1 and a 59.31-foot variance from the required 150-foot road frontage requirement for Lot 2; that he would like to build 2 new homes; that they would be affordable housing; that he has removed the old homes and trash from the lots; that he has septic approval for one (1) lot; and that the homes he would like to place would measure 28' x 40'.

Mr. Rickard stated the office received 4 letters in favor of the application.

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

Motion by Mr. Hudson, 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. Hudson, seconded by Mr. Mills, and carried unanimously that the case be **tabled until the January 28, 2008 meeting.** Vote carried 5 – 0.

Case No. 10032 – Patricia and Michael Schuchman- northwest of Swann Drive, being Lot 42, Block A within Swann Keys development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Patricia and Michael Schuchman were sworn in and testified requesting a 1.5-foot variance from the required 10-foot side yard setback requirement; that the lot measures 40' x 100'; that the lot size creates a hardship; that they would like to screen in a 8' x 16' portion of their deck; that Swann Keys Homeowners Association denied the request and referred them to the Board; and that other variances have been granted in the area.

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 other variances have been granted in the area.** Vote carried 5 – 0.

Case No. 10033 – Delaware Renewable Energy Co. LLC- northeast of Route One, 1,162 feet southeast of Road 268.

Mr. Rickard presented the case. A special use exception for a windmill. Tom Colucci and Joseph Johnson were sworn in and testified requesting a special use exception for a windmill in the C1 district; that he spoke with neighbors about existing windmills in the area; that the neighbors stated the windmill generates very little sound; that the proposed windmill will not generate any sound until it reaches 18 miles per hour; that it would measure 45-feet in height; that it would increase the value of the property; and that it would be used to help power the office and outside lighting.

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. Workman, 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.

The Board took a 10 minutes Recess

Case No. 10033 – Robert and Sherry Stephens- 700 feet northwest of Route 54.

A special use exception for a pond on less than five (5) acres.

Mr. Rickard presented the case. Robert Stephens was sworn in and testified requesting a special use exception for a wild life pond on less than 5 acres; that he purchased the property 2 years ago; that he has received approval from Sussex Conservation District; and that the pond will be 6 – 8 feet deep.

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

OLD BUSINESS

Case No. 10010 – Thomas J. and Tammie M. Deputy- south of Road 450, 1950 feet east of Road 612.

A variance from the side yard and rear yard setback requirements, and a variance from the minimum acreage requirement for poultry houses.

The Board discussed the case, which has been tabled since December 17, 2007.

Motion by Mr. Workman, seconded by Mr. McCabe, 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. 10011 - Michael and Elaine Herholdt- west of Road 42, 1,475 feet south of Road 635.

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

The Board discussed the case, which has been tabled since December 17, 2007.

Motion by Mr. Workman, 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 is the minimum variance to afford relief**. Vote carried 5 – 0.

Case No. 10012 – Elizabeth Fennell- north of Road 483, north of Waterview Drive, being Lot 1 within Waterview Acres development.

A variance from the side yard setback requirement for an accessory structure.

The Board discussed the case, which has been tabled since December 17, 2007.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **tabled until the office receives a response from Del-DOT**. Vote carried 5 – 0.

Case No. 10016 – David Moore- north of Road 368, north of William Chandler Boulevard, being Lot 38 within South Hampton development.

A variance from the separation requirement between units.

The Board discussed the case, which has been tabled since December 17, 2007.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it is the minimum variance to afford relief**. 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 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 December 17, 2007.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the case be **tabled for staff analysis**. Vote carried 5 – 0.

Meeting adjourned 10:00 p.m.