



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF July 7, 2008

The regular meeting of the Sussex County Board of Adjustment was held on Monday July 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, and Mr. Brent Workman, with Mr. Richard Berl – Assistant County Attorney and staff members, Mr. Norman Rickard and Mrs. Kelly Passwaters – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to approve the Revised Agenda as circulated with the correction to move Case No. 10193 to the first order of business. Vote carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Minutes of June 16, 2008. Vote carried 4 – 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. 10193 – Raymond Childs-** northeast of Mt. Herman Circle (Road 507), 2,472 feet east of Columbia Road.

A variance from the side yard setback requirement and a variance from the minimum width of a manufactured home.

Mr. Rickard presented the case. Dawn Hudson, Constable, was sworn in and testified on behalf of the applicant and stated that the singlewide mobile home was placed four (4) years ago; that it was placed without a permit; that it would cause a hardship to move the manufactured home; and that she submitted a letter of no objection from the neighbor.

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 **granted since it will not alter the essential character of the neighborhood**. Vote carried 4 – 0.

**Case No. 10185 – Clifton and Elaine Friel-** north of Route 54, west of Margaret Street, being Lot 10 within Lighthouse Mobile Home Park.

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

Mr. Rickard presented the case. Clifton and Elaine Friel were sworn in and testified requesting a 4-foot variance from the required 10-foot setback requirement for a mobile home park and a 13-foot variance from the required 20-foot separation requirement between units in a mobile home park; that they would like to add 6-foot to the existing deck; that they would like to build a roof over the deck and screen in the entire porch; and that the lot measures 25' x 100'.

Mr. Berl stated that Board of Adjustment now required applicants to submit a survey of the lot in a mobile home park.

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 **left open for the applicant to submit a survey only**. Vote carried 4 – 0

**Case No. 10186 – American Tower Corporation-** south of Route 22, 6,411 feet east of Route 22C.

A variance from the lighting requirements for a telecommunications tower.

Mr. Rickard presented the case. Tim McDougall was sworn in along with David Hutt, Attorney, and testified requesting a variance from the lighting requirements for a telecommunications tower; that the tower was approved on January 23, 2006; that the applicant is requesting that no lighting be required in compliance with FAA regulations; that American Tower Corporation follows all FAA guidelines on all towers placed; that they could install a double steady red light on top of the tower; that they would like to have the lighting changed to the top and midpoint of the tower; that they are asking that the lighting requirements be changed to dusk- to-dawn lighting; and that they cannot meet the stipulations set by the Board of Adjustment since to the stipulations do not meet FAA guidelines.

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 variance be **granted and to amend the decision to approve voluntary lighting**. Vote carried 4 – 0.

**Case No. 10187 – John S. and Marion W. Madigan-** east of Surf Road, 82 feet north of Fassett Road, being Lot 15 within Sussex Shores development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Mark Dieste and Tom Ford were sworn in and testified requesting a 5-foot variance from the required 30-foot front yard setback requirement; that the applicant would like to construct a new dwelling on the property; that the new dwelling will be moved further away from the dunes; and that the dwelling will meet the setbacks required by both the Sussex County Planning & Zoning Department and Sussex Shores restrictive covenants in the side and rear yards.

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 4 – 0.

**Case No. 10188 – Peter A. Saienni-** west of Road 288, south of Hazzard Drive, being Lot 37 within Conley Chapel Village development.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Peter Saienni was sworn in along with Robert Witsil, Attorney, and testified requesting a 10-foot variance from the required 20-foot rear yard setback requirement; that the builder obtained a building permit; that the structure is for therapy purposes; that the addition measures 24' x 18'; that the addition is attached to the dwelling; that the lot measures 145' x 125'; that it would cause a hardship to remove a portion of the addition; that he is not aware if the original contractor had a building license; that he had medical problems which did not allow him to stay in contact with the contractor; and that he fired the contractor and had to hire another contractor to finish the job.

Phillip Mead was sworn in and testified in opposition to the application and stated that the applicant elevated his lot before his home was constructed; that there is a

drainage issue due to the lot being elevated; and that there is a lack of privacy for the neighbors.

Hugh Rendall was sworn in and testified in opposition to the application and stated that he owns the property directly behind the applicant and that he feels it has affected his property value due to the addition being too close to the property line.

Michael Morris was sworn in and testified in opposition to the application and stated that he lives next door to the applicant; that when he built his sunroom he hired a lawyer and a contractor to make sure it was built properly; that he combined both of his lots to make sure the sunroom met setback requirements; that he does not understand why so much room is needed for a hot tub; and that the variance will decrease his property value.

Theresa Boblooch was sworn in and testified in opposition to the application and stated that the applicant did oversee the job; that he is operating a boarding house; and that it decreases her property value.

Mary Ellen Morris was sworn in and testified in opposition to the application and stated she lives to the right of the applicant; that it decreases her property value; and that several homes are for sale due to the applicant's home.

Carolyn Giallonardo was sworn in and testified in opposition to the application and stated that the applicant knew he needed a variance before he constructed the addition.

Helene Erickson was sworn in and testified in opposition to the application and stated that she feels using health issues is not a need to grant a variance.

In Rebuttal, Mr. Witsil asked Mr. Morris to identify his structure in a picture.

Mr. Rickard stated the office received 1 letter in support of the application.

The Board found that 10 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 4 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. 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 – 0.

**Case No. 10189 – Alfred Miller-** intersection of Gordy Road and Road 461.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Alfred Miller was sworn in and testified requesting a 20-foot variance from the required 40-foot front yard setback requirement; that the Planning & Zoning Department told him he only needed to be 15-foot from Gordy Road; that he replaced the existing singlewide home; and that it measures 14' x 68'.

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 case be taken under advisement. Vote carried 4 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until the July 21, 2008 meeting**. Vote carried 4 – 0.

**Case No. 10190 – New Dimension Homes-** west of Long Neck Road, south of River Road, being Lot 138 within Pot Nets Bayside Mobile Home Park.

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

Mr. Rickard presented the case. Richard DeWitt was sworn in and testified requesting a 2.5-foot variance from the required 20-foot separation requirement between units; that the lot is located in the original section of Pot Nets Bayside; that the manufactured home will measure 27' x 68'; and that it is an irregular shaped lot.

Robert Murphy was sworn in and testified in opposition to the application and stated he objects to the variance; that there is drainage problem; and that it creates an airflow problem.

Sarah Murphy was sworn in and testified in opposition to the application and stated that four (4) years ago she asked to place a new home; and that she placed the minimum size on her lot.

In rebuttal, Mr. DeWitt stated that the Murray's are only 7-foot from the property line; and that they have a large home.

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. Rickard stated the office received 11 names 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 4 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **denied**. Vote carried 4 – 0.

**Case No. 10191 – Clear Channel Outdoor-** east of U.S. Route 13, 2.050 feet south of Road 452.

A special use exception to place a billboard, a variance from the maximum size requirement and height requirement for a billboard, and a variance from the side yard setback requirement.

Mr. Rickard presented the case. Rick Phillips was sworn in and testified requesting a special use exception to place a billboard, a 78-square foot variance from the required 300-square-foot requirement, a 26.12-foot variance from the required 50-foot side yard setback requirement and a 5-foot variance from the required 25-foot maximum height requirement; that they would like to place a 10’-6” x 36’ double faced billboard; that the variance would allow for it to be placed on the most practical place on the property; and that the height variance is needed due to trees that will grow and block the view.

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 special use exception and variances be **granted since it will not alter the essential character of the neighborhood**. Vote carried 4 – 0.

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### **The Board took a 5-minute Recess**

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**Case No. 10192 – Fenwick 9, LLC-** south of Route 54, east of Cape Windsor Community, being ½ of Lot 1 within Cape Windsor development.

A special use exception to place an accessory structure on less than one (1) acre and a variance from the front yard setback requirement.

Mr. Rickard presented the case. Tom Ford, which was sworn in at a previous case, testified requesting a special use exception to place an accessory structure on less than one (1) acre and a 35-foot variance from the required 40-foot front yard setback requirement; that he is seeking to develop a launch site; that it would be an open sided structure to store kayak’s/canoe’s; that he would place a fence around the property; that

the structure will measure 12' x 20'; that it would serve as a safe convenient water access; that the watercraft would be locked down on provided racks; that Del-Dot condemned portions of this lot to accommodate the new Via-duct constructed in the Right-of-Way; that the remaining land is unusable for residential use; and that there will be room for 6 watercrafts.

Pam Tulley was sworn in and testified in opposition to the application and stated that it violates DNREC laws; that it violates the emergency turn around law; that the

Roxana Fire Department states they would not be able to get down the road if the structure was built; that the main reason for opposition is safety; that the area is very congested; that there are 17 docks around the cove; and that she feels it is only being constructed as an incentive to sell homes in Verandah Bay.

Jackie Wright was sworn in and testified in opposition to the application and stated that she lives on the cove; that people will drive there vehicles to the launch site instead of walking; and that she does not want to see a recreational facility in the area.

In Rebuttal, Mr. Ford stated that there are no provisions for parking but would place a restriction in the Homeowners Association that no vehicles are allowed at the site.

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

The Board found that 15 parties appeared in opposition to the application.

Mr. Rickard stated the office received 9 letters in opposition to the application.

Motion by Mr. Workman, seconded by Mr. Mills, and carried unanimously that the case be **tabled until the July 21, 2008 meeting**. Vote carried 4 – 0.

**Case No. 10194 – John and Beverly Hitch-** south of Road 553, 1,439 feet west of Road 554, being Lots 5 and 6, Block B within Si-Lo Acres development.

A special use exception to operate a day care facility.

No one appeared on behalf of the application.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **denied due to the lack of record support**. Vote carried 4 – 0.

**Case No. 10195 – Legum & Norman-** south of Road 368, west of Road 361, being Bethany Breeze Condominium.

A variance from the separation requirement between units to allow decks.

Mr. Rickard presented the case. Erica Grden and George Carlson were sworn in and testified requesting a 20-foot variance from the required separation requirement; that they are applying for a blanket variance for decks; that the original variance was for the inside facing units only; and that the variance will be for the following all inclusive units 614-621, 622-629, 638-645, 646-653, 678 – 683 and 684-689.

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. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the all the units referenced since it will not alter the essential character of the neighborhood.** Vote carried 4 – 0.

**Case No. 10196 – Arthur Watson, Jr.-** southeast of Road 305, ½ mile southwest of Road 48.

A variance from the front yard setback requirements.

Mr. Rickard presented the case. Arthur and Mary Watson were sworn in and testified requesting a 4-foot variance from the required 40-foot front yard setback requirement; that they removed the existing home; that they purchased a new home from Oakwood Homes; that they measured the property from the road; that the masonry contractor that was hired by Oakwood Homes called and said the home could be moved forward on the lot; and that Oakwood Homes obtained the placement permit.

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 taken under advisement. Vote carried 4 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it meets the standards for granting a variance.** Vote carried 4 – 0.

**Case No. 10197- Beazer Homes-** north of Road 382, 1,250 feet east of Road 391, within Ashley Manor development.

A variance for additional signs.

Mr. Rickard presented the case. Steve Broadbeck was sworn in along with K. William Scott, Attorney, and testified requesting a variance for additional signs; that the applicant desires to reconfigure the permitted signage area; that he would like to reduce



the size of the permitted sign to 10' x 6.5'; that he would like to install five (5) additional signs; that those signs would measure 3' x 4'; and that they would provide increased notice to motorists.

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 **tabled until the July 21, 2008 meeting**. Vote carried 4 – 0.

**Case No. 10198 – PGSD Properties, LLC-** north of Route 54, 794 feet east of Road 381, being Parcel B.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Preston Dyer was sworn in and testified requesting a 25-foot variance from the required 30-foot rear yard setback requirement; that Del-Dot is considering condemning a piece of the commercial property for storm water management; that it there will a 25-foot public access; and that Del-Dot required a 10-foot dedication of the property after the rezoning and a 10-foot easement.

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 variance be **granted since it is unique due to Del-Dot changes, since it will not alter the essential character of the neighborhood and since it is the minimum variance to afford relief**. Vote carried 4 – 0.

### **OLD BUSINESS**

**Case No. 10166 – Joan Wisniewski-** north of Route 58B, east of Oliver Drive, being Lot TH-34 within Bayview Landing development.

A variance from the rear yard setback requirement.

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 variance be **granted since it will not alter the essential character of the neighborhood**. Vote carried 4 – 0.

### **REORGANIZATION**

Mr. Rickard opened the nominations for Chairman.

Motion was made by Mr. Workman, seconded by Mr. McCabe to nominate Mr. Callaway as Chairman.

There was a consensus that the nominations for Chairman be closed.

Nominations for Chairman were closed.

Motion was adopted to nominate Mr. Callaway as Chairman: 4 yea

Vote by roll call:

Mr. McCabe - yea

Mr. Workman - yea

Mr. Hudson - absent

Mr. Mills - yea

Mr. Callaway - yea

Mr. Rickard opened the nominations for Vice Chairman.

Motion by Mr. Workman, seconded by Mr. Mills to nominate Mr. McCabe for Vice Chairman.

There was a consensus that the nominations for Vice Chairman be closed.

Motion was adopted to nominate Mr. McCabe as Vice Chairman; 4 yea

Mr. Mills - yea

Mr. Callaway - yea

Mr. Workman - yea

Mr. McCabe - yea

Mr. Hudson - absent

The meeting was turned over to Mr. Callaway, the new Chairman.

Motion was made by Mr. McCabe, seconded by Mr. Workman to appoint Mr. Rickard as Secretary to the Board. Vote carried 4 – 0.

**Meeting adjourned @ 10:30 p.m.**