



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF APRIL 20, 2009

The regular meeting of the Sussex County Board of Adjustment was held on Monday April 20, 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. Norman Rickard and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously to approve the Revised Agenda as circulated with the correction to move Case No. 10170, Keith Properties to the beginning of the Agenda. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of April 6, 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.

### OLD BUISNESS

**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. Mr. Rickard stated that Keith Properties has applied for a Change of Zone hearing; that it will not be heard for one (1) year; and that the Board members can make a decision without a decision being made from the Planning and Zoning Commission and County Council.

There was a concensus of the Board members to not take action at this time and to request that a copy of the minutes be sent to them for their review before making their decision.

PUBLIC HEARINGS

**Case No. 10350 – J. L. Carpenter Sr. Family Ltd. Part.** – north of Road 259, 1 mile east of Road 257.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Tammy and James Carpenter, Jr. were sworn in and testified requesting a 6-foot variance from the required 15-foot side yard setback requirement for a proposed 80' x 224' agriculture building; that the existing grain systems has an anchor, which prevents them from meeting the required setback requirements; that both parcels are zoned agricultural; and that no other buildings exist on the adjacent parcel.

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 variance be **granted since it is the minimum variance to afford relief and since it enables reasonable use of the property.** Vote carried 5 – 0.

**Case No. 10351 – Roberts Oxygen Co., Inc.** – east of U.S. Route 13, 505 feet north of Road 584.

A special use exception to retain a manufactured home type structures for storage purposes.

Mr. Rickard presented the case. David Garner was sworn in and testified requesting a special use exception to retain a manufactured home type structure for storage purposes; that he is the branch manager; that he received approval in July 2005; that the storage structures are fenced in; that the landlord is in favor of the use; that he does not wish to build permanent structures on leased land; that his lease expires next year; that he supplies oxygen to many local businesses and hospitals; that there has been no change to the area since his approval in July 2005; and that he plans to look for property so that they can construct a permanent building.

Mr. Rickard stated that the office received one (1) letter in favor of the application.

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 5 – 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 special use exception be **granted for a period of one (1) year**. Vote carried 5 – 0.

**Case No. 10352 – John and Joyce Kinniard** – north of Road 58, east of Bay Circle East, being Lot TH-89 within Bayview Landing development.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Gerald Schaeffer was sworn in and testified on behalf of the applicant requesting a 2.5-foot variance from the required 20-foot rear yard setback requirement for a proposed 16' x 20' screen porch on existing pavers; that the Homeowner's Association is in favor of the application; and that open space and a pond are located behind the property.

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**.  
Vote carried 5 – 0.

**Case No. 10353 – Kaye C. Henrichson** – south of Road 277, east of Oak Street East, being Lot 35, Block C, Section 1 within Angola By The Bay development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Debra and Gene Daffern were sworn in along with Veronica Faust, Attorney, and testified requesting a 0.03-foot variance from the required 10-foot side yard setback requirement for a 2<sup>nd</sup> floor deck and a 1.3-foot variance from the required 10-foot side yard setback requirement for a storage area; that the Homeowner's Association and property owner on Lot 34 are in support of the application; that the deck and shed were built in 1958; that a survey was prepared for settlement and showed the structures encroaching into the setback requirements; that it is a unique shaped lot; that it would be a hardship for the new owner's if the structures had to be removed; that it will not alter the essential character of the neighborhood; and that the variance is the minimum to afford relief.

Mr. Rickard stated that the parcel is a legal non-conforming lot.

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

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

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since the hardship was not created by the applicant and that it will not alter the essential character of the neighborhood.** 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 requirements.

Mr. Rickard presented the case. Jerry E. Yates was sworn in and testified requesting a 6-foot variance from the required 15-foot side yard setback requirement and a 11-foot variance from the required 20-foot rear yard setback requirement for a proposed 40' x 24' pole building; that he would like to place the structure in line with the existing building; that his neighbors are in support of the application; and that he submitted pictures and letters.

Mr. Rickard stated that the office received 2 letters in favor of the application.

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. Mills, seconded by Mr. Workman that the case be **tabled for the office to determine if the existing building has had a variance or if a variance would be needed.** Vote carried 5 – 0.

**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 requirement.

Mr. Rickard presented the case. Laura Ritter was sworn in and testified requesting a special use exception to replace existing billboards; a 320-square foot variance from the required 300-square foot requirement per side for a billboard, a 84-square foot variance from the required 300-square foot requirement per side for a billboard, a 25-foot variance from the required 25-foot maximum height requirement for

a billboard, a 35-foot variance from the required 25-foot maximum height requirement for a billboard, a 43-foot variance from the required 50-foot side yard setback requirement and a 40.5-foot variance from the required 50-foot side yard setback requirement; that she would like to replace two (2) existing billboards; that she missed filling for an extension by eighteen (18) days; that she is waiting for approval from Del-DOT; that the height has changed from the previous application; that the billboard will measure 10-foot higher on the north side; that it will measure 5-foot higher on the south

side; that the increase in height is due to a building and brush; that the existing sign is hard to see; and that she is unsure if she meets the 300-foot between signs.

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

Mr. Rickard stated to the Board that he would like to check the height of the Clear Channel billboard and the 300-foot requirement between signs.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be **tabled until May 6, 2009 for the office to obtain information in reference to the Clear Channel billboard.** Vote carried 5 – 0.

**Case No. 10356 – Sarah E. Dickey, Child's Play By The Bay-** intersection of Savannah Road and Quaker Road, being part of Lot 1 within Quaker Heights development.

A special use exception to operate a day care center.

Mr. Rickard presented the case. Sara Dickey and Alicia Malisky were sworn in along with Gene Bayard, Attorney, and testified requesting a special use exception to operate a day care center; that the existing location is on Kings Hwy in Lewes, Delaware; that it measures 1,400-square feet; that the center is currently open Monday thru Friday from 8:00 A.M. to 4:30 P.M.; that the center has been located there for 5 years; that there is no traffic issues at the present locations; that they have received no complaints; that they have outgrown the current location; that there will be no change in the days of operation at the new location; that they would like to be open from 7:00 A.M. to 5:00 P.M. at the new location; that they are licensed for up to twenty-four (24) children; that the yard will be fenced in; that there will be 5 parking spaces for pick up and drop off; that the property will be landscaped; that there are approximately thirty-eight businesses in the area; that there is no objection from her neighbors; and that there are no restrictions in the subdivision to prevent daycare facilities.

David Green was sworn in and testified in opposition to the application and stated he owns the property to the rear of the applicant; that there is only 13-feet from the property line to his home; that he would like to see the hours limited from 8:00 A.M. to 6:00 P.M. or from 7:00 A.M. to 5:00 P.M.; that he would not like to see the daycare

facility open on nights or weekends; and that he would like to see the fence be at least 7-feet in height and be a solid fence.

In Rebuttal, the applicant stated they currently do not offer weekend hours; that they consider themselves a child development resource center; that they offer special tutoring that is done on an individual basis; and that they only have one (1) event at night time to gift wrap for the local church.

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

The Board found that 1 party appeared in opposition to the application.

Mr. Rickard stated the office received 6 letters in support of 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.

**Case No. 10357 – Fermin and Nery Matos-** north of Road 534, 260-feet west of Kenmore Road.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Fermin and Nery Matos were sworn in and testified requesting a 4.8-foot variance from the required 20-foot rear yard setback requirement for an addition; that the builder obtained the building permit; that they were surprised to find that it did not meet setback requirements; that the builder refused to help with the variance issue; that they thought the builder would follow the requirements; that the addition is a family room; and that there is a pond and wooded area to the rear of the property.

The Board found that 5 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. Workman, and carried unanimously that the variance be **granted since it is unique, since it was not created by the applicant, 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. 10358 – Lester H. and Cindy L. King-** south of Route 54, west of Crab Bay Lane, being Lot 100 within Keen Wik West Development.

A variance from the minimum lot width requirement for a parcel, a variance from the minimum square footage requirement for a parcel, a variance from the front yard and side yard setback requirements.

Mr. Rickard presented the case. Kenneth Feaster, Attorney, testified on behalf of the applicant and requested a 0.27-foot variance from the required 75-foot lot width requirement for a parcel, a 363-square foot variance from the required 10,000-square foot area for a parcel, a 3.6-foot variance from the required 30-foot front yard setback

requirement for a dwelling, a 0.3-foot variance from the required 10-foot side yard setback requirement for a dwelling and a 0.4-foot variance from the required 10-foot side yard setback requirement for a dwelling; that the home was built in 1970; that the applicant purchased the property in 2008; that the previous owner was unaware of the violations; and that the only way they could comply with the violations is if they purchase more property from the neighbors or demolish the house.

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

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

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

**Case No. 10379 – Michael Kors-** Tanger Outlet Center-southwest of Route 14, 1,050 feet southeast of Road 283.

A variance for an additional wall sign.

Mr. Rickard presented the case. Darlene Matthes was sworn in and testified requesting one additional wall sign; that the additional wall sign will be located on the north tower below Nautica; that it faces the parking lot; that there is similar signage on existing towers; that it will not alter the essential character of the neighborhood; and that the store front sign cannot be seen from the road.

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

**Case No. 10380 – Scott and Lynn Johnson-** 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.

Mr. Rickard presented the case. Scott Johnson was sworn in and testified requesting a 0.6-foot variance from the required 10-foot side yard setback requirement; that one post of the pergola encroaches into the setback; that the pergola was constructed over an existing open deck; that the back stake used for measurement was incorrect; that they received approval from the Homeowners Association; that the violation was

discovered by the Homeowners Association; and that they used a metal detector to find the correct property marker.

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

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

Motion by Mr. McCabe, 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. 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.

Mr. Rickard presented the case. William Hendricks was sworn in and testified requesting a 10-foot variance from the required 30-foot front yard setback requirement for an above ground pool; that he obtained a building permit and discovered he could not meet the front yard setback requirement without a variance; that the pool cannot be placed in the rear or side of the home due to the location of the septic system; that approximately 96% of the people in the subdivision are in support of the application; that his neighbor asked for trees or a fence to be placed for privacy.

Richard Reinhart was sworn in and testified in opposition to the application and stated that he feels the variance is irresponsible; that the applicant has lived there for 12 years and has been setting up a pool every year that hasn't conformed with the rest of the pools in the neighborhood; that the Homeowners Association required all pools to be placed in the rear yard and to be the same color as the house but has since been changed; that all pools currently located in the subdivision are located behind the house; that he feels the pool will alter the essential character of the neighborhood and decrease his property value; that he feels the pool will create more children in the main street of the subdivision; that he does not feel the applicant will plant trees; and that if a fence was placed around the pool he would not be in opposition.



In Rebuttal, Mr. Hendricks stated there are numerous kids in the neighborhood; that the kids would still gather outside no matter if he had a pool or not; that he has no problem planting trees on his property; that he thinks putting a fence around the pool would look ridiculous; that the ladder to the pool will be removed when not in use; and that he will be placing a deck on the pool with a locking gate.

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

The Board found that 1 party appeared in opposition to the application.

Mr. Rickard stated the office received 39 signatures in favor of the application.

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until the May 4, 2009 meeting**. Vote carried 5 – 0.

**Case No. 10382 – Gunslinger Investments, L.L.C.-** north of Route 24, 406 feet east of U.S. Route 13.

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

Mr. Rickard presented the case. Randy O’Neal was sworn in and testified requesting a 12,800.50-square foot variance from the required 32,670-square foot requirement for a parcel, a 109.45-foot variance from the required 150-foot lot width requirement for Lot 1 and a 84.9-foot variance from the required 150-foot lot width requirement for Lot 2; that the parcel consists on 1.5 acres of land; that it currently has 2 dwellings on the property; that he purchased the property in February 2008; that his family owns the property across the street; that his family business is also across the road; that he purchased to help upgrade the neighborhood; that he was no aware the dwellings were on the same parcel; and that an easement is needed for Lot 1 to gain access.

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

**Case No. 10383 – Joseph W. Booth, Jr. and Sara Parris-** south of Route 26, north of Riga Drive, being Lot 5, Block A within Ocean Way Estates.

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

Mr. Rickard presented the case. Joseph Booth and Sara Parris were sworn in and testified requesting a 8.2-foot variance from the required 30-foot front yard setback requirement for a covered deck, a 1.4-foot variance from the required 10-foot side yard

setback requirement and a 2-foot variance from the required 5-foot side yard setback requirement; that they purchased the home in 2007; that they were unaware of the violations; that the house was built in 1979; that two (2) building permits were issued for a deck and porch; that the setback requirements changed from 20-feet to 30-feet; that the original road was a dirt path; that they want to improve the deck and add a covered porch; that they want to bring the carport into compliance before they tear it down; that the shed could be moved to bring it into compliance; and that the shed is located in the similar area as the neighbors shed.

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

**Meeting Adjourned at 9:40 P.M.**