



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF APRIL 21, 2008

The regular meeting of the Sussex County Board of Adjustment was held on Monday April 21, 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 Ms. Rebecca Trifillis – Assistant County Attorney and staff members, Mrs. Jennifer Norwood, Mr. Russell Warrington and Mrs. Kelly Passwaters – Recording Secretary.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to consider the Minutes of April 7, 2008 at the next regular meeting on May 5, 2008. Vote carried 5 – 0.

Ms. Trifillis read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

PUBLIC HEARINGS

Case No. 10110 – Sea Air Village- south of Route One, northwest of Sea Air Avenue, being Lot A-80 within Sea Air Mobile City Mobile Home Park.

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

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the application is substantially different from the application that was withdrawn on January 28, 2008. Vote carried 5 – 0.

Mrs. Norwood presented the case. Cindy Surface was sworn in along with David Hutt, Attorney, present on behalf of the applicant and testified requesting a 5.7-foot variance from the required 20-foot separation requirement between units in a mobile home park; that they withdrew the application that was to be heard on January 28, 2008; that the community has existed since the 1960's; that there are non-conforming structures on the lots; that a three (3) bedroom and two (2) bathroom manufactured home is what most people are looking to place; that the existing home that was torn down was wider

than the proposed manufactured home; that the majority of the residents would like to have a porch; and that the proposed manufactured home will have a factory porch on it.

The Board found that 3 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. Hudson, and carried unanimously that the variance be **granted since it is a unique shaped lot, since it enables reasonable use of the property, 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. 10111 – Vicki W. Allen- north of Fisher Street, 300 feet east of James A Street, being Lot 37, Block C within Dodds Addition development.

A variance from the front yard setback requirement.

Mrs. Norwood presented the case. Linda Whitmore was sworn in and testified requesting a 7.1-foot variance from the required 30-foot front yard setback requirement for a proposed dwelling; that the lot is irregular shaped; that the existing home will be demolished; and that the parcel is in a wind zone.

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

Mrs. Norwood stated the office received 1 letter in opposition to the application.

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

Case No. 10112 – Cynthia A. Kollner- southwest of Route 54, west of Wilson Avenue, being Lot 23, Block 3 within Cape Windsor development.

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

Mrs. Norwood presented the case. Al Perreca was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for a dwelling, porch and AC units and a 0.2-foot variance from the required 20-foot rear yard setback requirement for a porch and fireplace; that they would like to place a 2nd story deck on the proposed home; that the applicant received approval from Cape Windsor; and that the variance for the side yard setbacks are for HVAC units and propane tanks.

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

Case No. 10113 – Donald Feltenberger- north of Long Neck Road, east of Portside Lane, being Lot J33 within Rehoboth Shores 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.

Mrs. Norwood presented the case. Donald Feltenberger and Gil Fleming were sworn in and testified requesting a 0.3-foot variance from the required 20-foot separation requirement between units in a mobile home park, a 6.6-foot variance from the required 10-foot side yard setback requirement and a 10-foot variance from the required 10-foot side yard setback requirement for a shed; that Rehoboth Shores staked the lot before the manufactured home was placed; that the home measures 26' x 44'; that it would cause a hardship if the home had to be moved; and that the home is in a flood zone.

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 case be **left open so the applicant can have the surveyor determine how far the sheds are from the property line.** Vote carried 5 – 0.

Case No. 10114 – Susan D. and Otha Beckett- west of Road 258, 277 feet north of Route 9.

A variance from the front yard setback requirement.

Mrs. Norwood presented the case. Susan Beckett, Otha Beckett and Randall Manry were sworn in and testified requesting a 10-foot variance from the required 40-foot front yard setback requirement for a dwelling and steps; that a placement permit was obtained; that they did not check the setback requirements listed on the permit; and that the home has already been placed.

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 and that a letter be sent to all Oakwood Homes locations.** Vote carried 5 – 0.

Case No. 10115 – David and Tonya Quester- east of Route One. South of Collins Avenue, being Lot 7 within Indian Beach development.

A variance from the side yard setback requirement.

Mrs. Norwood presented the case. Frank Zicarelli was sworn in and testified requesting a 2-foot variance from the required 15-foot corner side yard setback

requirement for a swimming pool; that he was unaware of an alley on the adjacent lot and that a permit was obtained.

The Board found that no parties appeared in support of or 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. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it meets the standards for granting a variance, that the filing fee be returned to the applicant and that an apology letter be sent from the employee completing the building permit application.** Vote carried 5 – 0.

Case No. 10116 – Freddie Pusey- southwest intersection of Road 515 and Road 501.

A special use exception to place a second manufactured home.

Mrs. Norwood presented the case. Freddie Pusey was sworn in and testified requesting a special use exception to place a second mobile home on less than 10 acres; that he was told he could place a second mobile home on the property; that he has spent over eighteen thousand dollars (\$18,000.00) on a new septic system; and that the mobile home caught fire in 1999.

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

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted since it will not substantially affect adjacent and neighboring properties.** Vote carried 5 – 0.

Case No. 10117 – AT & T- west of Road 365, north of Road 84.

A special use exception to place a telecommunications tower.

Mrs. Norwood presented the case. William Panek, Tom Zolna and Aaron Erbeau were sworn in along with Pamela Scott, Attorney, on behalf of the applicant and testified requesting a special use exception to place a telecommunications tower; that the application was approved on October 16, 2006 but has since expired; that the tower will be 150-foot tall; that Sussex County currently has a gap in coverage and the tower will help improve the coverage; that it will be surrounded by a 6-foot fence; that the tower will have warning lights; that there will be a 60' x 60' fenced in area around the tower; that there will be a 12' x 20' equipment shelter; and that 60% of all 911 emergency calls come in from cellular phones.

Paul Jankowic was sworn in opposition to the application and read a letter in opposition from a neighbor; that he believes the applicant can find another location for the telecommunications tower; that he has health concerns; and that he feels it would decrease the property value.

In Rebuttal, Pamela Scott stated that she has submitted a health report for the record; that the Board is not permitted to consider health concerns; that there is no proof that it will decrease property value; that the code does not required telecommunication towers to be located in commercial zoning; and that the tower will be placed along a tree line.

In Rebuttal, Paul Jankowic stated he would still like to see the tower moved to another location.

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

The Board found that 2 parties appeared in opposition to the application.

Mrs. Norwood stated the office received 1 letter in opposition to the application and a petition with 11 signatures.

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. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for the same reasons as previously approved on October 16, 2006 which reference that there be red lights on the tower at the midpoint and at the top of the tower.** Vote carried 5 – 0.

Case No. 10118 – David Costello- south of Route 54, west of Taft Avenue, being Lot 12, Block 2 within Cape Windsor development.

A variance from the rear yard setback requirement.

Mrs. Norwood presented the case. David Costello was sworn in and testified requesting a 4-foot variance from the required 20-foot rear yard setback requirement for steps; that the steps allow for a rear exit to the home; 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, since it will not alter the essential character of the neighborhood and since there was no opposition.** Vote carried 5 – 0.

Case No. 10119 – Jason Hill- south of Road 358, 168 feet east of Mariners Lane, being Lot 17, Section 2 within Pine Crest Terrace development.

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

Mrs. Norwood presented the case. Jason Hill was sworn in and testified requesting a 13.4-foot variance from the required 40-foot front yard setback requirement, a 2.1-foot variance from the required 5-foot side yard setback requirement and a 4.2-foot variance from the required 10-foot side yard setback requirement for a 2nd floor deck; that the steps for the 2nd floor deck are already built; that the neighbors like the steps; that the existing shed does not meet setback requirements; and that he purchased the property in 2002.

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 variances be **granted since it will not alter the essential character of the neighborhood and since there was no opposition.** Vote carried 5 – 0.

Case No. 10120 – Baxter Farms Inc.- north of Road 48, 1,710 feet east of Road 326.

A variance from the setback requirement for a manure shed.

Mrs. Norwood presented the case. James Baxter IV and James Baxter Jr. were sworn in and testified requesting a 8-foot variance from the required 50-foot setback requirement for structures for storage of poultry manure; that he purchased the property in 2002; that they would like to convert what's left of the existing chicken house into a manure shed; that he is trying to stay within best management practices; that he was told

by the Director of Planning & Zoning that he must apply to the board since the chicken house has not been used in over 2 years; that a clay floor will be built inside the chicken house to prevent nutrients from entering into the ground; and that manure would be stored for 9 months out of the year.

Ralph Mitchell was sworn in and testified in opposition to the application and stated that his parents built the home closest to the manure shed in 1964; that he currently rents that home; that the chicken house is 45-foot from his rear property line; that the manure shed would be approximately 137-foot from his well; that he feels it could contaminate the ground water; that he has no objection to the farming business; that he is

opposed to the odor and possibility of fly's and rodents; and that he feels it would decrease his property value.

Ralph Lowe was sworn in and testified in opposition to the application and stated he sold the farm to the Mr. Baxter; that he owns property on both sides of Mr. Mitchell; that he owns a vacant lot that he would like to build a new home on; that he is opposed to the odor; that Mr. Baxter has 7 other vacant chicken houses that can be used; that there is a well 5-foot away from the chicken house.

Faith Lowe was sworn in and testified in opposition to the application and stated that Mr. Baxter has made improvements to the property; and that she would like to build a new home on her lot that is only 40-foot from the manure shed.

Patricia Deptula was sworn in and testified in opposition to the application and stated she built her home in 1989; that she was told the chicken houses would be burnt down; that Mr. Baxter has enough room on his property to place the manure shed; that the shed could be placed closer to where the manure is generated; that over one year ago a portion of the chicken house was raised on block a foundation; and that a building permit was not obtained.

James Deptula was sworn in and testified in opposition to the application and stated that there are residents less than 200-foot from the proposed manure shed; and that a letter sent from Mr. Lank was in error.

Denise Burns was sworn in and testified in opposition to the application and read a letter in opposition from her father that could not be present at the hearing.

Dustin Burns was sworn in and testified in opposition to the application and stated he is a water well contractor; and that nitrates can enter into the water well.

Ken Towers was sworn in and testified in opposition to the application and stated he is currently renting Mr. Mitchell's home; and that he would like to purchase the home however it puts a damper on the possibility of purchasing the property.

In Rebuttal, James Baxter IV and James Baxter Jr., stated that the portion of the chicken house that is left is approximately 150-foot; that it was Baxter Farms Inc. that purchased the property; that every farm has rodents; that they do have concerns about the water; that a lot of debris from the property was removed; that what was removed from the property would have contaminated the water more than the manure will; that they have a good farming reputation; and that the well is not being used.

In Rebuttal, Patricia Deptula, stated that the manure will have to be transported no matter what the cost it.

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

The Board found that 11 parties appeared in opposition to the application.

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

Case No. 10121 – Robert and Janet Beresh- north of Route 54, west of Swann Drive, being Lot 8, Block A within Swann Keys development.

A variance from the side yard setback requirement.

Mrs. Norwood presented the case. Robert and Janet Beresh were sworn in and testified requesting a 2.1-foot variance from the required 10-foot side yard setback requirement for both side yards; that they would like to place a new manufactured home; that it will measure 62' x 24'; that they removed the existing singlewide; and that they would like to make this there permanent residence.

The Board found that 3 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 meets the standards for granting a variance and since other variances have been granted in the area**. Vote carried 5 – 0.

Case No. 10122 – James T. Burke- north of Road 634, west of Lakewood Drive, being Lots 2 and 5 within Harry Donovan Subdivision.

A variance from the side yard setback requirements.

Mrs. Norwood presented the case. James Burke was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling and a 25-foot variance from the required 30-foot front yard setback requirement for a thru lot for a pole building; that he would like to place a pole building

to store his motor home; that it will measure 50' x 28'; and that a inspector told him it was not a true thru lot.

The Board found that 3 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 a unique lot, since the street does not exist and since it meets the standards for granting a variance.** Vote carried 5 – 0.

Case No. 10123 – Giuseppe, Rosa and Dominico Bufo and Anna Marie Barone- north of Road 283, east of Linden Lane, being Lot 5, Block U within Sandy Brae development, Addition 2.

A variance from the side yard setback requirement.

Mrs. Norwood presented the case. Dominico Bufo and Barry Askew were sworn in along with Douglas Marshall, Attorney, present on behalf of the applicant and testified requesting a 0.3-foot variance from the required 10-foot side yard setback requirement and a 0.2-foot variance from the required 10-foot side yard setback requirement; that the property was recently sold; that the dwelling was built in 1981; that the lot measure 100' x 145'; that the certificate of occupancy was issued; and that it would be a hardship to remove the ends of the dwelling.

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 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. 10124 – Woodrow Simone- north of Route One, north of Andrew Avenue, being Lot 6, Block D within Ann Acres development.

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

Mrs. Norwood presented the case. Woodrow Simone was sworn and along with Barry Askew who was sworn in at the previous hearing along with Douglas Marshall, Attorney, and testified requesting a 1.7-foot variance from the 10-foot side yard setback requirement, a 5-foot variance from the required 5-foot side yard and rear yard setback requirements, a 1.3-foot variance from the required 10-side yard setback requirement, a 2.2-foot variance from the required 30-foot front yard setback requirement; that the property was recently sold; that the violations were discovered when a survey was done;

that the house was built prior to zoning; that an addition was placed on the rear of the home in the 1980's; that a permit was obtained; and that the lot measures 50' x 100'.

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 and since the lots are small.** Vote carried 5 – 0.

OLD BUSINESS

Case No. 10097 – Joseph and Andrea Kokoszka- Road 274, southwest of Arnell Road, being Lot 50 within Old Landing development.

A variance from the rear yard setback requirement.

The Board discussed the case, which has been tabled since April 7, 2008.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the variance be **denied since it does not meet the standards for granting a variance.** Vote carried 5 – 0.

Case No. 10104 – William B. Shimmel- north of Route 22, corner of Caddies Dell and Creek Way, being Lot 3330 within Baywood Mobile Home Park.

A variance from the rear 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 in a mobile home park.

The Board discussed the case, which has been tabled since April 7, 2008.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variances be **denied since it does not meet the standards for granting a variance.** Vote carried 5 – 0.

Meeting Adjourned @ 10:45 P.M.