



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF AUGUST 17, 2009

The regular meeting of the Sussex County Board of Adjustment was held on Monday August 17, 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, Mrs. Susan Isaacs and Mrs. Kelly Passwaters – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Workman, 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 May 18, 2009 meeting as circulated. Vote carried 4 – 0. Mr. Mills abstained from voting.

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. 10457 – William P. and Phyllis B. Fischer- west of Coastal Highway, north of Elizabeth Avenue, being Lot 8, Block C within Ann Acres development.

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

Mrs. Isaacs presented the case. William & Phyllis Fischer were sworn in and testified requesting a 9.2-foot variance from the required 30-foot front yard setback requirement, a 4-foot variance from the required 10-foot side yard setback requirement and a 0.9-foot variance from the required 5-foot side yard setback requirement for a shed; that they would like to add a 2nd story addition to the existing house; that they would be extending the back of the house; that the house is only 900-square feet; that the shed is sitting on blocks and can be moved; and that they would possibly be using the home as a permanent residence in the future.

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

Case No. 10458 – John Baglione- south of Route 54, west of Maple Lane, being Lot 36, within Keen Wik Subdivision 5 development.

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

Mrs. Isaacs presented the case. John Baglione was sworn in and testified requesting a 2.8-foot variance from the required 10-foot rear yard setback requirement and a 0.4-foot variance from the required 10-foot side yard setback requirement; that they have owned the property since 1977; that he would like to add on to the existing garage to possible use it as a 2-car garage; that he constructed a sunroom and was issued a certificate of occupancy in 1997; that he received an approval letter from the Homeowners Association; that the garage will measure 19' x 24'; and that it is an odd shaped lot.

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

Mrs. Isaacs stated the office received 1 letter in favor of the application.

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

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variances be **granted since it is an odd shaped lot**. Vote carried 5 – 0.

Case No. 10459 – Anthony and Tina Jacono- south of Road 306A, west of Holiday Drive, being Lot 31, Section A within Holiday Pines development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Anthony and Tina Jacono were sworn in and testified requesting a 3.5-foot variance from the required 10-foot side yard setback requirement; that they purchased the property at Sheriff's sale; that Lot 32 is vacant and cannot be built on; and that a certificate of occupancy was issued on the home.

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. 10460 – Barbara Ann Bean- south of Road 38, 1,600 feet southeast of Road 224.

A special use exception to retain a manufactured home on less than five (5) acres.

Mrs. Isaacs presented the case. Harry Murphy was sworn in and testified requesting a special use exception to retain a manufactured home on less than five (5) acres; that the manufactured home is currently located on Lot 1; that on June 17, 2009 the Planning and Zoning Commission approved the subdivision as a concept with conditions; that the property has been in the family since the early 1900's; that applicant lives in the home adjacent to Lot 1; that the home on Lot 1 is occupied by Ms. Bean's daughter; that the home has been on the property for 12 years; that the home has been remodeled; that the home on Lot 2 is occupied by Ms. Bean's son; and that the property was subdivided so the double wide can get its own financing on its own lot.

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

Case No. 10461 – Zane Parker- north of Road 324, 2,445 feet east of Road 321.

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

Mrs. Isaacs presented the case. Zane Parker, George Parker and Donna Parker were sworn in and testified requesting a 50-foot variance from the required 150-foot lot width requirement for a parcel; that he would like to place a modular home on a 100-foot wide lot; that his mother requires care; and that there are other modular and manufactured homes in the area.

Gerald Pusey was sworn in and testified in opposition to the application and stated that he owns two (2) properties on this road; that it is not a hardship; that he does not want to see a manufactured home placed on a lot across from the country club; and that there are deed restrictions on that property.

Carol Hansen was sworn in and testified in opposition to the application and stated she lives to the north of the applicant; that the property is located across from the country club; that she is a local realtor; and that it will affect property value.

In Rebuttal, George Parker stated that they will not be placing a manufactured home, and that it would be a modular home.

The Board found that 1 party appeared in support of the application.

The Board found that 5 parties appeared in opposition to the application.

Mrs. Isaacs stated the office received 1 letter 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 the case. Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until the September 14, 2009 meeting**. Vote carried 5 – 0.

Case No. 10462 – James L. and Linda J. Reilly- north of Road 333, east of Sandy Beach Drive, being Lot 11, Block A within Sandy Beach development.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Anthony Perrino was sworn in along with Veronica Faust, Attorney, and testified requesting a 0.4-foot variance from the required 30-foot front yard setback requirement; that the property has been recently sold; that when a survey was done the violation was discovered; that the dwelling has been on the property for approximately seven (7) years; and that a certificate of occupancy was issued.

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. 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. 10463 – Joseph R. Hudson and Stanley L. Thompson, D/B/A Hudson & Thompson- Route One.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Craig Hudson was sworn in and testified requesting a 40-foot variance from the required 40-foot front yard setback requirement for a non conforming structure; that he would like to remodel the historic red mill; that the structure is non conforming; that the first floor foundation has encroached upon the Right of Way; and that the structure was last rebuilt in the 1920's.

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

Mrs. Isaacs stated the office received 1 letter in support of the application.

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

Case No. 10464 – Sam and Penny Warner- north of Road 270, west of Candlelight Lane, being Lot 9 within Colonial East Mobile Home Park.

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

Mrs. Isaacs presented the case. Sam and Penny Warner were sworn in and testified requesting a 2.5-foot variance from the required 20-foot separation requirement between units in a mobile home park; that they would like to attach a metal screen porch to their existing manufactured home; and that they talked to their neighbors on both sides and they do not object.

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. Hudson, seconded by Mr. Workman, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

Case No. 10465 – Country Rest Home, Inc- south of Route 16, east of Road 585.

A special use exception to expand a convalescent home.

Mrs. Isaacs presented the case. Mark Yoder was sworn in and testified requesting a special use exception for expansion of a convalescent home with eight (8) additional

houses; that he received approval in 2008 but never started construction; and that it will be for eight (8) homes.

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 be **granted since it will not substantially affect adversely the uses of adjacent and neighboring properties**. Vote carried 5 – 0.

Case No. 10466 – Bonita Sponsler and Harry Lartz- west of Road 327, being Lot 4 within Rolling Acres development.

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

Mrs. Isaacs presented the case. Bonita Sponsler and Harry Lartz were sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for a detached garage and a 5-foot variance from the required 10-foot rear yard setback requirement for a detached garage; that the garage is already constructed; that the garage measures 29' x 25'; that the contractor obtained the permit; that the contractor did not finish the job; that the garage matches the home; that they were told by the contractor that the setbacks were 5 feet on the sides and rear; that the second floor of the garage does not have any cooking facilities.

Mrs. Isaacs read a letter into the record from Zoning Inspector Dean Malloy.

Bessie Calhoun was sworn in and testified in opposition to the application and stated that she owns farm land to the rear of the applicant; that she runs irrigation and farm equipment on that property; and that the garage is too close to the property line.

Donna Lee Grace was sworn in and testified in opposition to the application and stated that she owns Lot 5 in Rolling Acres; that approval would create a substantial injustice to her and her property; that the building permit was issued for a 25' x 27' garage; that the garage actually measures 29' x 25'; that the applicants were aware the garage was in violation while being built; that the garage has a separate meter box; that the garage alters the essential character of the neighborhood; that she would like to see the 2nd floor completely removed; and that she would like the separate entrance to the 2nd floor also removed.

In Rebuttal, Ms. Sponsler and Mr. Lartz stated the 2nd floor was built to match the house; that they were guided by the contractor to add a separate meter box; and that the garage measures 27' x 29'.

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

The Board found that 3 parties appeared in opposition to the application.

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until the September 14, 2009 meeting**. Vote carried 5 – 0.

The Board took a 10-minute Recess

Case No. 10467 – Dorothy and Paul Elder- southwest of Route 54, northeast of Hayes Avenue, being Lot 16, Block 1 within Edgewater Acres development.

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

Mrs. Isaacs presented the case. Paul Elder and Joe Hill were sworn in and testified requesting a 9.1-foot variance from the required 15-foot corner side yard setback requirement for a proposed dwelling and a 9.8-foot variance from the required 30-foot front yard setback requirement for a proposed dwelling; that the property was purchased in 1987; that the home was remodeled in 1991; that they received a variance for the deck; that the house was moved on the property in the 1950's; that the variance is needed for the 2nd and 3rd floor deck; that the front yard variance is for a 3rd floor cantilevered window; and that they do not want to move the proposed home back so they can enjoy the back yard.

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. 10468 – David Briggs and John Benton- west of Route One, west of Bay Reach, being Lot 95 within Country Manor Pine Bay Section.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Greg Hastings was sworn in and testified on behalf of the applicant requesting a 6-foot variance from the required 30-foot front yard setback requirement for a proposed addition; that due to the curvature of the parcel a

variance is needed for the addition; and that they would like to maintain the ascetics of the home.

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 is an odd shaped lot, 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.

OLD BUSINESS

Case No. 10450 – Lorene C. Breasure- southeast of Road 321, 533 feet southwest of Road 323, being Parcel B.

A special use exception for a miniature golf course and to retain a golf driving range.

The Board discussed the case, which has been tabled since August 3, 2009.

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until the September 14, 2009 meeting**. Vote carried 4 – 0. Mr. Mills did not vote.

Case No. 10451 – Delaware Gospel Assembly- south of Route 18, 330 feet west of Road 528, being Lot 1.

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

The Board discussed the case, which has been tabled since August 3, 2009.

Motion by Mr. Hudson, 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 4 – 0. Mr. Mills did not vote.

Meeting Adjourned @ 9:25 P.M.