



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF DECEMBER 15, 2008

The regular meeting of the Sussex County Board of Adjustment was held on Monday December 15, 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. John Mills, Mr. Brent Workman and Mr. Jeff Hudson, with Mr. Richard Berl – Assistant County Attorney and staff members, Mr. Norman Rickard and Mrs. Kelly Passwaters – Recording Secretary.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously to approve the Revised Agenda as circulated. Vote carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of December 1, 2008 meeting as circulated. 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. 10313 – Patricia M. Quinn-** east of King's Highway, south of Road 269 (Clay Road), being Lot 1.

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

Mr. Rickard presented the case. Patricia Quinn and Norman Barnett were sworn in and testified requesting a 7.6-foot variance from the required 40-foot front yard setback requirement and a 6.3-foot variance from the required 10-foot side yard setback requirement; that the home was purchased in 2003; that a survey was done before settlement and was approved as non-conforming; that in 2007 the home was renovated; and that the right side of the home extends into the setback.

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 setbacks and that a letter be sent to the builder.** Vote carried 4 – 0.

**Case No. 10314 – Joseph T. Dashiell Builders, Inc.** - south of Route 54, east of Roosevelt Avenue, being Lot 25 within Cape Windsor development.

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

Mr. Rickard presented the case. Joseph Dashiell and Betty Ellis were sworn in and testified requesting a 4.8-foot variance from the required 20-foot rear yard setback requirement and a 7.2-foot variance from the required 10-foot side yard setback requirement; that the manufactured home was replaced with a stick built home; that a variance for the side yard was approved in 2006; and that the shed will remain on the property.

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

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

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

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variances be **granted since it meets the standards for granting a variance.** Vote carried 4 – 0.

**Case No. 10315 – Gwendolyn L. Karpin** - north of Road 297A, north of Russell Avenue, being Lot 54 within Delaware Oyster Farms development.

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

Mr. Rickard presented the case. Gwendolyn Karpin was sworn in and testified requesting a 4.4-foot variance from the required 5-foot rear yard setback requirement for a shed and a 4.4-foot variance from the side yard setback requirement for a shed; that the lot measures 50' x 90'; that the lot is narrow; that the shed measures 10' x 10'; and that the house is on pilings.

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. Workman, seconded by Mr. Hudson, and carried unanimously that the variances be **granted since it is the minimum variance to afford relief and since it is a narrow lot.** Vote carried 4 – 0.

**Case No. 10316 – Robert W. and Janet D. Hall-** south of Road 382, east of Fenwick Circle, being Lot 100 within Fenwick West development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Robert and Janet Hall were sworn in and testified requesting a 2.5-foot variance from the required 5-foot side yard setback requirement for a shed; that the shed was placed during the summer; that the shed cannot be moved to a different location on the property due to the location of septic system; that the fence is a few inches off the property line; and that they received a violation notice.

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

Motion by Mr. Hudson, 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. 10317 – Sharon and Kent Carson-** north of Road 503A, 435 feet south of Road 501.

A variance from the front yard setback requirement for a stable structure.

Mr. Rickard presented the case. Kent Carson was sworn in and testified requesting a 12-foot variance from the required 50-foot front yard setback requirement for a stable structure; that he constructed a stable structure; that he measured from the road and not the property line; that the property across the street is vacant; and that he obtained a building permit.

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

Motion by Mr. Workman, 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 4 – 0.

**Case No. 10318 – R. Thomas Krupsha-** south of Road 437A, 240 feet west of Road 62.

A special use exception from the provisions and requirements to retain a manufactured home on a parcel.

Mr. Rickard presented the case. R. Thomas Krupsha was sworn in and testified requesting a special use exception to retain a manufactured home on a parcel; that he would like to subdivide the parcel; that he has no plans to sell the property; and that the manufactured home measures 28' x 54'.

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 special use exception be **granted since it will not alter the essential character of the neighborhood and since it will not substantially affect adversely the uses of adjacent and neighboring properties.** Vote carried 4 – 0.

**Case No. 10319 – AT & T-** northwest of Road 490A, southeast of Nanticoke River.

A special use exception to erect a 180 foot telecommunications tower.

Mr. Rickard presented the case. Bill Panek, Tom Zolna and Andrew Petersohn were sworn in along with Pam Scott, Attorney, and testified requesting a special use exception to erect a 180-foot telecommunications tower; that the proposed tower will be located on River Road near Seaford, Delaware; that it will measure 180-foot in height; that it will meet setback and lighting requirements; that it is needed due to a gap in coverage in the area; that it is designed to accommodate two (2) additional carriers; that the ground equipment will be surrounded by a 6-foot fence; that warning lights will be placed every 50-feet; that if the tower is not operated continuously for 6 months the tower will be removed within 90 days; and that 70% of all 911 calls are from cell phones.

Mark Hardesty was sworn in and testified in opposition to the application and stated he owns the property next door to the proposed tower location; that the tax map states the property is only 5.95 Acres; that he plans to build his dream house on his lot; and that his lot has a pier and boat lift.

David Smith was sworn in and testified in opposition to the application and stated he believes the property owners along River Road should have been notified.

In Rebuttal, Pam Scott stated there is no impact of property value; that there is a problem with reception in the area; that the tower will be located 992-feet from the Nanticoke River; and that it will be located 65-feet from the opposition's property line.

In Rebuttal, Mark Hardesty stated that it will affect his property value; that he has bought and sold property in Sussex County for 25 years; and that he will have his property value appraised with the tower and without the tower.

In Rebuttal, Pam Scott stated that due to the gap in coverage the tower needs to be located near the Nanticoke River; and that if they move it closer to the Woodland Ferry they run into a historic preservation area.

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

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

Mr. Rickard stated a petition was submitted in favor of the application.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until the January 26, 2009 meeting for both parties to submit property value information.** Vote carried 4 – 0.

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#### **The Board took a 10-minute Recess**

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**Case No. 10320 – Ruth Ann Probst-** northwest of Delaware Avenue, 150 feet northeast of Myrtle Avenue, being Lot 23 and part of Lot 22 within Bookhammer Addition.

A special use exception to place an accessory structure without a main building.

Mr. Rickard presented the case. Ruth Ann and Barbara Probst were sworn in and testified requesting a special use exception to place an accessory structure without a main building; that a building permit was obtained for the shed; that the parcel is vacant; that the shed measures 12' x 20'; that she received a violation notice; and that she may place a manufactured home on the property in the future.

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

Mr. Rickard stated the office received 5 letters in support of the application.

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.

**Case No. 10321 – Mary Jane Boswell and Perri A. Holod-** east of Route One, north of Beaver Dam Reach, being Lot 16 within The Woods at Seaside Phase I.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Mary Jane Boswell and Jay Yoder were sworn in and testified requesting a 9.6-foot variance from the required 10-foot rear yard setback requirement for a screen porch; that when they purchased the property the patio encroached into the 10-foot buffer; that that porch construction has already been started; that a building permit was obtained; that they received approval from the Homeowners Association; that the porch cannot be seen from the street; that they received a violation notice; that other variances have been granted in the area; and that the porch cannot be completed without a variance.

Robert Dunbar was sworn in and testified in opposition to the case and stated the applicant did not follow the variance process; that he wasn't notified of the hearing; that the encroachment decreases property value; that it will alter the essential character of the neighborhood; that he has safety concerns; and that the roof on the screen porch blocks the sunlight.

In Rebuttal, Ms. Boswell stated that the pavers were in place when she purchased the property and that the fireplaces were moved closer to the fence only during the construction of the porch.

The Board found that 3 parties appeared in favor of the application.

The Board found that 4 parties appeared in opposition to the application.

Mr. Rickard stated the office received 3 letters in favor of the application.

Mr. Rickard stated the office received 14 names in opposition to the application.

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

**Case No. 10322 – Sharon June Cooper-** west of Road 48, 500 feet north of Road 324.

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

Mr. Rickard presented the case. Sharon Cooper and Paul Voskey were sworn in and testified requesting a 57-foot variance from the required 150-foot lot width requirement for a new parcel; that they would like to subdivide the property and give a portion of the property to their daughter; and that it will have a combined driveway.

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 is a unique 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 4 – 0.

### **OLD BUSINESS**

**Case No. 10305 – Juli J. Hattier-** north and south of Road 344, 600 feet northwest of Road 342.

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

The Board discussed the case, which has been tabled since December 1, 2008.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the case be **tabled until the Board is notified by Mr. Rickard.** Vote carried 4 – 0.

**Case No. 10306 – Capstone Homes L.L.C. -** southeast of Route 9, 1,291.67 feet southwest of Road 290, being Lot 7.

A variance for an on-premise ground sign by using existing billboard and a variance from the maximum allowable square footage requirement for a ground sign.

The Board discussed the case, which has been tabled since December 1, 2008.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variances be **denied since it does not meet the standards for granting a variance.** Vote carried 4 – 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 January 7, 2008.

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.

**Meeting adjourned at 9:50 P.M.**