



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF DECEMBER 3, 2007

The regular meeting of the Sussex County Board of Adjustment was held on Monday December 3, 2007, 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, Mrs. Melissa Thibodeau and Mrs. Kelly Passwaters – Recording Secretary.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of November 19, 2007 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.

PUBLIC HEARINGS

Case No. 9962 – Gene Kelly- west of Road 283A (Ward Road), south of private road (Misty Lane).

A variance from the side yard setback requirements.

This was a continuation of a hearing on the Applicant's request for a variance. The hearing commenced on October 15, 2007, but was recessed before completion in order to allow for several County employees with first hand knowledge of the facts to be called as witnesses.

Mrs. Susan Isaacs, Chief Zoning Inspector, was sworn in and stated that the situation all started with complaints from neighbors reporting that Mr. Kelly did not obtain the correct permits for what he was building and that he was encroaching on the neighbors property; that she went to the job site; that Mr. Kelly was on the job site and she told him why she was there; that she stated to him that she had received several complaints about him; that she saw he was adding a 2nd story addition to a non-conforming structure; that she then told him that she would have to go to the office to do

some research; that she then told Mr. Kelly that he needed to apply for a variance for the 2nd story addition; that she then received a complaint that the one wall that was to be left up during construction had fallen down; that she decided that she should talk to Building Code; that she then told Mr. Kelly that since the wall fell down the structure was no longer non-conforming and that he must reapply with a new application for the entire structure; that she suggested to Mr. Kelly that he stop construction; and that Mrs. Isaacs

acknowledged that when she advised Mr. Kelly that additional permits were necessary, he applied for them.

Mr. Berl and Mr. Stephen Spence, Attorney, present on behalf of the applicant, questioned Mrs. Susan Isaacs.

Mr. Van Milligan, Chief Building Code Inspector, was sworn in and testified and stated that Mr. Greg Hill, Building Code Inspector, contacted Mr. Kelly about constructing a new dwelling; that Mr. Kelly obtained a building permit for remodeling only; that he received complaints about pilings being driven; that he and Mr. Hill decided to visit the job site; that when they visited the site a new dwelling was being constructed; that they did a walk through; that he asked Mr. Kelly where the one wall was; that he explained to Mr. Kelly that he needed to submit a set of plans to the Building Code office for the dwelling and the pilings; that Mr. Kelly then obtained a 2nd permit for a 2nd story addition; and that once he obtained the 3rd permit he was finally in compliance with building code.

Mr. Berl and Mr. Spence questioned Mr. Van Milligan.

Gene Kelly who was sworn in at the previous hearing, testified by adding that Mr. Greg Hill did a plan review for the 2nd story addition; that there were no footers under the existing foundation; that he did not realize his contractor was driving pilings; and that he did not realize that he should have gone to the Planning & Zoning Department first.

Lynn Kelly was sworn in and stated that she has no place to really call home; that half of their belongings are in storage; that she will not be able to celebrate her son's 1st birthday in their new home; and that she hopes the Board will understand that a mistake was made.

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 5 – 0.

At the conclusion of the public hearing, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted 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. 9995 – James and Darla Dimitri- east of Tyler Avenue, being Lot 2, Block 5 within Cape Windsor development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. James Dimitri and Brett Reily were sworn in and testified requesting a 4.2-foot variance from the required 10-foot side yard setback requirement, a 5-foot variance from the required 7-foot side yard setback requirement for A/C units and a 3-foot variance from the required 5-foot side yard setback requirement for steps; that he has owned the property since 1981; that this is the 3rd structure that has been placed on the property; that he did not realize he needed a variance for steps; that he changed the configuration of the steps; and that many variance 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 variances be **granted since other variance have been granted in the area.** Vote carried 5 – 0.

Case No. 9996 – Annabell E. Truitt- South Winding Drive, 3 miles north of Seaford, being Lot 42 within Clearbrook Estates development.

A variance from the front yard setback requirement for a through lot.

Mr. Rickard presented the case. Annabell Truitt was sworn in and testified requesting a 13-foot variance from the required 40-foot front yard setback requirement for a through lot; that she built the home in 1998; that she was approved in 1999 for a variance to build a deck; that she would like to enclose the deck; and that it is a through lot.

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. 9997 – Lonnie and Jane Roth- northwest of Road 312, intersection of Cerise Lane.

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

Mr. Rickard presented the case. Jane Roth was sworn in and testified requesting a 25-foot variance from the required 40-foot front yard setback requirement and a 5-foot variance from the required 15-foot corner setback requirement; that she would like to place a new home on the property; and that the property has a lagoon on the property that is bulk headed.

By a show of hands 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. Hudson, and carried unanimously that the variances be **granted since it is an odd shaped lot**. Vote carried 5 – 0.

Case No. 9998 – Madhu Realty LLC- northwest of Route 36, 335 feet from the intersection of Route 36, Route 42 and Road 619.

A special use exception for an apartment above a commercial building.

Mr. Rickard presented the case. Angelo Abbate and Rellaosh Patel were sworn in and testified requesting a special use exception to have an apartment over a commercial business; that the property is zoned B1; that the property currently has a convenience store on it; that they plan to attach a package store to the existing store; and that they would like to have an apartment for the owners to reside in.

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 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. 9999 – Glenn and Olivia Bryan- south of Road 277, northwest of Priscilla Circle, being Lot 24 within Morning View development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Barbara O’Leary, Attorney, present on behalf of the applicant testified requesting a 1.2-foot variance from the required 15-foot side yard setback requirement; that the property is being sold; that a Certificate of Occupancy was issued; and that when a survey was done the violation was discovered.

By a show of hands 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. 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. 10000 – Stephen A. and Julie A. Sell, Bluewater Trust- Boar Dock Drive West, 1.080 feet of Woodland Circle, being Lots 36 & 37, Block Y, Section 4 within Angola By The Bay development.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. John Sergovic, Attorney, present on behalf of the applicant testified requesting a 1-foot variance from the required 20-foot rear yard setback requirement; that the addition was constructed in 1993; that the Certificate of Occupancy was issued; that the property is being sold; and that the lot backs up to the common 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 it is the minimum variance to afford relief.** Vote carried 5 – 0.

Case No. 10001 – CMF Bayside LLC- north of Lakeview Drive, 450-feet east of Americana Parkway, being Lot 3 within Americana Bayside MR-RPC.

A special use exception to place a manufactured home type structure for a golf clubhouse, pro shop and restrooms.

Mr. Rickard presented the case. James Willey and Douglas Brown were sworn in and testified requesting a special use exception to place a manufactured home type structure for commercial use; that they were previously approved in 2005 for a temporary golf club house; that they are seeking to relocate the temporary golf club house during the off-season; that they would like to place an additional mobile home type structure adjacent to the relocated temporary golf club house; and that they plan to construct a permanent golf club house in 2008.

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

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for a period of 5 years since it will not substantially affect adversely the uses of adjacent and neighboring properties.** Vote carried 5 – 0.

Case No. 10002 – Norman McLeod- south of Route 43, west of Blue Teal Drive, being Lot 17, Block C within Swann Keys development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Norman McLeod was sworn in and testified requesting a 8-foot variance from the required 10-foot side yard setback requirement; that there is currently a singlewide mobile home on the property; that he would like to replace it with a doublewide mobile home; and that it will measure 24' x 50'.

Mr. Rickard stated that the office received 1 letter 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 the lot size is unique.** Vote carried 5 – 0.

The Board took a 10-minute recess.

Case No. 10004 – WSFS Bank- north of Route One, 650 feet west of Tulip Drive.

A special use exception to place an off premise sign.

Mr. Rickard presented the case. David Meyers and Donald Hadley were sworn in and testified requesting a special use exception to place an off premise sign; that it will be a billboard advertising WSFS Bank only; that it will measure 300-square feet on each side; that they are planning to use the sign for advertising for 10 to 20 years; and that they have no objection if it was approved with stipulations.

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. McCabe, and carried unanimously that the special use exception be **granted without stipulations since it will not substantially affect adversely the uses of adjacent and neighboring properties.** Vote carried 5 – 0.

Case No. 10005 – Bayshore Plaza II, LLC- east of Route 24, 1,600 feet south of Route 22.

A variance from the maximum square footage of a sign and a variance for additional wall signs.

Mr. Rickard presented the case. James Frazier and Donald Welling were sworn in and testified requesting a variance from the maximum square footage for a wall sign and a variance from the maximum number of wall signs; that they have 3 proposed signs; and that it would be 3.24% of signage on the front of the store.

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. 10006 – Preston Carden, Jr.- west of Road 357, north of Whitesview Circle, being Lot 94, Section 2 within Cedar Landing development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Preston Carden was sworn in and testified requesting a 10-foot variance from the required 25-foot front yard setback requirement; that the house has been completed; and that when a final survey was done the encroachment was discovered.

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 and since it is the minimum variance to afford relief**. Vote carried 5 – 0.

Case No. 10007 – The Diana L. Topper Revocable Trust- east of Bunting Avenue, being Unit 2 within Ships View Condominium.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. James Topper was sworn in along with John Sergovic, Attorney, and testified requesting a 4.6-foot variance from the required 10-foot side yard setback requirement; that it is a 2-unit condo; that he purchased the unit in

1987; that the condo is elevated because it is in a flood zone; that he would like to place an elevator shaft to provide non-stair access to a raised 4th floor residential unit; that the elevator is needed due to physical limitations; and that the shaft would have the same cedar siding as the unit and would have 3 windows.

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

The Board found that no parties appeared 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. 10008 – Emanuel Reid, Jr.- east of Route 30, 800 feet north of Road 216.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Emanuel Reid was sworn in and testified requesting a 2-foot variance from the required 30-foot front yard setback requirement; that he replaced a singlewide mobile home with a new doublewide; that the property is located on a cul-de-sac; and that when a survey was done the encroachment was discovered.

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

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variance be **granted since it will not alter the essential character of the neighborhood and that a letter be sent to Capitol Homes**. Vote carried 5 – 0.

OTHER BUSINESS

Case No. 9989 – Complete Auto Recovery Services, Inc.- east of U.S. 113, 1,700 feet south of Road 380.

A special use exception to place two (2) manufactured home type structures as sales offices.

Mr. Rickard read a letter from the Applicant requesting a rehearing.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the request for a rehearing be **granted and that the Applicant be required to pay the filing fee**. Vote carried 5 – 0.

Meeting Adjourned at 10:00 p.m.