

MINUTES OF DECEMBER 5, 2005

The regular meeting of the Sussex County Board of Adjustment was held on December 5, 2005, 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. Callaway, Mr. McCabe, Mr. Mills, Mr. Workman and Mr. Hudson, with Mr. Berl – Assistant County Attorney, Ms. Hudson – Secretary to the Board, and Mrs. Norwood – Recording Secretary.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of November 14, 2005 and the Minutes of November 21, 2005 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.

Case No. 9309 – Ryan Homes – southeast of Road 84, northeast of Lord Baltimore Lane, being Lot 54 within Lord Baltimore Landing development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Mindy Moore, Attorney, present of behalf of the Applicant testified requesting a 2-foot variance from the required 30-foot front yard setback requirement for an existing covered porch; that the original structure included the stoop without a roof; that the buyer's wanted a roof over the stoop; that by adding the roof it created the encroachment; that the lot is unique in shape; that it was not created by the new owner's; and that it is the minimum variance to afford relief.

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 character of the neighborhood, it was noted that Ryan Homes should not ask for variances after construction has been completed.** Vote carried 5 – 0.

Case No. 9310 – Cingular Wireless – west of Road 310, 1,650 feet north of Route 24.

A special use exception for a telecommunications tower.

Ms. Hudson presented the case. Andrew Petersohn, Susan Tierney, and Tom Zolna were sworn in with Pamela Scott, Attorney, on behalf of the application, and testified requesting a special use exception for a 150-foot telecommunications tower; that the proposed tower will meet the required setback requirements; that the tower will provide collocation for two other carriers; that there will be a 60'x 60' fenced in compound at the base of the tower; that the tower will meet the required lighting requirements; that an existing site in the Angola area will be de-commissioned; that two other possible location for collocation cannot be used; that one location failed the structure requirements for their antennas; that the other location has no intention of dealing with Cingular; that when a tower is no longer needed they will either sell the tower or remove the tower; that the lease requires the site to be returned to its natural state prior to the existence of the tower; and that the lease goes with the tower if the tower is sold; that an exact time frame for collocation would be hard to determine; and that they work closely with other carriers and allow collocation.

Ms. Hudson stated that a petition with 161-signatures was submitted 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 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 case be **tabled until December 19, 2005**. Vote carried 5 – 0.

Case No. 9311 – Cascade Properties LLC – north of Route 16, 1,300 feet east of Peach Tree Road, being Parcel A.

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

Ms. Hudson presented the case. Pret Dyer and Mark Davidson were sworn in and testified requesting a special use exception from the provisions and requirements to retain a manufactured home on a parcel; that the unit was originally on a 148-acre parcel; that they have recently purchased the property; that the previous owner wants to retain a 2-acre parcel for his grandson which lives in the unit; that the subdivision has been approved by the Planning & Zoning Commission; that the Commission suggested they come before the Board; that a property easement will provide only one entrance to the property; and that the special use will not alter the character of the neighborhood.

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 special use exception be **granted since it will have no substantial effect to the neighborhood**. Vote carried 5 – 0.

Case No. 9312 – Patricia Somers – north of Route 54, east of Laws Point Road, being Lot 52, Block E within Swann Keys development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Patricia Somers was sworn in with Jim Fuqua, Attorney, on behalf of the application and testified requesting a 1.2-foot variance from the required 5-foot side yard setback requirement for a deck and a 2-foot variance from the required 5-foot side yard setback requirement for a shed; that she purchased the property 3-years ago; that the shed already existed on the property; that she obtained the building permit for the deck; that she advised her builder to stay in line with the existing shed; and that her neighbor has no objection to the application.

Ms. Hudson stated that the office received 1 letter in support of the application.

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

Case No. 9313 – Capital Health Care Services, L.L.C. – west of Route 24, 1,105 feet north of Road 299.

A special use exception for a nursing home.

Ms. Hudson presented the case. Pret Dyer, Mark Davidson and Randy Becker were sworn in and testified requesting a special use exception for a nursing home; that the proposed nursing home will have 120-beds; that the Applicant currently manages a total of 564-beds throughout the state; that the proposed building will be a state of the art facility; that the building is equipped with an alarm system; that the building will meet all the required setbacks requirements; that the proposed structure will meet all Fire Marshal requirements and DelDOT requirements; that the Applicant is a leader in this

industry; and that this will be a much less intense use for the property than previously planned.

Wallace Hudson was sworn in and testified in support of the application and stated that he is the Vice President of Corporate Affairs with Beebe Medical Hospital; that the nursing home would be a great asset to the area; and that he read 2-letters into the record in support of the application.

Trey Norwood was sworn in and testified in opposition to the application and stated that he was mainly concerned with what type of buffer would be implemented between the proposed structure and his adjacent property; that he runs an intense farming business on the adjacent property; and that he is concerned for water run off.

In rebuttal, Randy Becker, stated that they will install any buffer the adjacent property owner requests; that they have worked closely with DelDOT on a drainage project; that the site will have its own internal stormwater management pond; and that they will provide a ditch to provide positive outfall to the creek.

In rebuttal, Trey Norwood, stated that the proposed use is out of character with the neighborhood; that the area could use a nursing home; and that he is in agreement with the proposed buffer and run off management.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted since it will have no substantial effect to the neighborhood**. Vote carried 5 – 0.

Case No. 9314 – Mike and Jacqueline Goff – southeast of Road 485, 3,000 feet northeast of U.S. Route 13.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Mike Goff was sworn in and testified requesting a 30-foot variance from the required 40-foot front yard setback requirement for an existing detached garage; that the building measures 24'x 30'; that he did not read the setback requirements on his building permit; that the lot is pie shaped; that the majority of the lot is wooded; that he ceased work on the building when he received a notice of violation from the Planning & Zoning Department; and that he immediately applied to the Board.

Tammy Thomas was sworn in and testified in support of the application and stated that she has no objection to the application; that the surrounding neighbors are also in support of the application; and that the Applicant keeps a very neat property.

Ms. Hudson stated that the office received 1 letter in opposition to 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. 9315 – David F. Adcock – south of Road 277, south of Poplar Drive, being Lot 40, Block U, Section 5 within Angola By The Bay development.

A variance from the rear yard setback requirement.

Ms. Hudson presented the case. David Adcock was sworn in and testified requesting an 8.8-foot variance from the required 20-foot rear yard setback requirement for a proposed screen porch; that the existing deck measure 12'x 24'; that the rear of his property is adjacent to the common area of the development; and that the Homeowner's Association is in support of the application.

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

Case No. 9316 – Robert C. and Annamarie Engle – north of Route 54, northwest of Mallard Drive, being Lot 49, Block H within Swann Keys development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Robert Engle was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for an existing attached shed; that he replaced the existing unit with a modular dwelling; that he thought the setback requirement was only 5-foot for the attached shed; and that he obtained the building permit.

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 character of the neighborhood and since there has been numerous variances granted in the development.**
Vote carried 5 – 0.

Case No. 9317 – Helena C. Mumford – north of Fenwick Avenue, west of Bunting Avenue, being part of Lots 5 and 7, Section AA within L.P. Faucet, Inc. development.

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

Ms. Hudson presented the case. Elaine and Wayne McCabe were sworn in and testified requesting a 20.5-foot variance from the required 30-foot front yard setback requirement, a 7.3-foot variance from the required 10-foot side yard setback requirement, an 8.5-foot variance from the required 10-foot side yard setback requirement and a 7-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that the existing dwelling was lost due to a fire; that they want to build the new dwelling within the same footprint; and that the proposed dwelling will be on pilings.

By a show of hands 5 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 will not alter the character of the neighborhood and since it was not created by the Applicant.** Vote carried 5 – 0.

Case No. 9318 – Mary Teresa Morrison – southwest of Road 275A, north of Strawberry Way, being Lot 15 within Breezewood development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Mary Teresa Morrison was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for a proposed attached garage; that the proposed garage will measure approximately 15-foot wide; that the lot is unique in size; that there are two existing sheds on the property; that the proposed garage will extend approximately 1/3 down the side of the dwelling; and that the garage is needed to increase storage space.

Ms. Hudson stated that the office received 1 letter in opposition to the application.

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 case be **tabled until December 19, 2005**. Vote carried 5 – 0.

The Board recessed for 10-minutes.

Case No. 9319 – Chase Communities – east of Road 274, .7 miles south of Road 275, being Oak Creek development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Rob Baker was sworn in with Jim Fuqua, Attorney, present on behalf of the application, and testified requesting a 15-foot variance from the required 30-foot front yard setback requirement for all lots within the subdivision; that the request is for 227-lots within the Oak Creek development; that the Applicant has recently purchased this development; that they also own the adjacent development known as Warrington Creek; that they have combined the subdivisions into one larger subdivision known as Saw Grass development; that Warrington Creek was approved by the Planning & Zoning Commission as an Residential Planned Community; that the front yard setback requirement is only 15-foot; that the request will allow the entire subdivision to maintain the same setback requirement for all single-family lots; that this request will not alter the character of the neighborhood; that this was not created by the Applicant; and that this will be the minimum variance to afford relief.

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 case be **tabled until December 19, 2005**. Vote carried 5 – 0.

The Board moved Case No. 9320 – River Asphalt L.L.C to the end of the night's agenda per the Applicant's request.

Case No. 9321 – Kathryn B. Byrne Matushik – south of Road 288A, west of Lakewood Drive, being Lot 16, Block B within Lochwood development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Kathryn Byrne was sworn in with Shannon Carmean, Attorney, present on behalf of the application, and testified requesting a 0.2-foot variance from the required 30-foot front yard setback requirement; that the Applicant purchased the property on June 30, 1994; that the Applicant has since sold the property and the encroachment was discovered; that the dwelling was built in 1978; that

the cost to move the dwelling into compliance would be approximately \$15,000; that the encroachment was not created by the Applicant; that it will not alter the character of the neighborhood; and that it is the minimum variance to afford relief.

Amanda Littleton was sworn in and testified in support of the application and stated that she is the realtor and that the new homeowner understands that it was not the fault of the Applicant.

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. 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. 9322 – John J. Aranowicz – south of Route 54, south of Taylor Avenue, being Lot 24, Block 5 within Cape Windsor development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. John Aranowicz was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement and a 4-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that he plans to replace an existing unit with a single-family dwelling; that this is a typical request for this development; that the Homeowner's Association is in support of the application; that the proposed dwelling will be on pilings; and that a covered porch is not proposed.

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

Case No. 9323 – Bayside Homes – south of Road 288A, south of Blackwood Drive, being Lot 16, Section H within Lochwood development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Este Class and Karen Riley were sworn in and testified requesting a 2.4-foot variance from the required 30-foot front yard setback requirement for an existing attached garage; that the dwelling was a spec home for the Applicant; that the garage was built by another contractor; that the encroachment was discovered by a final survey done for settlement; that a Certificate of Compliance was issued for the attached garage; and that they submitted pictures and copies of Certificate of Compliance and the contract for the construction of the attached garage.

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. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it meets the standards for granting a variance. The Board asked Mr. Berl to send a letter to the builder of the attached garage.** Vote carried 5 – 0.

Case No. 9320 – River Asphalt L.L.C. – north of Road 333, west of Penn Central Railroad.

A special use exception for an asphalt plant.

Ms. Hudson presented the case. John Haines and Kevin Jones were sworn in with Jim Fuqua, Attorney, present on behalf of the application, and testified requesting a special use exception for an asphalt plant; that there is currently a concrete plant on the site; that there is an existing stone depot on the site by the railroad; that the proposed plant is a combination of two existing companies known as George & Lynch and H & K Group; that the equipment for the plant will be relocated from a Pennsylvania site; that the equipment will be updated and will use the latest state of art technology; that the latest technology has greatly reduced the noise factor; that loaded trucks will be covered with tarps; that they will use the existing entrance and will have a turn around area for the asphalt plant; that the trucks are loaded and weighed on site; that they will be closely monitored by DNREC; that the property is zoned HI; that there is a need for hot mix for the area; that hot mix does not absorb into the ground; and that they submitted letters in support of the application.

Kevin Fluharty was sworn in and testified in opposition to the application and stated that he is employed with P & A LLC, an existing hot mix company, and that he submitted a letter in opposition.

Thomas Jarmon and Steve Cordrey were sworn in and testified in opposition to the application and stated that they have concerns about the potential odors generated by the plant.

In rebuttal, Kevin Jones, stated that the modern plants do a lot of recycling; that the asphalt is contained within the plant and does not let out any odor; that the only time the asphalt is exposed is during loading into the outgoing trucks.

In rebuttal, Thomas Jarmon, stated that he is also concerned for the increase in truck traffic; that the plant is only 600-foot from nearby dwellings; that the Jake brakes the trucks use are very disruptive; and that he is concerned with the hours of operation.

In rebuttal, John Haines, stated that the use will increase the truck traffic; that there are a number of permitted uses for this zoning that would increase truck traffic and not require a public hearing; that they can control the Jake brake problem on their own trucks; that they will also have signs to deter the use of the Jake brakes with the other companies using the asphalt plant; that trucks won't run to and from the plant until 6:30 a.m.; that the need to start at 5:00 a.m. is to get the silos heated up for the hot mix; that the only late night use would be on jobs mandated by the State; and that they do not take on many jobs that require an all night running of the plant.

Wayne Ellingsworth was sworn in and testified in opposition to the application and stated that he represents Tilcon, and that they have a plant that is currently shut down due to a shortage of the need for hot mix in this area.

By a show of hands 2 parties appeared in support of the application.

By a show of hands 3 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until December 19, 2005**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 9275 – Kellco Partnership DBA Verizon Wireless – southeast of Road 264, 1,230 feet southwest of Route One.

A special use exception to replace an existing telecommunications tower.

The Board discussed the case which has been tabled since November 7, 2005.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted with the stipulation that a soft lighting system is used that changes to a strobe light during inclement weather and that the lighting start at the first 75-foot and that lighting be installed on top of the tower.**
Vote carried 5 – 0.

Case No. 9304 – Mary E. and William Stanley Roper, III – northeast of Road 357, southwest of Taylor Drive, being Lot 10 within Collins Park development.

A variance from the side yard setback requirement.

The Board discussed the case which has been tabled since November 21, 2005.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood and since it is the minimum variance of 3-inches to afford relief.** Vote carried 5 – 0.

Meeting Adjourned 10:30 p.m.