



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF DECEMBER 7, 2009

The regular meeting of the Sussex County Board of Adjustment was held on Monday December 7, 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. Mills, seconded by Mr. McCabe, 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 the November 16, 2009 meeting. 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. 10527 – Brian McMullen- south of Road 274, north of Magnolia Road, being Lot 20 within Pine Valley Mobile Home Park.

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

Mrs. Isaacs presented the case. Brian McMullen was sworn in and testified requesting a 9.8-foot variance from the required 20-foot separation requirement between units from manufactured home on Lot 19 and a 13-foot variance from the required 20-foot separation requirements between units from manufactured home and shed on Lot 21; that he would like to replace the existing manufactured home; that it is a 1960 and measures 8' x 38'; that the existing home is a fire hazard; and that he will be replacing it with the smallest size he can find.

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

Mrs. Isaacs stated the office received 2 letters in favor of the application.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variances be **granted since the lot is unique in size and since it will not alter the essential character of the neighborhood**. Vote carried 5 – 0.

Case No. 10528 – Fadely Living Trust- west of Road 347, west of Squirrel's Run Circle, being Lot 10 within Squirrel's Run development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Thomas and Janet Fadely were sworn in and testified requesting a 9-foot variance from the required 10-foot side yard setback requirement; that they would like to construct a 12' x 28' carport; that the carport will be open on three (3) sides; that it will be used to store their pontoon boat from the weather; that it will be located in the safest place for backing up a boat; that it is the only size that can be constructed due to the size and height of the pontoon boat; and that they received approval from the Homeowners Association.

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

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

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

Motion by Mr. McCabe, seconded by Mr. Workman and carried unanimously that the variance be **granted since there was no opposition**. Vote carried 5 – 0.

Case No. 10529 – Ellen T. Fennell Trustee- north of Road 483, north of Waterview Drive, being Lot 1 within Waterview Acres development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Richard Ewing and James Fennell were sworn in and testified requesting a 3-foot variance from the required 5-foot side yard setback requirement; that the existing shed was placed on a concrete pad; that the shed sits in an easement; that there is no other suitable place to put the shed; that the shed measures 28' x 12'' and that he spoke to Del-Dot and they have no objection to the placement of the shed.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the request for a rehearing be **denied since the application is not substantially different than the original application.** Vote carried 5 – 0.

Case No. 10530 – Karl and Lori Brown- north of Road 48, 793 feet west of Route 30.

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

Mrs. Isaacs presented the case. Karl and Lori Brown were sworn in and testified requesting a 7,759-square foot variance from the required 32,670-square foot requirement for a lot and a 50-foot variance from the required 150-foot lot width requirement for a parcel; that they would like to subdivide the parcel; that they received approval in 2005 to move the house; and that they were told by the house mover that the house cannot be moved as it would damage the home.

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

Mrs. Isaacs stated that she received 12 letters in support of the application and a petition with 23 signatures.

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

Case No. 10531 – Thomas P. and Carolyn Spiezio- north of Road 333, east of River Bend Drive, being Lot 36 within River Bend development.

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. Thomas and Carolyn Spiezio were sworn in and testified requesting a 20-foot variance from the required 20-foot rear yard setback requirement for a detached deck; that the deck is already constructed; that they were not aware a building permit was needed; that the property is waterfront; that the hill located on the property is beginning to erode; and that they received approval from the Homeowners Association.

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

Mrs. Isaacs stated the office received 5 letters in support of 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. Hudson, and carried unanimously that the case be **Tabled until the January 4, 2010.** Vote carried 5 – 0.

Case No. 10532 – Tim Riale- south of Road 277, west of Poplar Avenue, being Lot 55, Block V, Section 5 within Angola By The Bay development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Tim Riale was sworn in and testified requesting a 0.3-foot variance from the required 10-foot side yard setback requirement; that the home was foreclosed on; and that when a survey was done the violation was discovered.

The Board found that no parties appeared in support or 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. McCabe, and carried unanimously that the variance be **granted since it meets the standards for granting a variance.** Vote carried 5 – 0.

Case No. 10533 – Raymond E. Tomasetti, Jr. - south of Route 20, 1,595 feet east of Shufelt Road.

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

Mrs. Isaacs presented the case. Bruce Wright was sworn in along with Raymond Tomasetti, Attorney, and testified requesting a 10.8-foot variance from the required 15-foot side yard setback requirement and a 13.6-foot variance from the required 20-foot rear yard setback requirement; that that garage was placed on the property prior to 1990; that the property transferred ownership in 2001; that a survey was stamped and approved by Planning & Zoning; and that the garage measures 24' x 46'.

James Covey was sworn in and testified in opposition to the application and stated that there was no permit obtained for the garage; and that he does not want it to be used for business use.

In Rebuttal, Mr. Tomasetti stated that there is no intent to change the use of the property.

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

The Board found that 1 party 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 and since it was not created by the applicant.** Vote carried 5 – 0.

Case No. 10534 – Lisa Gillette- north of Rosemary Street, intersection of Bay Shore Drive, being Lot 58, Block H within Joseph D. Short 1st Addition development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Matthew Dotterer was sworn in and testified on behalf of the applicant requesting a 3.10-foot variance from the required 10-foot side yard setback requirement; that the existing structure is non-conforming; that the applicant would like to construct an A-Roof with a screen porch and concrete block shower; that the existing roof is flat and needs to be replaced.

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 **tabled for the applicant to reapply for the front yard variance and that the fee be waived.** Vote carried 5 – 0.

Case No. 10535 – CVS Pharmacy- northeast of Route One, 481 feet northwest of Pennsylvania Avenue.

A variance from the maximum allowable wall signage requirement.

Mrs. Isaacs stated it was determined that the variance was not needed.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **denied since it is not needed.** Vote carried 5 – 0.

Case No. 10536 – Lynn A. McColley- northwest of Route 36, 360 feet north of Road 208 (Sapp Road).

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Lynn McColley was sworn in and testified requesting a 6.7-foot variance from the required 15-foot side yard setback requirement for an existing building from proposed new property line; that he would like to subdivide the house and the garage from the rest of the farm; that he owes no money on the farm; and that in the future it would allow him to do some financing.

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 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. 10537 – Sea Breeze, LP- south of Route One, 170 feet northwest of Road 271, being Lots H15, H17, H19, H21, H23, H25 within Sea Air Village Mobile Home Park.

A variance from the buffer requirement in a mobile home park.

Mrs. Isaacs presented the case. Cindy Surface was sworn in along with David Hutt, Attorney, and testified requesting a variance from the 50-foot buffer requirement in a mobile home park; that they seek to consolidate six (6) recreational vehicle sites into one manufactured home site; and that the Planning & Zoning Commission gave conceptual approval for the consolidation of recreational vehicle sites H-5, H-9, H-11 and H-13 into one manufactured home lot to be known as H-5 on March 1, 2006 contingent upon the approval from the Board of Adjustment.

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. 10538 – Bernadette J. Abell- south of Holly Court, being Lot 10 and part of Lot 11, Block J, Section 2 within Angola By The Bay development.

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. Greg Hook was sworn in and testified on behalf of the applicant requesting a 3.6-foot variance from the required 20-foot rear yard setback requirement and a 4.9-foot variance from the required 20-foot rear yard setback

requirement for steps; that the lot is unique in size; and that the variance is needed for the screen porch and steps that are already constructed.

Angela Norwood was sworn in and testified in favor of the application and stated that the screen porch adds to the property value in the neighborhood; and that it does not alter the essential character of the neighborhood.

The Board found that one 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 is an odd shaped lot and since it will not alter the essential character of the neighborhood**. Vote carried 5 – 0.

Case No. 10539 – Charles A. Malizia- east of Route One, being Lot 2 within Indian Beach Surf Club development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Charles Malizia was sworn in along with Gene Bayard, Attorney, and testified requesting a 5-foot variance from the required 15-foot corner side yard setback requirement for a proposed dwelling; that the property is zoned MR; that the lot is long and narrow; that the variance would allow the applicant to build a structure that is more in the keeping with the neighboring dwellings; that Summerhouse Lane is not used as a through street, and only the adjacent property owners on Summerhouse Lane accesses their property through this lane; that there is no objection from his immediate neighbors; and that the letter that was submitted in opposition is not his immediate neighbor and it will not impact their property.

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

Mrs. Isaacs stated the office received 2 letters in favor of the application.

Mrs. Isaacs stated the office received 1 letter in opposition to 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. 10540 – Philadelphia Pentecostal Church- east of Road 213, north of Pentecostal Street, being Lot 2 within Northwood Acres development.

A special use exception for a homeless shelter.

Mrs. Isaacs presented the case. Major Foster and Vanda Deputy-Smith were sworn in and testified requesting a special use exception for a homeless shelter; that they would like to construct a homeless shelter; that it would house approximately forty (40) people; that they would stay from thirty (30) days up to two (2) years; and that there will be two (2) employees per shift.

The Board found that 10 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 will not substantially affect adversely the uses of adjacent and neighboring properties.** Vote carried 5 – 0.

OLD BUSINESS

Case No. 10185 – Clifton and Elaine Friel- north of Route 54, west of Margaret Street, being Lot 10 within Lighthouse Mobile Home Park.

A variance from the front yard, side yard and rear yard setback requirement between units in a mobile home park.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **denied.** **Vote carried 5 – 0.**

Case No. 10526 – Daniel F. Burton- northwest of Road 410, being Lot A within Oliver R. Fisher Subdivision.

A special use exception to place a manufactured home that is more than five (5) years old.

The Board discussed the case, which has been tabled since November 16, 2009.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted.** Vote carried 5 – 0.

OTHER BUSINESS

Case No. 10274 – Raymond S. Smethurst, Jr. - south of Old Country Road and Ann Avenue.

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

This is a request for a time extension.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted for a period of 6 months**. Vote carried 5 – 0.