



## *Board of Adjustment*

Agendas & Minutes

### **MINUTES OF FEBRUARY 27, 2006**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 27, 2006, 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. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda with the following corrections, Case No. 9401 – NV Homes was withdrawn on February 22, 2006, Case No. 9394 – Diane Barone moved to March 6, 2006, and with Case No. 9371 – Kathleen Huckeba and Case No. 9396 – Thomas and Claudia Brooks under Old Business moved to the beginning of the hearings. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of February 6, 2006 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. 9371 – Kathleen Huckeba** – east of Road 274, being Lot D-8 within Rehoboth Bay Mobile Home Park.

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

Mr. Berl stated that Benjamin Lee and Coran Thompson were subpoenaed to attend the meeting.

Benjamin Lee and Coran Thompson were sworn in and testified on behalf of the park's roll in the placement of this mobile home in the mobile home park; that he stakes each lot prior to the placement of any mobile home in the park; that they refer to a survey they have in the office to locate the lot lines; that they have always followed the 20-foot separation requirement; that one resident insisted that the separation requirement did not

need to be that great; that they then referred to the State Fire Marshal's Office and discovered that that office only required a 10-foot separation between units; that prior to this the park has not had any problems with having the units meet all the required setback requirements; and that the mobile home sales companies only seem to be interested in the sales.

Gene Bradley was sworn in and testified on behalf of the mobile home sales company; that they are not only interested in selling mobile homes; that they placed the

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unit under the direction of the park; that the cost to move the unit into compliance would be between \$24,000 and \$30,000; that the surveyor and maintenance supervisor were on the site when the lot was staked out; that the park wanted to line the unit up with the other units within the park; and that a shed the Applicant wanted to place on the property also affected the encroachment.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to recess the case until after the public hearings.

Motion by Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted with the stipulation that a survey be provided to the Board within one (1) year.** Vote carried 5 – 0.

**Case No. 9396 – Thomas and Claudia Brooks** – east of Road 274, east of B Street, being Lot B-16 within Rehoboth Bay Mobile Home Park.

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

See Case No. 9371 for details.

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

**Case No. 9400 – Robert and Elaine Muhlbauer** – northwest of Road 584, north of Glen Circle, being Lot 20 within Country Glen development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Robert and Elaine Muhlbauer were sworn in and testified requesting a 6.1-foot variance from the required 30-foot front yard setback requirement; that he built a porch in December 2002; that they have applied for a home equity loan and needed a survey; that the survey showed the encroachment; and that the Certificate of Compliance was issued in May 2003.

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

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood**.  
Vote carried 5 – 0.

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**Case No. 9402 – James D. MacMurray and Fishman AQ Center** – southeast of Dartmouth Drive, 375 feet southwest of Route One.

A special use exception for a blimp and a variance for additional wall signs, a variance from the maximum allowable square footage, and a variance from the maximum allowable height requirement.

Ms. Hudson presented the case. Dan MacMurray and Melbourn Manson were sworn in and testified requesting a special use exception for a blimp, a variance for two (2) additional wall signs, a 175-foot variance from the required 25-foot maximum allowable height requirement and a 103-square-foot variance from the required 100-square-foot maximum allowable square footage for a wall sign; that their business is approximately 400-foot from Route One; that the new WAWA store will block the view of the business from the highway; that the two additional wall signs are banners; that they would like the ability to change the signs for different promotions; that the blimp will be used to attract attention to their location; that they would like to use the blimp a minimum of 120-days throughout the year; that the blimp will go on a separate parcel; that the blimp will not obstruct the existing billboard; that the blimp will only be approximately 12-foot off the ground; and that they submitted pictures.

Diana Dolin was sworn in and testified in opposition to the application and stated that she is a member of the Rolling Meadows Homeowner's Association; that they understand the need for the Applicant to increase visibility to their business; that they are concerned for any structures being placed on the roof of the building; that they have no objection to the increase in the maximum allowable square footage for a sign; that they do not want the blimp to fly at 200-foot; that the blimp should only be used when the winds are less than 15mph; and that the Applicant was aware the WAWA was being built on the property in front of their business.

In rebuttal, Dan MacMurray, stated that they were aware of the WAWA store; and that they thought the building was too be built on more of an angle which would have allowed more visibility to their business.

By a show of hands 8 parties appeared in opposition to the application.

Ms. Hudson stated that the office received 2 letters 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.

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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 variance be **granted for one (1) wall sign with a maximum allowable square footage of 200-square-foot; that the variance for additional signs be denied. and that the special use exception for a blimp be denied.** Vote carried 5 – 0.

**Case No. 9403 – Diana Roben** – east of Road 348, north of Winward Way, being Lot 10, Block B, Section 1 within Greens At Indian River development.

A variance from the rear yard setback requirement.

Ms. Hudson presented the case. Tony Casmore was sworn in and testified requesting a 3.7-foot variance from the required 20-foot rear yard setback requirement for a proposed porch; that the deck already exists; that they want to extend the decking by 4-foot and enclose it to create a screen porch; that the porch will measure 8'x 21'; that the existing steps encroach into the setback; that the proposed porch will not extend further than the existing steps; and that they will enter and exit the porch from the existing deck.

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.** Vote carried 5 – 0.

**Case No. 9404 – Kenneth Dewey** – east of Road 584, 620 feet north of Road 600.

A variance from the maximum age requirement for a manufactured home.

Ms. Hudson presented the case. Kenneth Dewey was sworn in and testified requesting a variance from the maximum age requirement for a manufactured home; that the unit is a 1974, 28'x 60' double-wide; that he will live in the unit; that there is an

existing barn on the property; that he hopes that living on the property will keep the property from being vandalized; and that he submitted a picture of the unit.

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 will not alter the character of the neighborhood and is a minimum variance**. Vote carried 5 – 0.

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**Case No. 9405 – Edgar Polite and Dawn Capano** – west of Road 274, 400 feet north east of Arnell Road, being Lot 5 within Willowmere development.

A variance from the rear yard setback requirement.

Ms. Hudson presented the case. Edgar Polite and Dawn Capano were sworn in and testified requesting a 10-foot variance from the required 20-foot rear yard setback requirement for a proposed pole shed; that the pole shed will measure 40'x 30'; that the proposed location will allow easier access from the existing driveway; that they want to maintain their view from an existing deck; and that he owns a lawn service business.

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**. Vote carried 5 – 0.

**Case No. 9406 – CMF Bayside, LLC** – east of Road 395, west of Signature Boulevard, being within Americana Bayside development.

A variance from the separation requirement between units.

Ms. Hudson presented the case. Douglas Brown was sworn in with Jim Fuqua, Attorney, present on behalf of the application, and testified requesting a 5-foot variance from the required 20-foot separation requirement between units; that the variance is needed between two buildings in the development; that the buildings will meet at a 90-degree angle; that the building is proposed to be built 5-foot further back on the lot to accommodate a porch; that this change created the encroachment; that the buildings have not been built; that the variance will not alter the character of the neighborhood; and that it is a minimum variance to afford relief.

John Kane was sworn in and testified in opposition to the application and stated that he attended all the previous hearings for Americana Bayside; that the developer has been granted variances already; that he feels the porch can be built at an angle to comply with the setback requirement; that the developer should go back to the original design; that they could re-configure the roadway to make the buildings comply; and that he submitted a newspaper article.

In rebuttal, Jim Fuqua, stated that the Applicant has not been before this Board; and that the Planning and Zoning Commission approved the development as a Residential Planned Community.

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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 March 20, 2006**. Vote carried 5 – 0.

**Case No. 9407 – Anderson Homes** – east of Road 275 (Plantation Road), east of Dot Sparrow Drive, being Lot 92 within Summercrest development.

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

Ms. Hudson presented the case. Gerald Taylor was sworn in and testified requesting a special use exception to place a manufactured home type structure as a sales office; that the unit will measure 11' x 44'; that the unit will only be needed for a 4 to 5 month period; that there will be adequate parking; that the site will be landscaped; and that the office will be moved to a model home when the model home is completed.

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 for a period of five (5) months since it will have no adverse effect to the neighborhood**. Vote carried 5 – 0.

**Case No. 9408 – Darren S. Jones** – north of Road 540, .20 miles west of Road 538.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Darren Jones and Phyllis Parker were sworn in and testified requesting a 3-foot variance from the required 40-foot front yard setback requirement for an existing porch; that a survey approved in 1990 showed the

encroachment; that a second survey was done and shows the exact measurements as the first survey; that the Applicant is the third owner of the property; that they feel the fee should be refunded to them; and that the dwelling has been on the lot since the 1970's.

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 **left open to allow the applicant to supply a letter to the Board from the previous owner.** Vote carried 5 – 0.

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The Board recessed for 5-minutes.

**Case No. 9409 – Jacob Widerman** – southwest of Route 14, southwest of Concord Drive, being Lot 15 within Shawnee Acres development.

A variance from the minimum lot width requirement.

Ms. Hudson presented the case. Robert Nash was sworn in and testified requesting a 47.71-foot variance from the required 100-foot minimum lot width requirement for a parcel; that the situation was created in 1989; that two property owners traded portions of their lots; that the lot is larger than most lots in the development; and that the Applicant was unaware of any problem with the lots.

Rich Phillips was sworn in and testified in opposition to the application and stated that he is the owner of Lot 16; that he and the original owner of Lot 15 agreed to trade property to straighten the lot line; that he needed more road frontage to build his dwelling; and that he then thought the exchange of the land would make Lot 14 and Lot 15 become one building lot.

Mary Hewish was sworn in and testified in opposition to the application and stated that Lot 14 and Lot 15 have always been sold jointly; that everyone felt the two lots were one parcel; and that the property backs up to the golf course.

The Board found that 9 parties appeared in opposition to the application.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until March 20, 2006.** Vote carried 5 – 0.

**Case No. 9410 – Paul Henry** – south of Road 467B, 3,100 feet northeast of Road 467, being Lot 4.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Paul Henry was sworn in and testified requesting a 5-foot variance from the required 15-foot side yard setback requirement for an existing pole barn; that the pole barn measures 26'x 32'; that he hired First State Pole Building to construct the pole barn; that they obtained the permit; that he showed the general area that he wants the shed to be located on; and that he was not aware of the encroachment until he applied for the Certificate of Compliance.

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Wayne King was sworn in and testified in opposition to the application and stated that he was concerned how this variance would effect his need for a variance; and that he is not opposed to the variance.

In rebuttal, Paul Henry, stated that he let the builder know of the encroachment; and that the builder paid the application fee.

Motion by Mr. Mills, 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 a minimum variance to afford relief and since it was not created by the Applicant and that a letter be sent to the builder.** Vote carried 5 – 0.

**Case No. 9411 – Richard and Diane Lockwood** – northeast of U.S. Route 113, 140 feet southeast of Road 432.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Richard and Diane Lockwood were sworn in and testified requesting a 10-foot variance from the required 50-foot side yard setback requirement for an animal shelter and a 13-foot variance from the required 15-foot side yard setback requirement for an existing garage; that they purchased the property in August 2005; that they currently use the existing garage for the animal shelter; that they have 8-sheep and 9-chickens; that a portion of the existing garage is non-conforming; and that the neighbor effected most by the variance for the shelter is in support of the application.

Remo Censurato and Vicki Chamberlain were sworn in and testified in opposition to the application and stated that they own the adjacent property; that there is no fence between their properties; that the shelter is currently only 80-foot from their door; that the animals create an odor and fly problem; and that this entire neighborhood is not a farm area.



In rebuttal, Richard Lockwood, stated that they are not turning the garage into the shelter; and that the proposed shelter will meet the required setback requirement from the opposition's property line.

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

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

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At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until March 20, 2006**. Vote carried 5 – 0.

**Case No. 9412 – Anthony and Marcia Esposito** – north of Road 270A, 650 feet east of Road 270.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Lisa Michaels was sworn in with Jay Becker, Attorney, present on behalf of the application, and testified requesting a 1.7-foot variance from the required 10-foot side yard setback requirement for an existing dwelling; that the seller purchased the property in 1994; that there was a survey done which showed the encroachment; that the neighbor has stated he believes a manufactured home was originally placed on the property; that there have been additions built since then; that the structure is built over a basement; and that the encroachment was discovered at settlement.

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 5 – 0.

**Case No. 9413 – Everett B. and Doris J. Dickerson** – northeast of Road 46, 800 feet east of U.S. Route 13.

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

Ms. Hudson presented the case. Kim Mears was sworn in with Steve Ellis, Attorney, present on behalf of the application, and testified requesting a 0.4-foot variance

from the required 5-foot side yard setback requirement and a 0.9-foot variance from the required 5-foot rear yard setback requirement for existing sheds; that the two sheds were placed on the property by the original owners; that the second owner purchased the property as shown; that the encroachment was discovered on the day of settlement; that the sellers were unaware of any violations on the property; and that this is a minimum variance to afford relief.

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

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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 to afford relief**. Vote carried 5 – 0.

### **OLD BUSINESS**

**Case No. 9385 – Dolores R. Niblett** – south of Route 22, southeast of Mallard Road, being Lot 496 within Pot Nets Bayside Mobile Home Park.

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

The Board discussed the case which has been tabled since February 6, 2006.

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 5 – 0.

**Case No. 9391 – N V Homes** – east of Route One, north of Fenwick Avenue, being Lots 9, 11, 13, 15, and 17 within Fenwick Shores development.

A variance from the maximum allowable height requirement.

The Board discussed the case which has been tabled since February 6, 2006.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **denied since it does not meet the standards for granting a variance**. Vote carried 4 – 0 with Mr. McCabe abstaining.

### **OTHER BUSINESS**

**Case No. 8953 – Sun Communities** – west of Route One, southeast of Atlantic Avenue, being Lot E-10 within Sea Air Mobile City Mobile Home Park.

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

Clarification of Decision.

Mr. Berl read a statement he prepared explaining the reason for the amended Finding of Facts.

Motion by Mr. Hudson, and carried unanimously to approve the amended Finding of Facts. Vote carried 5 – 0.

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**Meeting Adjourned 10:30 p.m.**