



Board of Adjustment
Agendas & Minutes

MINUTES OF FEBRUARY 5, 2007

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 5, 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 member 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, Mrs. Melissa Thibodeau – Zoning Inspector, Mr. Norman Rickard, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Workman, 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 January 22, 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.

Case No. 9741 – James T. and Carol L. Curran – north of Road 341, east of Road 341-B, being Lot 222 within Dogwood Acres development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Carol Curran was sworn in and testified requesting a 7-foot variance from the required 40-foot front yard setback requirement for an existing dwelling; that they obtained the building permits; that members of their family built the dwelling; that they measured from the road for the setback requirements; that the Planning & Zoning Inspector informed them of the encroachment; and that the Certificate of Compliance has not been issued.

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 have been numerous variances granted in the development.**

Vote carried 5 – 0.

Case No. 9742 – Jerry Stansberry – west of Route One, northeast of Quillen Road, being Lot 25 within Suburban Development Corporation development.

A variance from the side yard setback requirement.

Minutes
February 5, 2007
Page 2

Mr. Rickard presented the case. Jerry Stansberry was sworn in with Daniel Myers, Attorney, present on behalf of the application, and testified requesting a 10-foot variance from the required 15-foot side yard setback requirement; that the Board granted a previous variance on the dwelling; that the steps were not considered in the first hearing; that they submitted surveys; that the steps cannot encroach due to the previous variances; and that it will not alter the character of the neighborhood.

By a show of hands 2 parties appeared in support of or 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 will not alter the character of the neighborhood and that it is a minimum variance to afford relief.** Vote carried 5 – 0.

Case No. 9743 – Robert A. Puddy – north of Road 283, 120 feet west of Oak Lane, being Lot 2, Block B within Sandy Brae development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Shannon Carmean, Attorney, was present on behalf of the application, and testified requesting a 1-foot variance from the required 10-foot side yard setback for an existing dwelling; that the previous owner purchased the property in 1982; that the previous owner is now deceased; that the property was sold in April 2006; that the dwelling was built in 1983; that the encroachment went unnoticed until a survey was done for settlement; that the encroachment was not created by the Applicant; and that the Certificate of Compliance was issued in 2000.

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 variance be **granted since it meets the standards for granting a variance**.
Vote carried 5 – 0.

Case No. 9744 – Dana and Neil Kishter – west of Bunting Avenue, 50 feet south of Maryland Avenue, being south ½ of Lots 6 and 8, Section B, within Coquina Club Condominium.

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

Minutes
February 5, 2007
Page 3

Mr. Rickard presented the case. Dana and Neil Kishter were sworn in with Heidi Balliet, Attorney, present on behalf of the application and testified requesting a 6-foot variance from the required 10-foot side yard setback requirement and a 3-foot variance from the required 6-foot rear yard setback requirement for an inground pool; that the Applicant has numerous health conditions; that the pool is needed for her therapy needs; that the yard has already been fenced in; that the pool will measure 11'x 15'; that they submitted letters and pictures; that the Condominium Association is in support of the application; that the property is unique due to the condominium common area; that the variance will enable reasonable use of the property; and that it will not alter the character of the neighborhood.

W. James Conley was sworn in and testified in opposition to the application and stated that the wrong property was identified for the hearing; that he is an adjacent property owner; and that he is concerned with the run off from the pool.

Cynthia Mather was sworn in and testified in opposition to the application and stated that she is also an adjacent property owner; that she has owned the property for 23-years; that the dwelling has already been granted a variance; that she has been a pool owner and knows that a pool must be backwashed; that the only place for run off from the pool to go is on the adjacent properties; that there is also a noise issue with having a pool in the area; and that she feels the Applicant has other options.

Marsha Smith was sworn in and testified in opposition to the application and stated that the property is already covered in concrete; that there is no gravel on the Applicant's property; that any run off from the property goes directly on adjacent properties or into the street; that since the Applicant's are not permanent residents she wants to know who will care for the pool; that she submitted pictures; and that she feels setback requirements should be maintained.

In rebuttal, Heidi Balliet, stated that the pool technician advised her that the Applicant's pool would be self contained and there would be no run off onto the adjacent properties.

In rebuttal, Neil Kishter, stated that there will be an electric cover with a lock over the pool when the pool is not in use; that they will have a maintenance plan set up with the pool company to care for the pool at all times; that they do not rent the property so the pool is strictly for their use only; and that there are several pools on Bunting Avenue.

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

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

Minutes
February 5, 2007
Page 4

Motion by Mills, seconded by Mr. McCabe, and carried unanimously to take the case 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. Workman, and carried unanimously that the variances be **denied since it does not meet the standards for granting a variance.** Vote carried 5 – 0.

Case No. 9745 – C. Bryan Bennett – west of U.S. Route 13, ¼ mile south of Elm Street.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. C. Bryan Bennett, William Bennett and Earl Jackson were sworn in and testified requesting a 4-foot variance from the required 5-foot side yard setback requirement for a proposed addition; that the proposed addition is a 4,000-square-foot storage area; that there will be a canopy type structure that will encroach; that there is an existing stormwater management system on the property; and that the neighbor 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. Mills, 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 necessary to enable reasonable use of the property and since it is the minimum variance to afford relief.** Vote carried 5 – 0.

Case No. 9746 – Anita and Ronald L. Tyndall, Jr. – south of Road 483, 2,675 feet west of Road 484.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Ronnie Tyndall, Jr. was sworn in and testified requesting a 10-foot variance from the required 15-foot side yard setback requirement for a proposed detached garage; that the garage will measure 30'x 48'; that he wants to line the garage up with his existing driveway; that his father owns the adjacent property; and that to build the garage in compliance with the required setbacks would put the garage up against his porch.

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

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

Minutes

February 5, 2007

Page 5

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

Case No. 9747 – Alvin and Donna Collins – west of Route 30, 1,425 feet north of Route 9.

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

Mr. Rickard presented the case. Alvin and Donna Collins were sworn in and testified requesting a 17-foot variance from the required 20-foot rear yard setback requirement and a 1-foot variance from the required 15-foot side yard setback requirement for a proposed detached garage; that the proposed garage will measure 40'x 60'; that the lot is irregular in shape; that the location of the garage will line up with the existing dwelling; that the location allows room to maneuver their camper and trailers; that the adjacent property owner is in support of the application; and that they submitted a drawing.

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

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

Motion by Mr. Hudson, 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. 9748 – CAN, Inc. – south of Road 279, north of Skyler Drive, being Lot 74 within The Villages at Herring Creek development.

A variance from the front yard setback requirements.

Mr. Rickard presented the case. Johnny Bates and John Richardson were sworn in with Heidi Balliet, present on behalf of the application, and testified requesting a 1.5-foot variance from the required 30-foot front yard setback requirement for an existing dwelling; that the Applicant measured from the street; that only the garage portion of the dwelling encroaches; that the encroachment will not alter the character of the neighborhood; and that it is the minimum variance to afford relief.

Mr. Rickard stated that the office received 1 letter in support of the application.

Minutes

February 5, 2007

Page 6

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 variance be **granted since it meets the standards for granting a variance**.
Vote carried 5 – 0.

Case No. 9749 – Miken Builders, Inc. – west of Belle Road, 210 feet north of Hassell Avenue, being Lot 28 within Bay View Park development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Martin Blackburn and Marta Hutton were sworn in and testified requesting a 9-foot variance from the required 10-foot side yard setback requirement for an existing deck; that the deck was built with 2”x8” boards; that the Planning & Zoning Inspector informed them of the encroachment; that the rear yard deck had been dug down into the dirt to maintain the 6-inch requirement for a ground-level deck; and that they submitted pictures.

Mr. Rickard stated that the Applicant would also need a rear yard setback variance.

Dick Fox was sworn in and testified in opposition to the application and stated that he is the President of the Civic Association for Bay View Park; that they object to all variances in the development; that the 2-inches makes this variance minimal and feel that there would be no problem with the proposed variance.

By a show of hands 1 party appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to take the case 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 to allow the Applicant to apply for the rear yard setback variance and that the filing fee be waived.** Vote carried 5 – 0.

Case No. 9750 – Richard C. Banks, Sr. – west of Road 522A, across from Road 523.

A special use exception for storage of a manufactured home and to construct a second dwelling on property.

Minutes
February 5, 2007
Page 7

Mr. Rickard presented the case. Richard Banks, Sr. was sworn in and testified requesting a special use exception for storage of a manufactured home and to construct a second dwelling on property; that he purchased the property 3-years ago; that the property was sold as farm land; that his property is surrounded by pulp wood; that he obtained 2 building permits for dwellings; that he will live in the first dwelling built and his son will live in the second dwelling; that the manufactured home is being stored on the property until it can be placed on his property in Bridgeville; that he did not want to subdivide the property; and that he does not currently farm the property.

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 special use exception be **denied since it does not meet the standards for granting a special use exception.**
Vote carried 5 – 0.

The Board recessed for 5-minutes.

Case No. 9751 – Anthony Crivella – north of Route 54, 588 feet west of Dukes Avenue.

A special use exception for a billboard and a variance from the maximum height requirement.

Mr. Rickard presented the case. Tony Crivella and Kelley Pierson were sworn in and testified requesting a special use exception for a billboard and a variance from the maximum height requirement; that he wishes to withdraw the request for the height variance; that the billboard will be a steel mono-pole structure and measure 10' x 25'; that the billboard will meet all the required setback requirements; that the billboard will not exceed 25-foot in height; that the 50-foot buffer zone requirement from wetlands does not apply to this parcel; and that he plans to keep the property environmentally friendly.

Norman Barnett, Attorney, was present on behalf of the opposition to the application and stated that he represented East of The Sun Homeowner's Association; that the same application was submitted approximately 2-years ago; that the Applicant did not go forward with the application; that the property was not posted for this hearing; that this is a very scenic area in the County; and that this billboard will have an adverse effect to the neighborhood.

Nesbitt Gardina was sworn in and testified in opposition to the application and stated that he is originally from the Philadelphia area; that billboards are a thing of the

Minutes
February 5, 2007
Page 8

past; that the billboard will take away from the view; and that the property was not posted for this public hearing.

Mary Pat Kyle was sworn in and testified in opposition to the application and stated that there is very little green space left in this area; that she submitted a petition with 50-signatures; that there was little notice of this hearing; and that the height of the billboard is completely out of character with the neighborhood.

Vicki Carmean and Theo Brawn were sworn in and testified in opposition to the application and stated that they represent the Fenwick Island Council; that the Fenwick Island Council objects to this application; that there was no a posting on the property; and that they submitted pictures and a petition.

Chris Clark was sworn in and testified in opposition to the application and stated that he is a property owner and business owner in the area; that the Little Assawoman Bay is already polluted; that the wetlands need to be preserved; that the billboard will effect the natural run off and natural light to the wetlands; and that the billboard is completely out of character with the neighborhood.

Peter Frederick was sworn in and testified in opposition to the application and stated that he is a former Mayor of Fenwick Island; that the County and State have rebuilt the wetlands; that the billboard would disturb the wetlands; and that the billboard would substantially effect the neighborhood.

Fran Hasson was sworn in and testified in opposition to the application and stated that the billboard will block the Fenwick Island lighthouse; that the site was never posted; and that she doesn't think nature should be disturbed.

In rebuttal, Anthony Crivella, stated that the posting was on the property as of last Friday; that the property in zoned commercial; that there are numerous businesses in the

area; that he could build a structure on the site up to 42-foot in height; and that the billboard will only need maintenance once a year.

By a show of hands 36 parties appeared in opposition to the application.

Mr. Rickard stated that the office received 13 letter in opposition to the application.

Mr. Rickard stated that the office received 2 letters in support of the application.

Minutes
February 5, 2007
Page 9

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception be **denied since it does not meet the standards for granting a special use exception.**

Vote carried 5 – 0.

Case No. 9752 – Brantwyn Beach Realty, LLC – southeast of Rehoboth Avenue Extended, 369 feet southwest of Church Street.

A special use exception for reduction of minimum parking space requirement.

Mr. Rickard presented the case. Ronald McDerr was sworn in with Steven Spence, Attorney, present on behalf of the application, and testified requesting a special use exception for reduction of minimum parking space requirement; that they planned to renovate the existing building; that the structure had to be torn down; that the existing building had 5 parking spaces; that the new building is 1000-square-foot in size and requires 9 parking spaces; that site only allows room for 5-parking spaces; that they have an agreement with the YMCA to park on their site; and that they also have met with Betty Gallo an adjacent property owner in reference to sharing parking.

By a show of hand 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. Workman, and carried unanimously that the special use exception be **granted**. Vote carried 5 – 0.

Case No. 9753 – Steven Newman – west of Road 226, 1,460 feet south of Road 224, being Lot 10 within Railroad Meadows development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Steven Newman was sworn in and testified requesting an 8-foot variance from the required 50-foot setback requirement for an existing horse barn; that he did not consider the overhang when he built the barn; and that he did not discover the encroachment until he tried to obtain the Certificate of Compliance.

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.**

Minutes

February 5, 2007

Page 10

Vote carried 5 – 0.

Case No. 9754 – Robert E. and Kathryn J. Davis – east of Road 350, north of Pinewood Road, being Lot 67 within Denton woods development.

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

Mr. Rickard presented the case. Robert Davis was sworn in with Ray Tomasetti, Attorney, present on behalf of the application, and testified requesting a 0.8-foot variance from the required 10-foot side yard setback requirement for an existing dwelling, a 0.6-foot variance from the required 5-foot rear yard setback requirement and a 1.7-foot variance from the required 5-foot side yard setback requirement for an existing shed; that the property was purchase by the Applicant in October 2006; that the Applicant is the third owner of the property; that the dwelling was placed on the property over 22-years ago; that the shed is in the same location as other sheds in the development; and that the neighbors have no objection to the application.

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

Mr. Rickard stated that the office received 1 letter in opposition to the application.

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the variances be **granted since it was not created by the Applicant since it will not alter the character of the neighborhood and that it is the minimum variance to afford relief.** Vote carried 5 – 0.

Case No. 9755 – Rt. 24 Self Storage LLC – south of Route 24, west of Road 309, being Lots 1 and 2.

A special use exception to place a manufactured home as a caretaker's residence.

Mr. Rickard presented the case. Bruce O'Hare was sworn in and testified requesting a special use exception to place a manufactured home as a caretaker's residence; that the buildings are being constructed; that the manufactured home will be used as the manager's home and office for the storage facility; that the unit will measure 24'x 48'; and that the unit will be placed on a block foundation.

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.

Minutes
February 5, 2007
Page 11

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted with the stipulation that the manufactured home have a block foundation**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 9700 – Charles R. and Mary Beth Caldwell – west of Road 362, north of Mimosa Street, being Lot 7, Section 4, Block M within Shady Dell Park development.

A variance from the side yard setback requirement.

The Board discussed the case which has been tabled since January 8, 2007.

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**.
Vote carried 5 – 0.

Case No. 9706 – Ocean Highway LLC – southwest of Route One, 301 feet northwest of Dartmouth Drive, being Parcel B.

A special use exception to place an off premise sign and a variance from the side yard setback requirement.

The Board discussed the case which has been tabled since January 22, 2007.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the case be **tabled until February 26, 2007**. Vote carried 5 – 0.

Case No. 9726 – Bestfield Homes, LLC – intersection of Road 206 and Route One.

A special use exception to place an off premise sign.

The Board discussed the case which has been tabled since January 22, 2007.

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

Case No. 9730 – John H. Ferris – intersection of Route 26 and Road 424.

A special use exception to place a billboard and a variance from the setback requirements.

Minutes
February 5, 2007
Page 12

The Board discussed the case which has been tabled since January 22, 2007.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until February 26, 2007**. Vote carried 5 – 0.

Meeting Adjourned 10:30 p.m.