



Board of Adjustment

Agendas & Minutes

MINUTES OF FEBRUARY 6, 2006

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 6, 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. McCabe, seconded by Mr. Mills, and carried unanimously to approve the Revised Agenda with the correction of Case No. 9371 – Kathleen Huckeba being moved to February 27, 2006. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of January 23, 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. 9384 – P & A LLC (Maryland) – east of U.S. Route 13, 2,050 feet south of Road 452.

A special use exception to place manufactured home type structures as offices and a lab.

No one appeared on behalf of the application.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **denied due to the for lack of a record of support**. Vote carried 5 – 0.

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.

Ms. Hudson presented the case. Dolores Niblett was sworn in and testified requesting a 4.5-foot variance from the required 20-foot separation requirement between units in a mobile home park; that she placed an 8'x 10' shed on her lot; that the park gave her permission to place the shed; that the park did not tell her about the 20-foot separation requirement; that someone from the park tried to help her find a different location for the shed; and that she has not obtained a building permit for the shed.

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

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The Board found that no parties 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. McCabe, and carried unanimously that the record be **left open for a staff report**. Vote carried 5 – 0.

Case No. 9386 – Donna L. Andrew – west of U.S. Route 13A, 290 feet south of Road 460, being Lots 6, 7, and 8 within Oscar Evans development.

A special use exception to place a manufactured home on a medical hardship basis.

Ms. Hudson presented the case. Donna Andrew was sworn in and testified requesting a special use exception to place a manufactured home on a medical hardship basis; that the unit will be for her mother; that the proposed unit will be approximately 14'x 70'; that she has not purchased a unit yet; that the unit will have an a-roof to blend with the neighborhood; and that her mother needs supervision throughout the day.

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

Ms. Hudson 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. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for a period of two (2) years since it will have no adverse effect on the community**. Vote carried 5 – 0.

Case No. 9387 – Nellie Hart – north of Route 5, west of Circle Drive, being Lot 30, Block B, Section 2 within Orchard Manor development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Nellie Hart and Ralph Skinner were sworn in and testified requesting a 9-foot variance from the required 30-foot front yard setback requirement for an existing front porch; that he is the builder and he obtained the building permit; that they were not aware of the encroachment until notified by the Planning and Zoning Department; that they had a survey done after construction; that this is only his

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second construction job; that the porch and ramp are needed for medical reasons; and that the porch is not out of character in this neighborhood.

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. Workman, seconded by Mr. Hudson, 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. Hudson, seconded by Mr. Workman, and carried unanimously that the variance be **granted for a 6.9-foot variance since it meets the standards for granting a variance**. Vote carried 5 – 0.

Case No. 9388 – Timothy and Deborah McMahon – south of Route 22C, south of Honey Spot Road, being Lot 539 within Pot Nets Bayside Mobile Home Park.

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

Ms. Hudson presented the case. Tim McMahon was sworn in and testified requesting a 5-foot variance from the required 20-foot separation requirement between units in a mobile home park; that they purchased a new double-wide package deal from the park; that the package included a porch; that the porch will not meet the separation requirement from his neighbor's carport; that his neighbor had a variance granted for the carport; that New Dimension obtained all the proper permits; and that he submitted pictures.

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 character of the neighborhood and**

since it is a minimum variance to afford relief and that a letter be sent to New Dimensions. Vote carried 5 – 0.

Case No. 9389 – Martin and Marie Cocci – south of Route 54, north of Stoney Run, being Lot 22, Phase I within Keenwick Sound development.

A variance from the side yard setback requirement.

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Ms. Hudson presented the case. Martin Cocci was sworn in and testified requesting a 2-foot variance from the required 10-foot side yard setback requirement for an addition; that the addition was built to cantilever into the setback requirement; that the builder believed the addition could cantilever into the setback requirement; that the foundation of the dwelling does not encroach into the setback requirement; that the addition is an extension of the dining room to allow room for a hutch; that the neighbor's and the Homeowner's Association are in support of the application; and that he submitted pictures.

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. Workman, and carried unanimously that the variance be **granted since it meets the standards for granting a variance and that a letter be sent to the builder.** Vote carried 5 – 0.

Case No. 9390 – Robert W. Lukowski – south of Route 54, west of Monroe Avenue, being Lot 12, Block 3 within Edgewater Acres development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Robert Lukowski was sworn in and testified requesting a 14.6-foot variance from the required 30-foot front yard setback requirement for a set of steps; that he was granted a variance in 2005; that the lot was originally thought to be 100-feet in length; that the survey shows the lot to be only 94.35-foot; that this was not even noticed on the first application to the Board; that the height of the entry way and the required rise for the steps added to the encroachment; that the stairs are the grand entry to the second floor; and that he submitted pictures.

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.

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

Ms. Hudson stated that the office received 3 letters in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously to take the case 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. 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.

The Board took a 5-minute recess.

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.

Ms. Hudson presented the case. Todd Hickman, Ted Ruberti and Zachary Crouch were sworn in with Heidi Balliett, Attorney, present on behalf of the application, and testified requesting a 2.81-foot variance from the required 42-foot maximum allowable height requirement for Building 5 and a 2.82-foot variance from the required 42-foot maximum allowable height requirement for Building 6; that the County adopted the IBC Building Code on May 1, 2005; that under the IBC Code there is no height violation; that the Planning and Zoning Ordinance height requirement has not been amended since 1995; that the variance that was granted in 2004 was for the cupola's only based on plans following the IBC Code; that there is a conflict between the two codes; that the plans are the same as they were in the 2004 case; that the request does not alter the character of the neighborhood; that the rest of the building will conform to the 42-foot maximum allowable height requirement; and that they submitted pictures.

Clinton Bunting was sworn in and testified in support of the application and stated that he is the developer; that he is upset to be here before the Board for the same structures; that the Applicant followed the IBC Code and by doing so a mistake was made due the code discrepancy; and that he feels the conflict between the codes needs to be addressed to prevent further errors of this type.

Dave Weidman, Attorney, present on behalf of the opposition, stated that he is also disappointed to be before this Board once again; that the Applicant is trying to create

a conflict that does not exist; that the Zoning Ordinance states clearly the maximum allowable height requirement is 42-foot; that the IBC Code rule must be done within the maximum allowable 42-foot height requirement, if not this would create a dramatic difference from property to property; that there is no conflict if there is a cap on a height requirement; that the IBC rule guides you on how to measure for the height requirement; that the Applicant should have an issue with their architect not with the County; that the architect signed a waiver stating it meets the requirements; that the building permit clearly states the 42-foot maximum allowable height requirement; that there was an agreement made in the previous case for the cupola's; that there was no conflict between

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the Zoning Ordinance and IBC Code at that hearing; and that a petition was submitted with 42-signatures in opposition to the application.

Taylor Dickerson was sworn and testified in opposition to the application and stated that he adopts the presentation made by the Attorney as his own.

Bill Strom was sworn in and testified in opposition to the application and stated that his family has owned property in the area since 1947; that he attended the first hearing and felt a fair agreement had been made between the two parties; that when he called the Planning and Zoning Department he was informed the maximum allowable height requirement is 42-foot; that the IBC Code allows you to build a structure at any height; that the foundation is already poured for the third building; and that he is concerned the Applicant will continue to ask for variances since the structures come to the site already built.

Phillip Craig was sworn in and testified in opposition to the application and stated that he has lived in the area for 18-years; that he is an architect; that no matter what code is used an architect goes to the local Zoning Department to get all the requirements; that the height requirement is 42-foot maximum and has nothing to do with an average; that the architect should have checked before signing a waiver; and that the Applicant has built the same exact structures elsewhere and know exactly how tall the structures are.

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

By a show of hands 11 parties appeared in opposition to the application.

Ms. Hudson stated that the office received 17-letters in opposition to the application.

Ms. Hudson stated that the office received 1-letter in support of 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. McCabe, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until February 27, 2006**. Vote carried 5 – 0.

Case No. 9392 – David Nocks – northeast of Road 636, 680 feet northeast of Road 637, being Lot 2 within Jacob W. Davis Heirs development.

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

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Ms. Hudson presented the case. David Nocks was sworn in and testified requesting a 44.69-foot variance from the required 150-foot lot width requirement for a parcel; that the property is 2.34-acres; that he is building a dwelling on the property; that he has a low credit score; that he wants to subdivide to help others with low credit scores; and that his neighbor has had a variance.

Ken Davis affirmed and testified in opposition to the application and stated that his family has owned property in this area for over 100-years; that the variance will alter the character of the neighborhood; and that the Applicant is building on both lots for personal gain.

Ricardo Griffin affirmed and testified in opposition to the application and stated that he has lived in the area for 14-years; that he is concerned for the development in the area; and that he was previously denied to subdivide.

Myron Shockley affirmed and testified in opposition to the application and stated that he has been in a similar situation as the Applicant; that he tried to help a family member and discovered it was too difficult to subdivide in this area; and that he feels the Applicant can make it work within the laws of the County.

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

By a show of hands 6 parties appeared in opposition to the application.

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 this case. Motion by Mr. Hudson, seconded by Mr. Mills, 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. 9393 – Dale R. Dukes and Ross B. Dukes – northeast of Rod 474, 2,360 feet southeast of Route 9.

A variance from the rear yard setback requirement.

Ms. Hudson presented the case. Rusty Dukes was sworn in and testified requesting an 11.6-foot variance from the required 20-foot rear yard setback requirement for an existing barn; that the barn was built in the early 1900's; that the property is being subdivided to settle the estate; and that the barn is built with wooden pegs and impossible to move into compliance.

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

Case No. 9394 – Diana Barone – south of Route 22, south of West River Drive, being Lot 48 within White House Beach Mobile Home Park.

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

Ms. Hudson presented the case. Diana Barone, David Epperson and Alfred Lansi were sworn in and testified requesting a 4-foot variance from the required 20-foot separation requirement between units, a 9-foot variance from the required 20-foot separation requirement between units in a mobile home park, a 3-foot variance from the required 5-foot side yard setback requirement and a 4-foot variance from the required 5-foot front yard setback requirement; that they replaced an existing manufactured home; that the new unit was placed in the same footprint as the previous unit; that they asked the park owner to provide a survey or mark the lot lines; and that the park permitted the placement of the unit.

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 record be **left open to subpoena the park owner for the February 27, 2006**. Vote carried 5 – 0.

Case No. 9395 – Thomas McGlone and Andrew Meddick – north of Route 9, across from Road 282, being Lot 16 within Stamper Farms development.

A special use exception for a commercial greenhouse.

Ms. Hudson presented the case. Andrew Meddick was sworn in with Bonnie Benson, Attorney, present on behalf of the application, and testified requesting a special use exception for a commercial greenhouse; that the greenhouse will measure 20' x 50'; that the greenhouse will be used to grow plants to be sold on and off the property; that the neighbors are in support of the application; and that there will be no substantial effect to the neighborhood.

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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. Hudson, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted**. 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.

Ms. Hudson presented the case. Thomas Brooks and Gene Bradley was sworn in and testified requesting a 1.1-foot variance from the required 20-foot separation requirement, a 5.5-foot variance from the required 20-foot separation requirement and a 2-foot variance from the required 20-foot separation requirement between units in a mobile home park; that they have replaced an existing unit; that the previous unit measured 10' x 58'; that the new unit measures 26' x 62'; and that the park owner and manager told the installer where to place the unit.

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 record be **left open to subpoena the park manager to the February 27, 2006 meeting**. Vote carried 5 – 0.

Case No. 9397 – Stanley L. Merson – north of Route 54, east of Blue Teal Road, being Lot 14B, Block B, Section A within Swann Keys development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Stanley Merson was sworn in and testified requesting a 2-foot variance from the required 10-foot side yard setback requirement for both side yards; that the lot is 40' x 100'; that the proposed dwelling will measure 24' x 66'; that there will be no adverse effect to the neighborhood; and that numerous lots have been upgraded to larger dwellings.

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.

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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.** Vote carried 5 – 0.

Case No. 9398 – Michael and Deborah Hamlin – southwest of Road 226, 1,300 feet southeast of Road 224, being Lot 9 within Railroad Meadows development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Michael and Deborah Hamlin were sworn in and testified requesting a 13-foot variance from the required 15-foot side yard setback requirement for a proposed attached garage; that the garage will measure 22' x 32'; that due to the location of the septic system and access to the property this is the only side that the garage can be built; that the garage will match the dwelling; and that the adjacent neighbor is in support of the application.

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.

OLD BUSINESS

Case No. 9279 – Preston's Millsboro Auto Mart – northeast of Route One, 1,800 feet northwest of Road 271.

A special use exception for a car sale display.

The Board discussed the case which has been tabled since November 14, 2005.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for one (1) event for a period of five (5) days since it will have no substantial effect on the neighborhood.** Vote carried 5 – 0.

Case No. 9301 – Cassell and Edna Thomas – south of Route 20, 3,600 feet west of Road 485.

A special use exception for a day care center.

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

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

Case No. 9381 – Miller and Smith Homes At The Peninsula – southeast of Road 299, south of South Nicklaus Avenue, being Lot 134 within The Peninsula development.

A variance from the separation requirement between multi-family units.

The Board discussed the case which has been tabled since January 23, 2006.

Motion by Mr. Hudson, seconded by Mr. McCabe, 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.

OTHER BUSINESS

Case No. 8961 – Resort Broadcasting Co. – 300 feet east of Road 288, 3,600 feet south of Road 287.

A special use exception for a special height exception for a 500 foot radio broadcasting tower.

Ms. Hudson read a letter from the Applicant requesting a time extension.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the request for a time extension be **granted for a period of one (1) year.** Vote carried 5 – 0.

Meeting Adjourned 10:15 p.m.