



Board of Adjustment

Agendas & Minutes

MINUTES OF JANUARY 23, 2006

The regular meeting of the Sussex County Board of Adjustment was held on Monday, January 23, 2006, at 7:00 p.m. in the County Council Chamber, 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. 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 January 9, 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. 9369 – Frank and Cynthia Scott – south of Route 22, west of Mimosa Cove, being Lot 2821 within Pot Nets Lakeside Mobile Home Park.

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

Ms. Hudson presented the case. Cynthia and Frank Scott and George Myers were sworn in and testified requesting a 1.5-foot variance from the required 20-foot separation requirement between units in a mobile home park; that they purchased the unit in July 2005; that they had a contractor build a screen porch on the existing deck; that the contractor obtained the building permit; that they were not aware of any encroachment until contacted by the Planning and Zoning department; and that the 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 will not alter the character of the neighborhood, since it was not created by the Applicant, since it is the minimum variance to afford relief, and with the stipulation that a letter be sent to the contractor.**

Vote carried 5 – 0.

Mr. Callaway had to excuse himself from the meeting.

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Case No. 9370 – Norman Passmore, III – north of Road 381A, northwest of Clam Avenue, being Lot 26 within Beach development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Norman Passmore was sworn in and testified requesting a 9.6-foot variance from the required 30-foot front yard setback requirement for an existing porch; that the encroachment was discovered at settlement; that the dwelling was built in 1989; that he is not sure when the porch was built; that he would like to keep the porch; and that he submitted pictures.

Irwin Saulsbury was sworn in and testified in support of the application and stated that he has lived next door to the property for 16-years; that he is certain the porch was built with the dwelling; and that he has no objection to 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 variance be **granted since it meets the standards for granting a variance.**
Vote carried 4 – 0.

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.

Ms. Hudson presented the case. Kathleen Huckeba and Gene Bradley were sworn in and testified requesting a 6-foot variance from the required 20-foot separation requirement between units in a mobile home park; that she has replaced an existing unit; that the new unit was placed on the lot at the direction of the park owner and his park surveyor; that the park was to send a representative to the hearing; that Colonial Mills Homes has set other units in the park; that the park always directs the placement of the units; that to move the unit into compliance at this time would be very costly; that the

park has not answered what they will do if the Board denies the case; and that they submitted drawings.

Marilyn Burnitz was sworn in and testified in opposition to the application and stated that she owns a unit on the adjacent lot; that the old unit was removed in July; that the new unit was placed in October; that she met with the contractor on the site to make him aware that it did not meet the separation requirement; that the contractor refused to stop; that she spoke to the park manager Coran Thompson and she confirmed that there is a 20-foot separation; that the park informed her that the Applicant planned to build a

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screen porch which created the need for the unit to be placed closer to her unit; and that she submitted pictures.

Paul Boyer was sworn in and testified in opposition to the application and stated that he does feel the gentleman from the mobile home company tries to do the right thing; and that he agrees the park has created the encroachment.

Caroline Radel was sworn in and testified in opposition to the application and stated that she lives in the mobile home park; that she replaced her unit with a larger unit; and that she placed a 20-foot wide unit that would meet the required separation requirement.

In rebuttal, Kathleen Huckleba, and stated that she did not ask the park for any special favors to place the unit; that the minimum cost to move the unit into compliance would be approximately \$12,000; and that they will not be adding a porch to the unit.

In rebuttal, Marilyn Burnitz, stated that she tried to tell the contractor the day the crane was there that the unit was being placed too close to her unit.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **left open only for the purpose to subpoena Ben Lee and Coran Thompson to explain to the Board their part in the placement of this unit.** Vote carried 4 – 0.

Case No. 9372 – Delmarva Clergy United In Social Action, Inc. – north of 50' easement, 429 feet west of Road 213.

A special use exception to operate a day care center.

Ms. Hudson presented the case. Elizabeth Williams and Alicia Downing were sworn in and testified requesting a special use exception to operate a day care center; that the Board granted the use in September 2002; that they were not able to establish the use

due to remodeling the building; that the remodeling is complete and they are ready to proceed; that the center will be open 24-hours a day, Monday through Friday; and that the children will range in age from infant to 12-years old.

Ticola Gibbs was sworn in and testified in support of the application and stated that she is the director of the center; that the community is steadily growing; and that there is a great need for this center.

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

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Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for 24-hour care, Monday through Friday for 50 to 75 children up to the age of 12-years old since it will have no adverse effect to the neighborhood.** Vote carried 4 – 0.

Case No. 9373 – William F. Raither – south of Route 54, east of Grant Avenue, being Lot 21, Block 6 within Cape Windsor development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. William Raither was sworn in and testified requesting a 3-foot variance from the required 10-foot side yard setback requirement for a proposed manufactured home; that he wants to replace the existing single-wide unit; that the existing unit is only 5-foot from the side yard property line; that the proposed unit will be 7-foot from the property line; and that the development supports the application.

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 character of the neighborhood and since it is the minimum variance to afford relief.** Vote carried 4 – 0.

Case No. 9374 – Lincoln Plaza LLC – intersection of Road 207 and U.S. Route 113.

A special use exception to replace an existing billboard and a variance from the maximum size and height requirements.

Ms. Hudson presented the case. Jamie Masten was sworn in and testified requesting a 276-square-foot variance from the required 300-square-foot maximum size requirement and a 15-foot variance from the required 25-foot maximum height requirement for a billboard; that he wants to replace the existing billboard; that the proposed billboard will be the same size and height as the existing billboard; that the

structure will be a steel mono-pole billboard; that the size will be 12'x 24' per side; that the signs will be made of a vinyl material versus paper; and that there will be no advertising of the business located on 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. Hudson, and carried unanimously that the special use exception and variances be **granted since it will have no substantial effect**

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to the neighborhood, since it was not created by the Applicant and with the stipulation that the structure be a mono-pole. Vote carried 4 – 0.

Case No. 9375 – Spectrum Properties LLC – southeast of Route 17, 774 feet west of Route 20, being Lot 2.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Carl Broshaw was sworn in and testified requesting a 12-foot variance from the required 40-foot front yard setback requirement; that the previous dwelling was demolished; that the existing dwelling was set by iron rods on the property; that the rods were not set by the surveyor; that a 10-foot easement was granted to the State when the lot was subdivided; that the original dwelling met setback requirements prior to the right-of-way dedication; that the existing dwelling is in line with other dwellings on the street; and that he submitted a survey.

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 4 – 0.

Case No. 9376 – Iris Downing – northwest of Road 213, east of Cherry Street, being Lot 33 within Walker Acres development.

A special use exception to increase capacity for a day care center.

Ms. Hudson presented the case. Iris Downing was sworn in and testified requesting a special use exception to increase capacity for a day care center; that she was granted a special use exception in June 2005 for up to 30-children; that she want to increase the number to 48-children; that she obtained her license from the State in

November and was approved by the State to have 48-children; and that there are no other changes to the original special use exception.

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 since it will have no adverse effect to the neighborhood**. Vote carried 4 – 0.

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Case No. 9377 – Janice and David Pavick, Sr. – north of Road 341, northeast of Long Leaf Road, being Lot 172, Section 4 within Dogwood Acres development.

A variance from the maximum allowable front yard height requirement for a fence.

Ms. Hudson presented the case. Janice and David Pavick were sworn in and testified requesting a 1.5-foot variance from the required 3.5-foot front yard height requirement for an existing fence; that they obtained the building permit; that they did not read the setback requirements on their application; the fence is 5-foot in height and 125-foot long; that the fence does not obstruct the view of the street; that the neighbors have no objection to the application; and that they submitted pictures.

Julie Baker was sworn in and testified in opposition to the application and stated that she has a copy of the violation notice the Applicant received from the Planning and Zoning Department; that her mother is the adjacent property owner; that when her mother spoke to the Applicant on November 15, 2005 they never mentioned putting a fence on the property line; that they are concerned for the safety of children in the neighborhood; that the fence will obstruct their view of the street; and that they feel the fence should be shortened in height or length.

In rebuttal, Janice Pavick, stated that the building permit was obtained in September 2005; that they have no objection to lowering the first panel of the fence into compliance with the height requirement.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for a 22-foot variance and that the first 8-foot panel of fence must meet the required height requirement**. Vote carried 4 – 0.

Case No. 9378 – Ryan Homes – south of Road 358, 183 feet west of Pine Needle Road, being Sandy Cove development.

A variance from the maximum allowable height requirement.

Ms. Hudson presented the case. Darlene Gray and Doug Kelly were sworn in and testified requesting a 7.5-foot variance from the required 42-foot maximum height requirement; that the proposed townhouse buildings will consist of 3-units up to 8-units; that the building will have cupola's that will encroach the height requirement; that the cupolas will not be additional living space; that the cupolas are proposed to enhance the appearance of the proposed community; and that they submitted pictures.

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Clinton Bunting was sworn in and testified in support of the application and stated that he is the property owner; that the Applicant is requesting the variance under his instruction; that he feels this type of design is important to the area; and that this style of townhouse is better suited for this area.

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. Mills, and carried unanimously that the case be taken under advisement. Vote carried 4 – 0.

At the conclusion of the public hearings, the Vice-Chairman referred back to this case. Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variance be **granted for a 7.5-foot variance for cupolas only**. Vote carried 4 – 0.

The Board recessed for 5-minutes.

Case No. 9379 – Cingular Wireless – south of Route 22, 1.2 miles east of Route 22C.

A special use exception to place a telecommunications tower.

Ms. Hudson presented the case. Roger Johnson and Ed O'Mera were sworn in with Pamela Scott, Attorney, and testified requesting a special use exception to place a telecommunications tower; that the proposed tower will be 120-foot in height; that there will be a 75'x 45' fenced-in compound area at the base of the tower; that the tower will meet all the required setback requirements; that the tower is needed to fill a gap in coverage in that area; that they will use an existing access road to get to the site; that the tower can accommodate two other carriers; and that the tower will meet the lighting requirements.

Gary Napp was sworn in and testified in opposition to the application and stated that he is the pastor of the East Gate Church; that he has concerns on how many trees will be cleared; that the church also uses the access road; that he wants to know how much traffic will be in and out of the tower site; that he is concerned for parking requirements for the tower; and that he is concerned about interference with wireless equipment the church uses.

In rebuttal, Roger Johnson, stated that there will be a minimum amount of trees cleared; that the only trees that will be cleared are within the compound area; that there is routinely only one truck in and out of the site approximately once a month; that traffic

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and parking during construction will only last approximately 2 to 3 weeks; and that the trucks during construction will be well beyond the parking area for the church.

In rebuttal, Ed O'Mera, stated that there will be no interference with any sound equipment used by the church from the tower; and that if there was ever a time the tower was running interference with wireless facilities the tower would be fixed within 24-hours or shut down until it could be repaired.

In rebuttal, Gary Napp, stated that he was satisfied with the Applicant's answers to his concerns.

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

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 4 – 0.

At the conclusion of the public hearings, the Vice-Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted with the stipulation that the lighting be placed at 75-foot and on the top of the tower, that the lighting be soft lights with the ability to change to a strobe light in inclement weather, and that the Applicant provide a collocation report in 3-years.** Vote carried 4 – 0.

Case No. 9380 – Esther Perri – north of Road 64, 400 feet west of Road 70.

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

Ms. Hudson presented the case. Esther Perri, Angelo Perri, Gloria Perri and Tony Nero were sworn in and testified requesting a special use exception to retain a manufactured home on a medical hardship basis; that there was a special use exception granted in 1993; that the unit has been on the lot since 1993; that the original special use exception was for her husband; that the use is now needed for the Applicant; that her son and his wife live in the unit; and that they were not aware the special use exception needed to be updated regularly.

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.

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Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 4 – 0.

At the conclusion of the public hearings, the Vice-Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of two (2) years since it has no substantial effect to the neighborhood**. Vote carried 4 – 0.

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

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

Ms. Hudson presented the case. Mike Mocks was sworn in with Jim Fuqua, Attorney, present on behalf of the application and testified requesting a 15-foot variance from the required 40-foot separation requirement between multi-family units; that the variance is needed between units 134 and 179; that this is a new development; that the units are single family townhouses; that they believe an error was made in the field during construction; that only the front corners of the structures encroach; that the Applicant has taken measures to prevent this from happening again; that this is the only location throughout the development where an error has occurred; and that they submitted pictures.

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

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the case be **tabled until February 6, 2006**. Vote carried 4 – 0.

Case No. 9382 – Richard Langenfelder – southeast of Route 54, east of Bay Berry Road, being Lot 11 and part of Lot 12, Block H, Subdivision 3 within Keen-Wik development.

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

Ms. Hudson presented the case. Richard Langenfelder was sworn in and testified requesting a 0.4-foot variance from the required 30-foot front yard setback requirement and a 2.65-foot variance from the required 10-foot side yard setback requirement for a proposed addition; that the proposed addition will measure 18'x 18'; that a variance was granted in 1999 for the side yard; that the proposed addition will not extend further into the side yard setback; that the dwelling is 30-years old; and that the addition is needed for extra living space for their growing family.

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

Motion by Mr. Hudson, seconded by Mr. Mills, 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 4 – 0.

Case No. 9383 – Percilla and Dennis Mullen, Jr. – east of Road 213, 2,000 feet east of State Street.

A variance from the minimum lot width requirement.

Ms. Hudson presented the case. Sean Steward was sworn in and testified requesting a 10-foot variance from the required 150-foot lot width requirement for Parcel B and an 80-foot variance from the required 150-foot lot width requirement for Parcel A; that Parcel B rear property line will border the existing tax ditch; that a dwelling will be built on Parcel B; that Parcel A will be sold; and that the County sewer will be available to the sites.

John Green was sworn in and testified in support of the application and stated that he is the adjacent property owner; and that the proposed buyer of the property is a member of his family.

Cory Hunt was sworn in and testified in support of the application and stated that she is going to purchase the property; that she plans to build a dwelling on one parcel; and that she is a member of the adjacent property owner's family.

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. Workman, and carried unanimously that the case be taken under advisement. Vote carried 4 – 0.

At the conclusion of the public hearings, the Vice-Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances **denied since it does not meet the standards for granting a variance**. Vote carried 4 – 0.

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OLD BUSINESS

Case No. 9368 – Howard and Carol Krouse – west of U.S. Route 13, 800 feet north of Road 612.

A special use exception to operate a commercial dog kennel and a variance from the setback requirements.

The Board discussed the case which has been tabled since January 9, 2006.

Motion by Mr. Workman, seconded by Mr. Mills, and carried unanimously that the special use exception and variances be **granted with the maximum allowable number of dogs not to exceed six (6) dogs**. Vote carried 4 – 0.

Meeting Adjourned 10:12 p.m.