



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF January 28, 2008

The regular meeting of the Sussex County Board of Adjustment was held on Monday January 28, 2008, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. Ronald McCabe, Mr. John Mills, Mr. Brent Workman and Mr. Jeff Hudson, with Mr. Richard Berl – Assistant County Attorney and staff members, Mr. Norman Rickard, Mrs. Melissa Thibodeau, Mrs. Jennifer Norwood and Mrs. Kelly Passwaters – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to approve the Revised Agenda with the correction to move Case No. 10018 to the first order of business. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of January 7, 2008 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.

PUBLIC HEARINGS

Case No. 10018 – John DelRossi- east of Route 22, east of Berry Street, being Lot 3 within Bay City Mobile Home Park.

A variance from the maximum allowable lot coverage in a mobile home park.

This was a continuation of a hearing on the Applicant's request for a variance. The hearing was commenced on December 17, 2007, but was left open in order to allow for the park owner of Bay City Mobile Home Park to be subpoenaed.

Paul Oliva was sworn in and testified that the lots have been there over 60 years; that he had a survey done over one (1) year ago for Lots 1, 2, 3 & 4 to enlarge the measurements to 70' x 100'; that it was never approved; that he was out of town when the deck was built; and that the lot measures 70' x 80'.

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

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 case be **tabled for a survey to show the comparison of improvements to the lot lines**. Vote carried 5 – 0.

Case No. 10035 – Vincent and Sandra Otto- west of Road 436, 1,230 feet south of Road 439.

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

Mrs. Thibodeau presented the case. Vincent Oddo was sworn in and testified requesting a 98.65-foot variance from the required 150-foot road frontage requirement; that he would like to be allowed to have the maximum amount of lots that is allowed by code; that he would like to have 3 additional lots or however many lots the Board is willing to give him; that currently there is a road with a cul-de-sac; and that they would be for his children.

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 taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **denied since it does not meet the standards for granting a variance**. Vote carried 5 – 0.

Case No. 10036 – Gerald and Joan Townsend- northwest intersection of Road 357 and Erie Avenue.

A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. Gerald and Joan Townsend were sworn in and testified requesting a 4-foot variance from the required 15-foot corner setback requirement; that a permit was issued for a 10-foot side yard setback; that it is for a shed; and that it is a corner lot.

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 essential character of the neighborhood**. Vote carried 5 – 0.

Case No. 10037 – Bill Gibris- northwest of Road 502, northwest of railroad.

A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. Bill Gibris was sworn in and testified requesting a 1.4-foot variance from the required 20-foot side yard setback requirement; that he would like to add 120-feet onto the west side of the existing building; that it will be used for storage of steel; that it will not have walls or a roof; and that he has requested an 8-foot variance instead of what is stated on 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. Hudson, and carried unanimously that an 8-foot variance be **granted since it meets the standards for granting a variance**. Vote carried 5 – 0.

Case No. 10038 – John and Cheryl Davidson- east of Road 318A, being Lot B.

A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. John Davidson was sworn in and testified requesting a 3.2-foot variance from the required 15-foot side yard setback requirement; that the house was moved onto the vacant lot; that he went by the old survey marks; that the property is being sold and when a survey was done the violation was discovered; and that a garage was added after the home was placed.

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 variance be **granted since it will not alter the essential character of the neighborhood and since it enables reasonable use of the property**. Vote carried 5 – 0.

Case No. 10039 – David and Susan Lilley- west of Route 22, east of Walnut Street, being Lot 36 within Bay City Mobile Home Park.

A variance from the maximum allowable lot coverage in a mobile home park.

Mrs. Thibodeau presented the case. David Lilly was sworn in and testified requesting a 520-square foot variance from the required 1,837-square foot requirement; that he constructed a sunroom; that the builder obtained the permit; that a concrete patio was placed first and he received the certificate of occupancy; the when he requested the certificate of occupancy he was told he exceeded the allowable lot coverage; and that the lot measures 70' x 77'.

Dan Wien was sworn in and testified in opposition to the application and stated that over building on lots is causing flooding in the park; that there is no storm drainage; that he feels the units should be raised instead of the lots; that there is another shed on the property that is not listed on the application; and that he would like the application to be denied.

Patricia Weyl was sworn in and testified in opposition to the application and stated that there is a Homeowners Association; and that there is a drainage problem.

Susan Lilly was sworn in and testified in support of the application and stated she was not trying to get away with anything; that they were told to raise the lot by the park owner; and that they are adjacent to open space.

John DelRossi was sworn in and testified in support of the application and stated that Bay City is a water front property; and that there is drainage in the park.

Paul Oliva was sworn in and testified in support of the application and stated that there is drainage everywhere in the park; and that he has twice the amount of drainage required.

The Board found that 2 parties appeared in support of the application.

The Board found that 2 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled for a survey to show the comparison of improvements to the lot lines**.
Vote carried 5 – 0.

The Board took a 5 minutes Recess

Case No. 10040 – The Council of The Breakers Condominium- South Carolina
Avenue, being Unit 1 and 2 within The Breakers condominium.

A variance from the rear yard setback requirement.

Mrs. Thibodeau presented the case. Richard Haans and Charlie Zonko were sworn in along with John Sergovic, Attorney, and testified requesting a 6.25-foot variance from

the required 10-foot rear yard setback requirement for Unit 1 and a 7.61-foot variance from the required 10-foot rear yard setback requirement for Unit 2; that they would like to install rear decks to both units; that it is in a flood zone; that there is living space on the 1st, 2nd, & 3rd Floor; that they got approval from the neighbors; and that they also need a variance from the side yard setback for the steps.

Charlie Zonko stated that he plans to start immediately if the variance is approved; that the steps are not needed to build the deck; and that the steps are for convenience only but are not important.

Mrs. Thibodeau stated the office received 5 letters in support of the application.

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

The Board found that 1 party appeared in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the rear yard setback only since it will not alter the essential character of the neighborhood**. Vote carried 5 – 0.

Case No. 10041 – Pumpkin Investments, LLC- east of Glen Circle, being Lot 37 within Country Glen development.

A variance from the front yard setback requirement.

Mrs. Thibodeau presented the case. Dolores and Gary Elswick were sworn in along with Stephen Ellis, Attorney, and testified requesting a 8.6-foot variance from the required 30-foot front yard setback requirement; that the covered porch was constructed over ten (10) years ago; that the covered porch is in character with the neighborhood; and that when the survey was done the violation was discovered.

The Board found that 2 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. McCabe, and carried unanimously that the variance be **granted since it is the minimum variance to afford relief and since it will not alter the essential character of the neighborhood**. Vote carried 5 – 0.

Case No. 10042 – Sea Air Village- north of Sea Air Avenue, being Lot A-52 within Sea Air Mobile City Mobile Home Park.

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

Mrs. Thibodeau read a letter from the Applicant requesting to withdraw the application.

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

Case No. 10043 – Sea Air Village- Lot K-68 within Sea Air Mobile City Mobile Home Park.

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

Mrs. Thibodeau presented the case. Cindy Surface was sworn in along with David Hutt, Attorney, and testified requesting a 9.6-foot variance from the required 20-foot separation requirement between units; that they would like to place a new manufactured home; that the manufactured home measures 20' x 60'; that the manufactured home will have a factory porch; that the lot measures 3,988-square feet; that the lots were created in 1968; and that the manufactured home will meet the lot coverage requirement.

Bradford Bamberger was sworn in and testified in support of the application and stated he is the President of the Homeowners Association; that he feels the manufactured will enhance the community; and that the manufactured home will be safer and increase property value.

Jeanie Sisk was sworn in and testified in opposition to the application and stated many homes are being fixed up; that the lots are too small; that Sea Air has had six (6) managers; that there needs to be 20-feet between units; and that she is the President of the Homeowners Association and she is state certified through the DMHOA.

Tom Zalewski was sworn in and testified in rebuttal to Mrs. Sisk's claim that she is the President of the Homeowners Association; that the Homeowners Association that Mrs. Sisk is part of is a statewide Association that anyone can join; and that he is Vice President of the Homeowners Association that is incorporated with Sea Air only.

The Board found that 7 parties appeared in support of the application.

The Board found that 8 parties appeared in opposition to the application.

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

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Workman and carried unanimously that the variance be **granted for 5.6-foot only since it is the minimum variance to afford relief**

and since it will not alter the essential character of the neighborhood. Vote carried 5 – 0.

Case No. 10044 – Sea Air Village- southeast of Center Avenue, being Lot 59, Block D within Sea Air Mobile City Mobile Home Park.

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

Mrs. Thibodeau presented the case. Cindy Surface was sworn in along with David Hutt, Attorney, and testified requesting a 9.6-foot variance from the required 20-foot separation requirement between units; that the manufactured home was placed on the lot by the homeowner; that it is a singlewide; that it was approved by the Planning & Zoning Department to be placed during the moratorium; and that the manufactured home was condemned due to water damage.

Mr. Berl recommended that the Board adopt the testimony in support from the last case.

Jeanie Sisk was sworn in and testified stating that she worked with Sea Air on placing the manufactured home under a hardship.

The Board found that 6 parties appeared in support of the application.

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

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

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

Case No. 10045 – Sea Air Village- northwest of Sea Air Avenue, being Lot 80, Block A within Sea Air Mobile City Mobile Home Park.

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

Mrs. Thibodeau read a letter from the Applicant requesting to withdraw the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the request to withdraw the application be **denied**. Vote carried 5 – 0.

Case No. 10046 – John Ruff and Jamie Dyer- west of Route One, east of Belle Road, being Lot 35 within Bayview Park development.

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

Mrs. Thibodeau presented the case. John Ruff was sworn in and testified requesting a 0.6-foot variance from the required 10-foot side yard setback requirement and a 4.6-foot variance from the required 30-foot front yard setback requirement; that the home was built in 2002; that they purchased the home in 2004; that a certificate of

occupancy was never issued on the home; and that in 2000 the Board denied a 1-foot side yard setback.

Jamie Ruff was sworn in and testified stating that she spoke with Dean Malloy, Inspector; and that he issued a temporary Certificate of Occupancy.

Dick Fox was sworn in and testified in support of the application and stated that he is President of the Civic Association; and that he would like to know why the house was built and lived in for several years with no Certificate of Occupancy issued.

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

The Board found that 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. Hudson, and carried unanimously that the variance be **granted since it is the minimum variance to afford relief**. Vote carried 5 – 0.

Case No. 10047 – James Shugart and George Dextras- north of Route 54, east of Canvasback Road, being Lot 16, Block D, Section A within Swann Keys development.

A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. James Shugart was sworn in and testified requesting a 2.2-foot variance from the required 5-foot side yard setback requirement; that he purchased the property in 1987; that the home was place in 1984; that there is a fuel oil tank on the left side of the home; that it is required that the tank be enclosed; and that when he went to have the deed changed a survey was done and the violation was discovered.

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

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

Case No. 10048 – Brendan McNamee- southwest of Road 349, 1,118 feet east of Road 350.

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

Mrs. Thibodeau presented the case. Brendan McNamee was sworn in and testified requesting a 15.2-foot variance from the required 40-foot front yard setback requirement, a 3.9-foot variance from the required 10-foot side yard setback requirement and a 4.3-foot variance from the required 5-foot side yard setback requirement; that the original plan was to add an addition on to the existing dwelling; that the dwelling is over 100 years old; that the dwelling was infested with termites; that they decided to replace the existing dwelling with a new one; that it was placed in the same footprint; that he was told he could build on the existing foundation; and that they plan to demolish the existing shed and replace it with a new one.

Mrs. Thibodeau stated 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. McCabe, and carried unanimously that the variances be **granted since it meets the standards for granting a variance.** Vote carried 5 – 0.

Case No. 10049 – Jeremy D. Day- north of U.S. Route 113, 5,000 feet north of Route 26.

A variance from the landscape buffer requirement.

Mrs. Thibodeau presented the case. Jeremy Day and Douglas Parker were sworn in and testified requesting a 11.2-foot variance from the required 20-foot landscape buffer; that the parking lot, walk, grass area and building have been moved away from the right-of-way; and that the lot has wetlands on both sides of the lot along the rear sidelines.

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

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

OTHER BUSINESS

Case No. 9696 – Vines Creek Investments, LLC- south of Route 26, 2,450 feet west of Road 343, being Lot 2.

A variance from the wetland buffer zone requirement.

Mrs. Thibodeau 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 1 year**. Vote carried 5 – 0.

Case No. 10031 – M & M Properties- west of Road 40B, 287 feet east of ditch, being part of Lots 1 and 2 within Katherine Kinsey Subdivision.

A variance from the minimum square footage and lot width requirements for parcels.

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

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

Meeting Adjourned at 10:45 p.m.