



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF JANUARY 5, 2009

The regular meeting of the Sussex County Board of Adjustment was held on Monday January 5, 2009, 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 and Mr. Jeff Hudson, with Mr. Richard Berl – Assistant County Attorney and staff members, Mr. Norman Rickard and Mrs. Kelly Passwaters – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to approve the Revised Agenda as circulated. Vote carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to consider the Minutes of the December 15, 2008 meeting at the January 26, 2009 meeting. Vote carried 4 – 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. 10323 – Irene Hill-** northwest of Route 16, 582 feet southwest of Route 22A.

A special use exception for determination of existence of farm use.

Dawn Hudson, Constable, stated she received a complaint from the Planning & Zoning Department; that she advised Mr. Hill to apply to the Board of Adjustment for a determination of existence for the number of goats on his property; that there is a large number of goats on the property; that she talked to several people in the community to see if the property is non-conforming; that she has pictures dated from 1942 that shows it was a farm; that she contacted the SPCA about a complaint she received in reference to the well being of the animals; that a SPCA officer visited Mr. Hill's property and found that there were no goats in harm or distress; that Mr. Hill was not cited for animal cruelty; that the officer had Mr. Hill clean up the property; and that there are only 30 goats on the property at this time.

Mr. Hill was sworn in and testified requesting a special use exception for determination of existence of farm use; that he raises the goats for income; that he has had goats since the 1960's; and that he will have no more than 50 goats.

James Betts was sworn in and testified in favor of the application and stated that farm animals have been raised on the property for as long as he can remember.

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

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

Mr. Rickard stated the office received 3 letters in favor of the application.

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

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until the January 26, 2009 meeting**. Vote carried 4 – 0.

**Case No. 10324 – DKR LLC/Doug Ritter-** north of Road 299, north of Steele Drive, being Lot 19, Block A and B within Steele Land Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Doug Ritter was sworn in and testified requesting a 3.9-foot variance from the side yard setback requirement; that he purchased the property with only the garage on it; that the garage does not meet setback requirements; that he intends to place a Class "C" manufactured home on the property; that the septic is located in the front of the property; and that the garage will be attached to the manufactured home with a breezeway.

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 **approved since it meets the standards for granting a variance**. Vote carried 4 – 0.

**Case No. 10325 – Indian River School District-** east of Road 433, east of Route 20.

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

Mr. Rickard presented the case. Greg Weer and Doug McIlvain were sworn in and testified requesting a special use exception to place a manufactured home type

structure as a classroom; that the manufactured home will be placed at the Ingram's Pond site; that it measures 24' x 60'; that the buildings at Ingram's Pond are clustered together; and that a permanent structure will be based on future funding.

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

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of 5 years since it will not alter the essential character of the neighborhood**. Vote carried 4 – 0.

**Case No. 10326 – Franklin Brittingham, Jr.** - north of Route 20, 600 feet east of Road 474.

A variance from the minimum lot size requirement to place a manufactured home.

Mr. Rickard presented the case. Franklin Brittingham and Theodore Spengos were sworn in and testified requesting a 3,731-square foot variance from the required 32,670-square foot requirement for a 3/4 acre lot; that he purchased the property as a vacant lot; that the septic system has already been installed; that the realtor told him that a manufactured home could be placed on the lot; that he has ordered a manufactured home that measures 28' x 60'; that it will be placed on permanent foundation; and that he cannot afford to build a stick built home.

Eugene Russell was sworn in and testified in opposition to the application and stated that his brother purchased the property next door with the understanding that the lot could not be built on; that the lot is small; that he does not want to see a manufactured home placed on the property; and that there are only a few trees on the lot.

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

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

Mr. Rickard stated the office received 4 letters in opposition to the application.

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

At the conclusion of the public hearing, the Chairman referred back to the case. Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until the February 2, 2009 meeting**. Vote carried 4 – 0.

**Case No. 10327 – Bryton Homes Delaware, LLC** - north of Route 5, south of Beaver Creek Drive, being Lot 118 within Trails at Beaver Creek Phase 1.

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

Mr. Rickard presented the case. Rick Clendaniel was sworn in along with Gene Bayard, Attorney, and testified requesting a special use exception to place a manufactured home type structure as an office; that the manufactured home will measure 12' x 56'; that the lot will be landscaped; that the subdivision contains 168 lots; and that 154 lots have

already been developed; that there were 2 sales trailers on site previously; and that it will take no more than two (2) years to complete the model home.

John O'Connell was sworn in and testified in opposition to the application and stated he does not want another sale trailer in the subdivision; that it will end up being used for another subdivision to sell homes; that he has concerns about the appearance of the sales trailer; and that it will be located at the entrance to the subdivision which is not appealing.

In Rebuttal, Mr. Clendaniel stated the manufactured home is not a construction trailer; that it will have a paver entrance; and that the sales trailer will not be used to sell homes in another subdivision.

Charles Breidenbach was sworn in and testified in opposition to the application and stated the he has lived in the community for one (1) year; that he would like to see a date set for the temporary sales trailer to be moved; and that he has concerns with increased traffic.

Joe Bowski was sworn in and testified in opposition to the application and stated that he is against the temporary sales trailer in the subdivision; that he does not want to see increased traffic; that the community is already 80% complete; and that he would like to see the whole community vote on the temporary sales trailer being placed.

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

The Board found that 13 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be taken under advisement. Vote carried 4 – 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 special use exception be **granted for a period of 9 months**. Vote carried 4 – 0.

**Case No. 10328 – Tanya and Walter Hall, Sr.-** west of Road 312A, 360 feet north of River Road, being Lot H-3 within Isaac W. Harmon Lots.

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

Mr. Rickard presented the case. Walter Hall was sworn in and testified requesting a special use exception to retain a manufactured home on a medical hardship basis; that the case was previously approved in 2005 for his mother; that she has since passed away; and that his father still needs to be cared for.

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. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of 2 years since it will not substantially affect adversely the uses of adjacent and neighboring properties**. Vote carried 4 – 0.

**Case No. 10329 – Anne Batchelder and William F. Hudson-** west of U.S. route 13A, 2.047 feet south of Road 501.

A variance from the minimum lot width requirement for parcels.

Mr. Rickard presented the case. Dawn Hudson and Tom Feret were sworn in and testified requesting a 16-foot variance from the required 150-foot road frontage requirement for a parcel and a 100-foot variance from the 150-foot road frontage requirement for a parcel; that they would like to subdivide the parcel for a family member; that there are a lot of parcels along Route 13A that do not meet the 150-foot road frontage requirement; that there is no official entrance to this property; and that the parcel would have a combined entrance.

Nelson Chorman was sworn in and testified in opposition to the application and stated that there are no parcels that have houses one behind another; and that a railroad runs behind the parcel.

James Riggan was sworn in and testified in opposition to the application and stated that he lives next door to this parcel; that he has safety concerns with being too close to the railroad; and that the parcel being subdivided will decrease his property value.

In Rebuttal, Ms. Hudson stated that Mr. Riggan spoke to her about subdividing his property; and that she could have applied for a medical hardship.

In Rebuttal, Mr. Riggan stated that he would like to place a greenhouse, swimming pool and garage on his property in the future; and that he has no desire to subdivide his parcel.

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

The Board found that 5 parties appeared 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 4 – 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 variances be **granted since the lot is unique, since it enables reasonable use of the property and since it will not alter the essential character of the neighborhood.** Vote carried 4 – 0.

**Case No. 10330 – Big Debs LLC-** south of Route 9, being Lots 2 and 3.

A variance for an additional wall sign and a variance from the maximum square footage requirement for a sign.

Mr. Rickard presented the case. Randy Reed was sworn in and testified requesting a variance for one additional wall sign and a 31.5-foot variance on both sides from the required 6-square foot requirement per side for a directional off premise sign; that he installed an additional wall sign on the gable of the building; that there is a warehouse on the property; and that the parcel has been subdivided and now the sign is located on parcel 11.09.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled for the applicant to give the sign measurements and that a letter be sent to the sign company.** Vote carried 4 – 0.

**Case No. 10331 – George E. and Mildred L. Burkett-** south of Road 277, west of Oak Street East, being Lots 1 and 2, Block D, Section 1 within Angola By The Bay development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. George Burkett was sworn in and testified requesting a 3-foot variance from the required 30-foot front yard setback requirement; that he lives on a corner lot; that his wife has health issues; and that he would like to construct a porch for easier access into the home.

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 essential character of the neighborhood and since it enables reasonable use of the property.** Vote carried 4 – 0.

**Case No. 10332 – Victor and Rita Hudson-** south of Road 404, 25 feet east of Road 32.

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

Mr. Rickard presented the case. Rita Hudson was sworn in along with Neal Hemlein, Attorney, and testified requesting a special use exception to retain and manufactured home on a medical hardship basis; that the case was previously approved in 2005; that her son has had several disabilities since he was a child; that she helps with his finances, decision making and parenting skills; that his wife also has health issues; that her son receives Social Security Disability; and that a new septic system was placed on the property before the manufactured home was placed.

Ruby Brooks was sworn in and testified in favor of the application and stated that her driveway runs along side the Hudson's property; and that they have been good neighbors.

Michael Martin was sworn in and testified in opposition to the application and stated that Mrs. Hudson's son has no disabilities; that Mr. Telthoester is doctor jumping; that he does a lot of outside work; that there is a lot of traffic to and from the property; that Mr. Telthoester was stealing electric from him and it caused his house to surge; and that he submitted copies of charges that were filed against Mr. Telthoester for drugs on the property.

Carol Sparks was sworn in and testified in opposition to the application and stated that there are traffic issues; and that they were not aware the trailer was being placed in 2005.

In Rebuttal, Mr. Hemlein stated that Mr. Telthoester is not doctor jumping; that the letters submitted from the physician stated he is trying to work part-time; and that a mental impairment is the real issue and not physical impairment.

In Rebuttal, Mr. Martin stated he wants to know why the original doctor from 2005 isn't the same one treating Mr. Telthoester.

William Baker was sworn in and testified in opposition to the application and stated that he lives across the street; that he has a problem with the drug dealing that is going on; and that he received a letter from Mr. Martin in reference to the charges against Mr. Telthoester.

Don Hoffman was sworn in and testified in opposition to the application and stated there is a lot of traffic in and out; and the he is concerned with the drug problems.

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

The Board found that 4 parties appeared in opposition to the application.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be taken under advisement. Vote carried 4 – 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 case be **tabled until the February 2, 2009 meeting.** Vote carried 4 – 0.

### **OLD BUSINESS**

**Case No. 10321 – Mary Jane Boswell and Perri A. Holod-** east of Route One, north of Beaver Dam Reach, being Lot 16 within the The Woods at Seaside Phase I.

A variance from the rear yard setback requirement.

The Board discussed the case, which has been tabled since December 15, 2008.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until the February 2, 2009 meeting.** Vote carried 4 – 0.

**Meeting Adjourned at 10:30 P.M.**