



## *Board of Adjustment*

### Agendas & Minutes

### **MINUTES OF JANUARY 8, 2007**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, January 8, 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 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, Mrs. Melissa Thibodeau – Zoning Inspector, Mr. Norman Rickard, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Vote carried 5 – 0.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously to move the approval of the Minutes of December 18, 2006 to the January 22, 2007 meeting. 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. 9728 – E. Brent and Bonnie Workman** – west of Road 583, 750 feet north of Road 34.

A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. Bonnie Workman was sworn in and testified requesting a 30-foot variance from the required 50-foot side yard setback requirement for a proposed manure shed; that the property is unique in size; that the variance will enable reasonable use of the property; that the manure shed is needed to store manure for composting; that the location is adjacent to the existing poultry house; that there are similar sheds within the neighborhood; that DNREC requires the manure shed; and that this is the minimum variance to afford relief.

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. Hudson, and carried unanimously that the variance be granted since it meets the standards for granting a variance. Vote carried 4 – 0. Mr. Workman was not present for this hearing.

**Case No. 9717 – Edward F. Pallas** – southwest of Road 395, south of Watergate Circle, being Lot 34, Section 5 within Bay View Estates development.

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A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. Edward Pallas was sworn in with Robert Witsil, Attorney, present on behalf of the application and testified requesting a 15-foot variance from the required 15-foot side yard setback requirement for an existing attached garage; that the Applicant purchased the property in 1991; that the garage was built in 1997; that they felt the garage was built in the rear yard; that the Planning & Zoning Department has determined this to be a side yard; that the garage was built over the building setback line; that they have acquired a permanent easement into the common area; that a survey done for settlement is how the encroachment was discovered; and that they submitted documents and a survey.

Mrs. Thibodeau stated that the office received 2 letters 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. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted since an easement was granted from the Homeowner's Association and since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

**Case No. 9718 – David Costello** – south of Route One, west of Taft Avenue, being Lot 12, Block 2 within Cape Windsor development.

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

Mrs. Thibodeau presented the case. David Costello was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement and a 5-foot variance from the required 20-foot rear yard setback requirement for a proposed dwelling; that the variance request is typical for the development; that the existing unit

will be removed; and that the proposed dwelling will be the same distance from the property line as the existing unit.

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 variances be **granted since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

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**Case No. 9719 – Reiley Enterprises** – intersection of U.S. Route 13 and Road 468.

A variance for additional wall signs.

Mrs. Thibodeau presented the case. Michael Reiley was sworn in and testified requesting a variance for three additional wall signs; that the location for Mountain Mudd Espresso has been annexed into the town limits of Laurel; that the signage is standard for the franchise; and that the 3 additional signs have been covered with a canvas pending the outcome of the hearing.

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 with the condition that the property is still under County jurisdiction since it meets the standards for granting a variance**. Vote carried 5 – 0.

**Case No. 9720 – Phyllis L. Nelson** – west of U.S. Route 13A, 2,400 feet west of Road 78.

A variance from the front yard setback requirement.

Mrs. Thibodeau presented the case. Phyllis Nelson and James Whaley were sworn in and testified requesting a 20-foot variance from the required 40-foot front yard setback requirement for a proposed addition; that the addition will measure 12'x 46'; that they have removed structures on the property; that the proposed addition will make the building more attractive; and that they have been improving the site.

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

**Case No. 9721 – Eugene Machulski** – south of Road 277, east of Elmwood Avenue East, being Lot 10 and ½ Lot 9, Section 1 within Angola By The Bay development.

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

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Mrs. Thibodeau presented the case. Shannon Carmean, Attorney, was present on behalf of the application and testified requesting a 0.5-foot variance from the required 10-foot side yard setback requirement for an existing screen porch and a 3.3-foot variance from the required 30-foot front yard setback requirement for a manufactured home; that the property was sold in December 2006; that the Applicant purchased the property in 1975; that the manufactured home was placed in 1977; that a Certificate of Compliance was never issued; that the encroachments were discovered by a survey done for settlement; that the lot is unique in shape; that the variances will not alter the character of the neighborhood; that the variance is necessary to enable reasonable use of the property; and that the Homeowner's Association supports the application.

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 variances be **granted since it will not alter the character of the neighborhood**.  
Vote carried 5 – 0.

**Case No. 9722 – Justin Konesey** – southeast of Route 36, 788 feet southwest of Road 621.

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

Mrs. Thibodeau presented the case. Justin Konesey was sworn in and testified requesting a 74.9-foot variance from the required 150-foot lot width requirement for a parcel; that his neighbor built his dwelling over the property line; that he granted his neighbor a temporary easement; that a Certificate of Compliance was issued; that he plans to sell a portion of his land to bring his neighbor into compliance; that the portion of his property he is going to sell is his driveway; and that he believes his neighbor placed the dwelling themselves.

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. Workman, seconded by Mr. McCabe, and carried unanimously that the variance be **granted since it is the minimum variance to afford relief**.  
Vote carried 5 – 0.

**Case No. 9723 – Klabé Homes, Inc.** – southwest of Road 299, corner of N. Nicklaus Avenue and Mariners Avenue, being Lot 1 within Peninsula Phase 5A.

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A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. Anne Warren was sworn in and testified requesting a 0.7-foot variance from the required 10-foot side yard setback requirement for an existing dwelling; that the dwelling was designed to meet the required setbacks; that they believe the sub-contractor for the foundation may have made a mistake when measuring; that the Homeowner's Association did not allow a brick veneer when the dwelling was designed; that the brick veneer is now permitted and was added to the dwelling per request of the new homeowner's; and that these two factors resulted in creating the encroachment.

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. 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. 9724 – Gerald and Karen Hirst** – north of Road 273A, south of Fourth Street, being Units 204-207 within Bay Vista development.

A variance from the rear yard setback requirement.

Mrs. Thibodeau presented the case. Gerald Hirst was sworn in and testified requesting a 10.3-foot variance from the required 20-foot rear yard setback requirement for an existing attached garage; that he was denied a variance in 2004; that he thought the rear yard setback had been granted in 2004; that he modified the garage to comply with the side yard setback requirement; that the garage is in line with the dwelling and new addition; that his neighbor's are in support of his application; that the Certificate of Compliance has not been issued; that he collects cars and needs the garage to store the cars; and that the builder obtained the building permit.

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

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried to allow the application to be considered. Vote carried 4 – 1.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried that the variance be **granted since it is an improvement to the neighborhood**. Vote carried 4 – 1.

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**Case No. 9725 – Doris and Vince Wheeler** – east of Road 274, west of F Street, being Lot F-17 within Rehoboth Bay Mobile Home Park.

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

Mrs. Thibodeau presented the case. Doris and Vince Wheeler were sworn in and testified requesting a 1-foot variance from the required 20-foot separation requirement between units in a mobile home park; that her husband had a stroke in 2004; that the ramp is needed for him to gain access in and out of their home; that the park approved the ramp; and that the ramp cannot comply with the setback requirements and still accommodate a wheelchair.

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 and that a letter be sent to the builder from Counsel to verify if he has a license in the State of Delaware**. 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.

Mrs. Thibodeau presented the case. Scott Patrick Bradley was sworn in and testified requesting a special use exception to place an off premise sign; that in October 2006 they leased the property for the sign; that they received a violation in November 2006 and immediately applied for the special use exception; that there are similar signs in the area; that the sign will be needed for approximately a 2-year period; and that the sign is located on farmland.

Beverly Thawley was sworn in and testified in opposition to the application and stated that she is the previous owner of the Knollac Acres development; that she sold the property with the restriction that there would be no changes to the development without her knowledge; that the Applicant has had a similar sign in the past and did not maintain the property; and that she hopes to see that this proposed sign be maintained.

Joann Clark was sworn in and testified in opposition to the application and stated that she owns the adjacent property; that there are numerous signs put up throughout the summer months; and that these signs are erected on Friday nights and removed on Sunday nights.

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In rebuttal, Scott Bradley, stated that Bestfield Homes has been in business for 52-years; that a lease could not be obtained from Beverly Thawley; and that the sign on the tractor-trailer was the same type of sign the previous owner had on the trailer.

By a show of hands, 2 parties appeared in opposition to the application.

Motion by Mr. Workman, 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. Hudson, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until January 22, 2007**. Vote carried 5 – 0.

**Case No. 9727 – Paul F. Phillips** – east of Route One, 74 feet south of S. Carolina Avenue, being Lot 18, Section F within L.P. Faucett Inc. Lots.

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

Mrs. Thibodeau presented the case. Paul Phillips was sworn in and testified requesting a 4-foot variance from the required 10-foot side yard setback requirement and an 18-foot variance from the required 30-foot front yard setback requirement for steps; that the existing steps need to be replaced; that the proposed steps will extend around the corner of the dwelling; that they plan to have a deck area at the top of the stairs; and that there will be storage and an outside shower underneath the stairs.

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 variances be **granted since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

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The Board took a 5-minute recess.

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**Case No. 9729 – Angela L. Savage and Dwaine Porter** – east of Road 600, .58 mile southeast of road 599, being Lot 9.

A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. Dwain Porter was sworn in with Jane Patchell, Attorney, present on behalf of the application and testified requesting a 3-foot variance from the required 15-foot side yard setback requirement for a dwelling and a

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1.8-foot variance from the required 5-foot side yard setback requirement for a shed; that the Applicant purchased the property in 2006; that a survey done for settlement is when the encroachments were discovered; that the previous owner placed the shed and dwelling; that a Certificate of Compliance was issued on the dwelling in 2002; and that the variances will not alter the character of the neighborhood.

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

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the variances be **granted since it meets the standards for granting a variance**.

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.

Mrs. Thibodeau presented the case. John Ferris was sworn in and testified requesting a special use exception to place a billboard and a 195-foot variance from the 300-foot setback requirement from the Gumboro Fire Company, a 50-foot variance from the required 300-foot setback requirement from the dwelling, and a 117-foot variance from the required 300-foot setback requirement from the antique store; that the sign will be used to advertise their business; that their business is located near Millsboro; that the opposite side will be rented for other advertisement; that the structure will be a steel mono-pole structure and measure 12' x 25'; that the height will not exceed 25-foot; that the two existing lots will be combined; and that the property is zoned C-1.

Maurice and Connie Daisey were sworn in and testified in opposition to the application and stated that they own a nearby property; that they feel the sign is too large for the area; and that the sign could impair vision at the intersection.



Mrs. Thibodeau read 2 letters received by the office in opposition to the application.

By a show of hands, 2 parties appeared in opposition to the application.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the case be **tabled until January 22, 2007**. Vote carried 5 – 0.

### **OLD BUSINESS**

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**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.

The Board discussed the case which has been tabled since December 11, 2006.

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 that it will enable reasonable use of the property**. Vote carried 4 – 0. Mr. Callaway did not vote since he was not present the night of the hearing.

**Case No. 9699 – Columbus and Deborah Nacchia** – northwest of Road 351, south of Dorothy Circle, being Lot 17, Block C within Denton Manor development.

A variance from the front yard setback requirement.

The Board discussed the case which has been tabled since December 11, 2006.

Motion by Mr. Mills, seconded by Mr. Workman and carried unanimously that the variance be **denied since it does not meet the standards for granting a variance**. Vote carried 4 – 0. Mr. Callaway did not vote since he was not present the night of the hearing.

**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 December 18, 2006.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until the office gets a report on when the County sewer will be available**. Vote carried 5 – 0.

**Case No. 9540 – Robert P. Short** – west of U.S. Route 113, 1,500 feet south of Route 16.

A special use exception to place a manufactured home for storage purposes.

The Board discussed the case which has been tabled since December 18, 2006.

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Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for the manufactured home submitted by the Applicant**. Vote carried 5 – 0.

**Case No. 9716 – RC Carpet Outlet** – east of Route 24, 1,160 feet south of Route 23.

A variance for additional wall signs.

The Board discussed the case which has been tabled since December 18, 2006.

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

### **OTHER BUSINESS**

**Case No. 9308 – Lorne L. Breasure** – southeast of Road 321, 533 feet southwest of Road 323, being Parcel B.

A special use exception for a golf driving range.

Mrs. Thibodeau read a letter from the Applicant requesting a time extension.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously to **approve the time extension for a period of one (1) year and that the 5-year approval begin from the date of the time extension**. Vote carried 5 – 0.

**Meeting Adjourned 9:30 p.m.**