



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF JULY 11, 2011

The regular meeting of the Sussex County Board of Adjustment was held on Monday, July 11, 2011, 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, Mrs. Susan Isaacs – Chief Zoning Inspector and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda with Case No. 10769 – Cellco Partnership D/B/A Verizon Wireless, under Old Business to be heard before the public hearings. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of June 20, 2011 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.

### OLD BUSINESS

**Case No. 10769 – Cellco Partnership D/B/A Verizon Wireless** – south of Road 557 (Briarhook Road) approximately 1,650 feet west of Road 30 (Atlanta Road).

A special use exception to place telecommunications monopole.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously to table the case until July 25, 2011 for further review. Vote carried 5 – 0.

### PUBLIC HEARINGS

**Case No. 10812 – Kenneth and Anita Reich** – south of Road 471 approximately 3,988 feet west of Road 432.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Kenneth and Anita Reich were sworn in and testified requesting a 14.5-foot variance from the required 40-foot front yard setback requirement for an existing detached

garage; that the builder obtained the building permit and constructed the detached garage; that they were unaware of the setback encroachment until a survey was done; that they are constructing a new dwelling on the property; that the manufactured home will be removed once the dwelling is complete; and that a Certificate of Compliance has not been issued on the detached garage.

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 5 – 0.

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**Case No. 10813 – William Kenneth Greenwood** – west of Road 362 (Parker House Road) west of Alabama Drive, being Lot 37 within Plantation Park development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. William Greenwood, Jr. was sworn in and testified requesting a 1.5-foot variance from the required 10-foot side yard setback requirement for an existing dwelling and a 2-foot variance from the required 5-foot side yard setback requirement for existing steps; that a survey done for settlement showed the encroachments; that the unit replaced an existing unit in the same footprint; and that a Certificate of Compliance was issued.

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 and since a Certificate of Compliance was issued**. Vote carried 5 – 0.

**Case No. 10814 – Sidney Frazier** – northwest of Route 9, 2,745 feet south of Road 46.

A special use exception to operate a day care facility.

Mrs. Isaacs presented the case. Kathleen Cross was sworn in and testified requesting a special use exception to operate a day care facility; that the learning center will care for approximately 50-children; that the building will be approximately 2,500-square-foot in size; that the hours of operation will be from 6:30 a.m. to 6:00 p.m., Monday through Friday; that she may add a 3:00 p.m. to 11:00 p.m. shift; that the ages of the children will be from 6-weeks to school age; that she will have approximately 8-employees; that she is certified in Childcare Administration; and that there will be adequate space for parking and turnaround 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 be **granted with the stipulation that Planning & Zoning Commission review a site plan, and since it will not substantially or adversely affect the neighborhood**. Vote carried 5 – 0.

**Case No. 10815 – Pamela S. Relyea** – east of Road 510, 595 feet north of Road 502.

A special use exception to place a multisection home that is more than five (5) years old.

Mrs. Isaacs presented the case. Pamela and Heather Relyea were sworn in and testified requesting a special use exception to place a multisection home that is more than five (5) years old; that the proposed unit is a 1994, 28' x 58'; that the previous unit on this property was removed over 2-years ago and was a 1978, single-wide; that there are other manufactured homes in the area; that they plan to put the unit on a block foundation; that they submitted pictures; and that they submitted 11-signatures in support of the application.

The Board found that 4-parties 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. McCabe, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted since it will not substantially or adversely affect the neighborhood.**  
Vote carried 5 – 0.

**Case No. 10816 – Albert J. and Jacqueline M. Lisiewski** – east of Road 297 (Oak Orchard Road) northwest of Basin Road Drive being Lot 88 within Fagan and Delaware Oyster Farms development.

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

Mrs. Isaacs presented the case. Albert Lisiewski and Fin McCabe were sworn in and testified requesting a 12.2-foot variance from the required 30-foot front yard setback requirement and a 4.8-foot variance from the required 10-foot side yard setback requirement for an existing dwelling; that the dwelling was built in 1971; that a survey prepared for closing showed the encroachments; that there have been numerous variances in the area; that the lot is only 50-foot wide; and that the shed will be moved into compliance.

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. Mills, 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. 10817 – Joseph J., III and Kathleen Nichols** – southwest corner of Route 1 (Coastal Highway) and Dodd Avenue being ½ Lot 1 and ½ Lot 2 within Ann Acres development.

Mrs. Isaacs presented the case. Joseph and Kathleen Nichols and Ronald Kramer were sworn in and testified requesting a 3.3-foot variance from the required 15-foot corner side yard setback requirement for the dwelling, a 5.8-foot variance from the required 10-foot side yard setback requirement for an outside shower, a 1.0-foot variance from the required 10-foot rear yard setback requirement for steps and a landing, a 3.9-foot variance from the required 5-foot side yard setback requirement, and a 4.6-foot variance from the rear yard setback requirement for a shed; that building permits were obtained and Certificate of Compliances were issued for all improvements on the property; that a survey showed the

encroachments; that the shed cannot be moved into compliance; that the original dwelling was destroyed by wind; and that they submitted pictures.

The Board found that 4-parties appeared in support of the application.

Mrs. Isaacs stated that the office received 8-letters 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 variances be **granted since it meets the standards for granting a variance**. Vote carried 5 – 0.

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**Case No. 10818 – Keith Properties** – south of Route 54 south of Water Walk Way being Lot 23 within Fenwick Shoals development.

A special use exception to place a temporary building for sales office and storage.

Mrs. Isaacs presented the case. William Scott, Attorney, present on behalf of the Applicant, and testified requesting a special use exception to place a temporary building for sales office and storage; that the Board approved this use in August 2006; that the Applicant was not aware the approval was time sensitive; that there are 7-lots left to be sold in the development; that the Applicant has a new broker that will use the unit for the remaining sales; that they are requesting approval for 2-years; that the unit is 10'x 30'; and that he submitted pictures.

Richard Ebert, Mary Beth Ebert, Eric Fatzinger, and Robert Taylor were sworn in and testified in opposition to the application and stated that the sales trailer is not in the original location; that in 2008 the Applicant moved the unit to a lot inside the development; that the unit has been used for storage only for the past 5-years and is not permitted; that the Homeowner's Association now has control of the development; that the property is not well kept; that the Community Area is directly across from this site; and that they submitted pictures and letters of opposition.

In rebuttal, William Scott, stated that the unit was originally placed on a commercial lot in front of the development; that the August 2006 approval from the Board was for its current location; that the Applicant does still own 7-lots in the community and has only handed over rights to the Homeowner's Association; that the lender has had very strict requirements on the Applicant and has made it difficult to get a broker to handle the sales of the lots; that the items being stored in the unit will be removed; and that the Homeowner's Association never contacted the Applicant prior this hearing.

In rebuttal, Richard Ebert, stated that the development is a gated community and it is not practical to have the sales office within the gated community; that the Applicant owns commercial property in front of the development where he could place this unit; and that the Homeowner's Association had written a letter to the Applicant prior to this hearing.

In rebuttal, William Scott, stated that the Applicant does own property in front of the development, however the property is fully leased.

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

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **left open to allow the Homeowner's Association to provide a copy of the letter sent to the Applicant.** Vote carried 5 – 0.

**Case No. 10819 – Rebekah L. Elbourn** – west of Road 5, 940 feet north of Route 9.

A variance from the side yard setback requirement.

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Mrs. Isaacs presented the case. Shannon Carmean, Attorney, present on behalf of the Applicant, and testified requesting a 3-foot variance from the required 10-foot side yard setback requirement for an existing accessory structure; that all improvements have been on the lot since 2002; that a Certificate of Compliance was issued on the improvements; that the survey showed the encroachment; that it was not created by the Applicant; that it cannot be otherwise developed; that it will not alter the character of the neighborhood; and that the lot is unique in size.

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 variance be **granted since it meets the standards for granting a variance.** Vote carried 5 – 0.

**Case No. 10820 – Joseph McCabe** – southwest corner of Road 553 (Neals School Road and Clagg Road, unimproved Road).

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

Mrs. Isaacs presented the case. Joseph McCabe was sworn in and testified requesting a 35-foot variance from the required 40-foot front yard setback requirement and a 5-foot variance from the required 10-foot side yard setback requirement for a proposed storage building; that the existing dwelling was built at an angle on the lot; that the property is a corner lot; that these conditions make the property unique; that it cannot be otherwise developed; that the existing septic system and trees on the lot prevent him from complying with the setback requirements; that he plans to remove the existing shed; that the proposed storage building will be used to store his vehicles and to keep a neat appearance to his property; and that he submitted pictures and letters of support.

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 variances be **granted since it meets the standards for granting a variance.** Vote carried 5 – 0.

**Case No. 10821 – Coroc/Rehoboth/LLC** – south of Route 1 (Coastal Highway) 30 feet southeast of Road 271 (Shuttle Road).

A special use exception for tent sales for a period of five (5) years.

Mrs. Isaacs presented the case. Daniel Myers was sworn in and testified requesting a special use exception for tent sales for a period of five (5) years; that the tent will be used for a 4-day sale for the Vanity Fair Outlet; that he has approval from the Fire Marshall and the Tanger Outlet Center; that they held a tent sale last year with Mr. Lank's approval; that Vanity Fair holds this type of 4-day tent sale every August throughout the country; that the tent will be set up in front of a current store front that is vacant; that there will still be adequate parking on site for all outlets; and that other tenants in the outlet center support the tent sale.

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

Mrs. Isaacs read 2-letters of opposition into the record.

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Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted for a period of five (5) years for a 4-day tent sale event in the month of August.** Vote carried 5 – 0.

**Case No. 10822 – Rouchard/Fogle Property** – east of Route 1 (Ocean Blvd) north of South Caroline Avenue.

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

Mrs. Isaacs presented the case. Kim Fogle and Mary Rouchard were sworn in and testified requesting a 17.5-foot variance from the required 30-foot front yard setback requirement for an existing dwelling and steps, a 6.5-foot variance from the required 10-foot side yard setback for an existing dwelling, a 5.5-foot variance from the required 10-foot rear yard setback requirement for an existing dwelling and a proposed dormer, a 9.7-foot variance from the from the required 10-foot rear yard setback requirement for an existing outside shower, and a 2-foot variance from the required 10-foot side yard setback requirement for a proposed deck; that the dwelling was built in the 1950's; that they want to build shed dormers to provide more head room in the existing dwelling; that the existing footprint of the dwelling will not change; and that the other variances will bring the existing structures into compliance.

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

Mrs. Isaacs stated that the office received 8-letters 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.

### **OLD BUSINESS**

**Case No. 10809 – Turnstone Builders** – east of Route 1 (Coastal Highway) southeast corner of Collins Avenue and Mary Avenue, being Lot 5 within Indian Beach Surf Club development.

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

The Board discussed the case which has been tabled since June 20, 2011.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variances be **granted since it will not alter the character of the neighborhood and there have been other variances granted in the area.** Vote carried 4 – 1.

### **OTHER BUSINESS**

**Case No. 10633 – 26 Centre, LLC** – northeast corner of Route 26 and Road 327.

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A special use exception to place a billboard, a variance from the maximum allowable square footage of a billboard, a variance from the maximum height requirement, a variance from the setback requirement from a dwelling, church, school, public lands or another sign.

Request for a time extension.

Mrs. Isaacs read a letter from the Applicant requesting a 90-day time extension.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the request for time extension be **granted for a period of 90-days.** Vote carried 5 – 0.

**Meeting Adjourned 9:00 p.m.**