



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF JULY 12, 2010

The regular meeting of the Sussex County Board of Adjustment was held on Monday July 12, 2010, 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 Inspector, 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 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to table the Minutes of the June 21, 2010 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.

### PUBLIC HEARINGS

**Case No. 10642 – Gerald A. Barron-** Route 54, west of Laws Point Road, being Lot 4, Block F within Swann Keys development.

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

Mrs. Isaacs presented the case. Kenneth Feaster, Attorney, testified requesting a 3.27-foot variance from the required 10-foot front yard setback requirement for an existing dwelling, a 0.22-foot variance from the required 10-foot side yard setback requirement for a existing dwelling, and a 1-foot variance from the required 10-foot side yard setback requirement for a AC Unit, which can encroach 3-feet into the required setback; that the applicant purchased the home in March 2010; that when a survey was obtained the violation was discovered; that the sellers were not aware of any violations; that the applicant uses the home as his primary residence; that it would cause a hardship to correct the violation; and that the home has been on the property since 1982.

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 was not created by the applicant, 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. 10643 – Liberty Towers, LLC-** west of Road 78.

A special use exception for a communication tower and a variance from the maximum allowable height requirement for a tower.

Mrs. Isaacs presented the case. Richard Lemanowicz, Attorney, testified requesting a special use exception for a communication tower and a 45-foot variance from the required 150-foot maximum height requirement for a communication tower; that the applicant would like to construct and operate a wireless communications tower; that the applicant leased a 100' x 100' area to construct the tower; that the tower will be a galvanized steel monopole; that the tower will be approximately 195-feet in height; that there will be four (4) lightening rods attached to the top of the antenna support structure; that the concrete equipment pad will measure 10' x 20'; that a security fence will enclose the antenna support structure, equipment pad and utility meters; that the tower is needed due to a gap in coverage in the area; that there are no existing towers within three (3) miles of the proposed location; that the tower will support AT & T; that the tower is designed to accommodate six (6) users; that the height variance will accommodate all six (6) users; and that the tower is located approximately 124-feet from the property line.

Sandra Spence was sworn in and testified in opposition to the application and stated that the application was advertised incorrectly; and that the public needs more time to comment on the application.

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

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

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

Mrs. Isaacs stated that the office received 1 letter in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until the August 2, 2010 meeting**. Vote carried 5 – 0.

**Case No. 10644 – BAK , LLC-** south of Route One, west corner of Route 273.

A special use exception to place a billboard and a variance from the maximum square footage and maximum height requirements for a billboard.

Mrs. Isaacs presented the case. Bill Lingo and Richard Hackston were sworn in along with David Hutt, Attorney, and testified requesting a special use exception to place a billboard, a 600-square foot variance from the required 600-square foot requirement for a billboard, and a 15-foot variance from the required 25-foot maximum height

requirement for a billboard; that a billboard has been on the property since 1990; that the billboard was removed on April 30, 2010 by the former sign company due to the lease expiring; that the new billboard will measure 12' x 50' on each side; that the billboard will measure 40-feet in height; and that the dimensions and height are identical to other signs along Coastal Highway.

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 the special use exception and variance be **granted since it meets the standards for granting a variance and since it will not substantially affect adversely the uses of adjacent and neighboring properties.** Vote carried 5 – 0.

**Case No. 10645 – Thomas Kelly-** east of Road 271, south of Worcester Road, being Lot 11 within Canal Point development.

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. Richard Blitz, Jr. was sworn in and testified on behalf of the applicant requesting a 0.6-foot variance from the required 10-foot rear yard setback requirement for a proposed screen porch; that the applicant would like to construct a screen porch; that the property backs up to wetlands; that the screen porch would allow the applicant to enjoy the outside; and that due to the windows on the back on the home, enclosing the existing deck would not allow the home to get sunlight.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until the July 19, 2010 meeting.** Vote carried 5 – 0.

**Case No. 10646 – Fred Kling-** south of Route 22, north of Salt Marsh Loop, being Lot 11 within Canal Point development.

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

Mrs. Isaacs presented the case. Ted Spangos was sworn in and testified on behalf of the applicant requesting a 1.1-foot variance from the required 20-foot separation requirement between units in a mobile home park; that the applicant received a variance in April 2010; that the manufactured home encroaches into the setback of the neighbors deck on Lot 254; and that the surveyor understood that the separation requirement was from any covered permanent structure.

Sandra Spence, whom was sworn in at a previous hearing, testified in opposition and stated that the 20-foot separation requirement is needed for safety reasons.

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

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until the July 19, 2010 meeting**. Vote carried 5 – 0.

**Case No. 10647 – Frank A. Miranda-** north of Route 357A, being Lot 3 within Laura Short development.

A special use exception to place a windmill and a variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Frank Miranda was sworn in and testified requesting a 24-foot variance from the required 40-foot front yard setback requirement, and a special use exception for a windmill; that he would like to construct a new home; that the lot is unique in size; that it is impossible to construct a home within the setback requirements; that he received a variance in 2003 but the home was never constructed due to time and money issues; that he would like to placed a windmill on a free standing pole; and that the windmill would be located on the west end of 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. McCabe, and carried unanimously that the case be **tabled until the August 2, 2010 meeting**. Vote carried 5 – 0.

**Case No. 10648 – Joseph Weedon-** south of Road 277, west of Holly Way West, being Lot 28, Block O, Section 2 within Angola By The Bay development.

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. Joseph Weedon was sworn in along with Erika Schrader, Attorney, and testified requesting a 16-foot variance from the required 20-foot

rear yard setback requirement; that the applicant purchased the home as a vacation home; that it is a narrow lot; that the screen porch is already constructed; that the applicant hired a contractor that did not obtain a building permit; that his neighbors do not object; and that due to the lot being narrow it prevents expansion.

Mark Wolfe was sworn in and testified in opposition to the application and stated that he is the Committee Manager for Angola- By- The -Bay; that the screen porch is not consistent with the neighborhood; that a portion of the porch was built over the septic

system; that no building permit was obtained; and that the property owners to the rear of the applicant are in opposition.

Michael Duncker was sworn in and testified in opposition to the application and stated that he is on the Board of Directors for Angola- By -The -Bay; that the applicant is a licensed contractor in the State of Maryland; and that the applicant should be aware of the setback requirements.

In Rebuttal, Mrs. Schrader stated that the applicant has complied with the HOA requests; that a building permit was obtained; and that the applicant intends to hook into the County sewer system.

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. 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. 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. 10649 – Mary DiVirgilio and Joseph Cofrancesco-** Road 273A, southwest of Eagle Drive, being Lot 29 within Bald Eagle Village development.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Joseph Cofrancesco was sworn in and testified requesting a 8-foot variance from the required 30-foot front yard setback requirement; that he would like to construct a roof over the front stoop; that the stoop measures 11' x 8';' that he spoke to his neighbors and they have no objections; and that he feels it would enhance the appearance of his home.

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 case be **left open for the applicant to submit a survey**. Vote carried 5 – 0.

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**The Board took a 10-minute Recess**

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**Case No. 10650 – Matt R. Dotterer-** northeast of Road 275, west of Goldfinch Turn, being Lot 90 within Summercrest development.

A variance from the front yard setback requirement for a through lot.

Mrs. Isaacs presented the case. Matt Dotterer was sworn in and testified requesting a 9.4-foot variance from the required 30-foot rear yard setback requirement for a uncovered deck and screen porch for a through lot; that the applicant purchased the home in 2008; that it is a through lot; that there is no area to construct in the rear due to it being a through lot; and that the applicant cannot construct on the side due to the location of the bedrooms.

Sandra Spence who was sworn in at a previous hearing testified in opposition to the application and stated that she is familiar with the area; and that it is an unfortunate circumstance.

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

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

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. 10651 – Gary J. W. and Donna B. Lambert-** west of Road 395, west of bay View West, being Lot 21, Block 3 within Bayview Estates development.

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

Mrs. Isaacs presented the case. Gary Lambert was sworn in and testified requesting a 1-foot variance from the required 10-foot side yard setback requirements for a lean-to on an existing shed and an 11.7-foot variance from the required 30-foot front yard setback requirement for an existing dwelling; that he extended the shed roof to make a lean-to; that it is open on three (3) sides; that he did not obtain a building permit for the lean-to; that a certificate of occupancy was issued on the home; and that the neighbors have no objections.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted for the dwelling and the variance for the shed be denied since it does not meet the standards for granting a variance.** Vote carried 5 – 0.

**Case No. 10652 – Elaine Lyle-** east of Road 274, east of B Street, being Lot B10 within Rehoboth Bay Mobile Home Park.

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

Mrs. Isaacs presented the case. Lori Hoelen was sworn in and testified on behalf of the applicant requesting a 7-foot variance from the required 20-foot separation requirement in a mobile home park for steps; that that applicant obtained the property in January 2010; that the steps do not meet the separation requirement; and that the steps were placed by a sub-contractor.

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.

**Case No. 10653 – Nick Shevland and Heather Cannon-** west of Road 346, being Lot 3 within Blackwater Cove III development.

A special use exception for a day care facility.

Mrs. Isaacs presented the case. Nick Shevland and Heather Cannon were sworn in and testified requesting a special use exception for a day care facility; that they would like to operate a day care facility on a seasonable basis; that the facility will be open from 8:15 A.M. to 2:30 P.M. daily; that they follow the Indian River School District Schedule; that there will be a maximum of thirty-six (36) children; that they will provide adequate off street parking; that they are willing to erect a fence or landscaping buffer to adjacent properties; that the building will look like a garage; that the children will only have a total of one (1) hour outside time per day; that currently the facility is operating in Ocean View; and that they will only have one (1) employee.

The Board found that 3 parties 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 case be **tabled until the July 19, 2010 meeting**. Vote carried 5 – 0.

**Case No. 10654 – Donald J. and June M. Elardo-** north of Route One, east of Anna B Street, being Lot 10, Block E within Dodds Addition development.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Donald and June Elardo were sworn in and testified requesting a 10-foot variance from the required 30-foot front yard setback requirement for a proposed dwelling; that they would like to place the new home closer to the property line to accommodate a deck and porch; that they received a variance approval in March 2010; that during renovation of the existing home they discovered extensive termite and mold damage; that they demolished the existing home; 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. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **left open for the applicant to provide a survey**. Vote carried 5 – 0.

**Case No. 10655 – Ellen MacDonald-** southwest of Route One, northwest of Martin Lane, being Lot 29 within Truitt's Midway Subdivision.

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

Mrs. Isaacs presented the case. Shawn Tull was sworn in along with Daniel Myers, Attorney, and testified requesting a 4-foot variance from the required 30-foot front yard setback requirement for an existing dwelling, a 0.4-foot variance from the required 5-foot side yard setback requirement and a 0.1-foot variance from the required 5-foot rear yard setback requirement for an existing detached garage; that the detached garage was built in 1976; that the roof overhang is encroaching into the setback requirement; and that the dwelling was moved there in 1987.

The Board found that no parties appeared in support of or 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. 10656 – Cricket Communications** – south of Route 26, 50 feet west of Route 17.



A special use exception for expansion of existing communication tower and a variance from the maximum allowable height requirement for a tower.

Mrs. Isaacs presented the case. Frank Washart was sworn in and testified requesting a special use exception for expansion of an existing tower and a 10-foot variance from the required 150-foot height requirement for a telecommunications tower; that the existing tower is 150-foot; that there are currently 5 carriers using this tower; that they want to extend the tower 10-foot; that the 10-foot will allow room on the tower for

Cricket Communication antennas; and that the tower is 275-foot from the property line and there is minimal change to the appearance of the tower.

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 and special use exception be **granted since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

### **OLD BUSINESS**

**Case No. 10634 – Philadelphia Pentecostal Holiness Church** – west of Road 213, across from Pentecostal Street.

A variance from the minimum square footage, lot width and lot depth for a parcel and a variance from the side yard setback requirement.

The Board discussed the case, which has been tabled since June 21, 2010.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variances be **granted due to the uniqueness of the lot**. Vote carried 5 – 0.

**Case No. 10639 – Summer N. Morse** – south of Road 244, 1,550 feet west of Road 246.

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

The Board discussed the case, which has been tabled since June 21, 2010.

Motion by Mr. Hudson, seconded by Mr. Hudson, and carried unanimously that the special use exception be **denied**. Vote carried 4 – 0. Mr. Mills abstained.

### **OTHER BUSINESS**

**Case No. 7981 – Dennis Ward, Mary Ward, Barbara Ward, and Mary Ward** – west of Route One, east of Alda Avenue, Lot 59, within Bayview Park Subdivision.

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

Request for a time extension.

The Board stated the Applicant must re-apply. Mr. Berl stated that no motion was needed.

**Case No. 10410 – Harrison F. Elliott** – north of Road 475 and west of Road 476.

A variance from the minimum acreage requirement to place an on-farm manufactured home.

Request for a time extension.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the request for time extension be **granted for a period of one (1) year**.  
Vote carried 5 – 0.

**REORGANIZATION**

Mr. Callaway asks Mrs. Isaacs to process the election of officers.

Motion was made by Mr. Workman, seconded by Mr. McCabe to nominate Mr. Callaway as Chairman.

There was a consensus that the nominations for Chairman be closed.

Nominations for Chairman were closed.

Motion was adopted to nominate Mr. Callaway as Chairman: 5 yea

Vote by roll call:

Mr. McCabe- yea

Mr. Workman- yea

Mr. Hudson- yea

Mr. Mills- yea

Mr. Callaway- yea

Mrs. Isaacs opened the nominations for Vice Chairman.

Motion by Mr. Hudson, seconded by Mr. Workman to nominate Mr. Mills for Vice Chairman.

There was a consensus that the nominations for Vice Chairman be closed.

Motion was adopted to nominate Mr. Mills as Vice Chairman; 5 yea

Mr. Mills- yea

Mr. Callaway- yea

Mr. Workman- yea

Mr. Hudson- yea

Mr. McCabe- yea

The meeting was turned over to Mr. Callaway, the new Chairman.

Motion was made by Mr. McCabe, seconded by Mr. Mills to appoint Mrs. Isaacs as Secretary to the Board. Vote carried 5 – 0.

**Meeting Adjourned 10:30 p.m.**