



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF July 21, 2008

The regular meeting of the Sussex County Board of Adjustment was held on Monday July 21, 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 and Mrs. Kelly Passwaters – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously to approve the Revised Agenda as circulated with the correction to combine Case No. 10199 with Case No. 10141 and Case No. 10200 with Case No. 10142. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Minutes of the July 7, 2008 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. 10199 and Case No. 10141 – Edwin F. Jacobsen- east of Road 357, east of Marshy Hope Way, being Lot 30 within W. Glyn Newton's development.

A special use exception to place a windmill and a variance from the maximum height requirement.

Mr. Rickard presented the case. Edwin Jacobsen was sworn in and testified requesting a 7-foot variance from the required 42-foot height requirement; that a height variance is needed due to trees; that the windmills will be attached to the dwelling; and that he submitted an email from the manufacture in reference to decibels.

Derek Billnitzer was sworn in and testified in opposition to the application and stated that if the windmills were placed that it will obstruct the view of the water from their home; that it would look like an antenna; and that he feels it would decrease the property value.

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. Mills, seconded by Mr. McCabe, 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. McCabe, seconded by Mr. Mills, and carried unanimously that the cases be **tabled until the August 4, 2008 meeting**. Vote carried 5 – 0.

Case No. 10200 and Case No. 10142- Edwin F. Jacobsen- east of Road 357, east of Marshy Hope Way, being Lot 41 within W. Glyn Newton's development.

A special use exception to place a windmill and a variance from the maximum height requirement.

Mr. Rickard presented the case. Edwin Jacobsen, who was sworn in at the previous case. The testimony from the previous case was adopted for these cases since it is the same.

Jacqueline Umstertter was sworn in and testified in opposition to the application and stated that she lives next door to the applicant; that she has no air conditioning and leaves her windows open; that she is afraid that it will fall on her roof; and that she would not be opposed if the windmill was placed on the opposite side of the home.

The Board found that no 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 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. McCabe, and carried unanimously that the case be **tabled until the August 4, 2008 meeting**. Vote carried 5 – 0.

Case No. 10201 – Katherine L. Cauley- east of Route One, northwest of Sabrina Drive, being Lot 29 within Midway Estates development.

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

Mr. Rickard presented the case. Mary Slinkma was sworn in along with Daniel Myers, Attorney, and testified requesting a 0.6-foot variance from the required 10-foot side yard setback requirement and a 1.1-foot variance from the required 5-foot rear yard setback requirement; that the home was built in 1973; that the shed was built on a

concrete foundation in 1985; and that it would cause a hardship to move the shed and a portion of the house.

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 was not created by the applicant and since it will not alter the essential character of the neighborhood.** Vote carried 5 – 0.

Case No. 10202 – Barbara Watson- east of Route One, 990 feet north of Road 270.

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

Mr. Rickard presented the case. Barbara Watson and Robert Sautori were sworn in and testified requesting a 100-foot variance from the required 150-foot lot width requirement for parcel A and B and a 25,170-square foot variance from the required 32,670-square foot requirement for parcel A & B; that she purchased the property with two (2) manufactured homes on it; that it has two (2) septic systems; that the manufactured homes and shed will be removed in the future; that the shed is on the property line; and that she has owned the property for 20 years.

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

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

Motion by Mr. Workman, seconded by Mr. McCabe, 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 case be **tabled until the August 4, 2008 meeting.** Vote carried 5 – 0.

Case No. 10203 – Jacquelyn E. Porter (Shaw)- south of Road 312, 2,124 feet east of Road 312A, being Lot 11.

A variance from the side yard setback requirements.

Mr. Rickard presented the case. Jacquelyn Porter Shaw was sworn in and testified requesting a 1.2-foot variance from the required 5-foot side yard setback requirement and a 9.74-foot variance from the required 10-foot side yard setback requirement; that she would like to replace the existing dwelling; that it has extensive termite damage; that the new dwelling would be placed in the same foot print; and that the property has been in her family for 62 years.

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 unanimously that the variances be **granted since it will not alter the essential character of the neighborhood, since it enables reasonable use of the property and since it was not created by the applicant.** Vote carried 5 – 0.

Case No. 10204 – Todd A. and Christina B. Fishburn- intersection of Patrick Court and Road 490A, being Lot 1 within Patrick Subdivision.

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

Mr. Rickard presented the case. Todd Fishburn was sworn in along with Jane Patchell, Attorney, and testified requesting a 1.1-foot variance from the required 30-foot front yard setback requirement and a 4.94-foot variance from the required 5-foot side yard setback requirement; that the property was purchased in 2004; that when the property was purchased in 2004 the applicant was not aware of the violations; that the previous owner applied for a variance in 1999 but was denied due to lack of representation; and that the shed is on permanent foundation.

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 has existed for many years, 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. 10205 – John and Stacy Leal- south of Cedar Road, west of Bayberry Lane, being Lot 68, Block H, Subdivision 3 within Keen-Wik development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. John Leal was sworn in and testified requesting a 10-foot variance from the required 30-foot front yard setback requirement; that he has started construction on a portico/balcony; that he would like a minimum of a 4-foot variance; that he was not aware of the setback requirements; that he was approached by the Homeowners Association about being in violation; that a variance was granted in 1983 for the dwelling; that he feels the addition would add curb appeal to his home; that he has spoken to his neighbors; and that the Homeowners Association objects to the variance.

Ben Waide was sworn in and testified in opposition to the application and stated he is the president of the Homeowners Association; that there are deed restrictions in the subdivision; that he approached the applicant and stated he should stop construction due to being in violation; that a variance has already been approved for the property; and that the building permit does not state all the work that is being done.

In Rebuttal, Mr. Leal stated the Homeowners Association does not want him to be granted a variance and that he is not aware of the standards for granting a variance.

In Rebuttal, Mr. Waide stated that when Mr. Leal purchased his home he received a welcome letter from the Homeowners Association.

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

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

Mr. Rickard stated the office received 14 letters in opposition to the application.

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

OLD BUSINESS

Case No. 10189 – Alfred Miller- intersection of Gordy Road and Road 461.

A variance from the front yard setback requirement.

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

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 3 – 1 with Mr. Mills opposed to the motion. Mr. Hudson did not participate in the vote since he was not present during the public hearing.

Case No. 10192 – Fenwick 9, LLC- south of Route 54, east of Cape Windsor Community, being ½ of Lot 1 within Cape Windsor development.

A special use exception to place an accessory structure on less than one (1) acre and a variance from the front yard setback requirement.

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

Motion by Mills, seconded by Mr. Workman, and carried unanimously that the special use exception and variance be **denied since it will alter the essential character**

of the neighborhood. Vote carried 4 – 0. Mr. Hudson did not participate in the vote since he was not present during the public hearing.

Case No. 10197 – Beazer Homes – north of Road 382, 1,250 feet east of Road 391, within Ashley Manor development.

A variance for additional signs.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted and that the signs not exceed 150-square feet.** Vote carried 4 – 0. Mr. Hudson did not participate in the vote since he was not present during the public hearing.

OTHER BUSINESS

Workshop – Discussion of Windmills and Solar Panels

Mr. Rickard stated that additional information would be required when requesting footer inspections. A preliminary drawing of the unit being placed must be submitted at the time of the footer inspection showing that all setback requirements will be met.

The Board conducted a discussion on windmills and solar panels. Mr. Berl brought up the question about height requirements on windmills. A windmill attached to the dwelling must meet the 42-foot height requirement. A windmill unattached can be up to 100-foot in height.

Mr. Rickard stated that some solar panels are free standing and must meet setback requirements.

Mr. Mills would like to see some feedback on windmills and solar panels from County Council.

Greg Menoche was present for the discussion and stated that he did a presentation at a Council meeting; that he would like to see the acreage requirements changed; that he has installed a windmill on his property; that would like the Board of Adjustment to visit his property to see the windmill in use; and that he recommended that windmills be placed 20-foot higher than objects within 200-feet.

Meeting Adjourned @ 9:35 p.m.