



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF JULY 6, 2009

The regular meeting of the Sussex County Board of Adjustment was held on Monday July 6, 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, Mr. Brent Workman and Mr. Jeff Hudson, with Mr. Richard Berl – Assistant County Attorney and staff members, Mrs. Susan Isaacs, Mr. Dean Malloy 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 approve the Minutes of June 15, 2009 meeting 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.

PUBLIC HEARINGS

Case No. 10426 – Miriam P. McCabe- east of Road 394-A, 1,970 feet south of Route 54.

A special use exception to retain a manufactured home on less than ten (10) acres and a variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Miriam McCabe was sworn along with Ken Feaster, Attorney, and testified requesting a special use exception to retain a manufactured home on less than ten (10) acres and a 12.7-foot variance from the required 40-foot front yard setback requirement; that the property was sub-divided in 1986; that the manufactured home was originally placed on-farm; that the farm sold for development of Americana Bayside; that it would cause a hardship to move; that the violation was discovered when she refinanced and a survey was done; and that a certificate of occupancy was issued.

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 special use exception and variance be **granted 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. 10427 – Roland J. Hoffman- intersection of Route 26 and Road 346.

A special use exception for a billboard.

Mrs. Isaacs presented the case. Roland and Mary Ann Hoffman were sworn in and testified requesting a special use exception for a billboard; that the billboard needed to be moved because it could not be seen; and that they were not aware they needed a hearing to move the billboard to a different location.

Mr. Malloy, Sussex County Zoning Inspector, stated that the property is zoned B1 and that new billboards are not permitted according to the zoning ordinance.

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 case be **tabled until the July 20, 2009 meeting**. Vote carried 5 – 0.

Case No. 10428 – Marie Hood- west of Road 291, 1,500 feet south of Road 262.

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

Mrs. Isaacs presented the case. Marie Hood and Maria Brittingham were sworn in and testified requesting a special use exception to place a manufactured home on a medical hardship basis; that the manufactured home measures 14' x 70'; that the manufactured home has been on the property for approximately two (2) years; and that her daughter will be residing in the home.

Renee Wells was sworn in and testified in opposition to the application and stated that the parcel is only zoned for one (1) manufactured home; and that Ms. Hood only has life time rights to the trailer.

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. 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 the case. Motion by Mr. Mills, seconded by Mr. McCabe, 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 5 – 0.

Case No. 10429 – BOH Canal Point, DE, LP- east of Hebron Road, west of City of Rehoboth Beach, being Parcels B and C within Canal Point development.

A variance from the maximum allowable condominium building length.

Mrs. Isaacs presented the case. Zack Crouch was sworn in and testified requesting 3'1'2" variance from the required 165-foot length requirement for a condominium building; that the project was approved in 2004; that the property is zoned MR-RPC; that four (4) townhouse units have already been built; that they will reduce the townhouse from 3 stories to 2 stories; that the master bedroom and bathroom will be located on the bottom floor; that the buildings will meet the 40-foot separation requirement and will meet all setback requirements; that eight (8) units will not exceed the building width of 168 1 1/2; that the variance will be for buildings F,I,L,N,O,P,Q,Z; and that the variance would decrease the number of authorized townhouse units for those 12 buildings from 80 units to 68 units.

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

Case No. 10430 – Guy R. Martin- south of Road 274, south of Bay Drive, being Lot 49 within Rehoboth Bay Mobile Home Park.

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

Mrs. Isaacs presented the case. Guy Martin was sworn in and testified requesting a 5.36-foot variance from the required 20-foot separation requirement between units in a mobile home park; that he would like to enclose an existing screen porch and add a new

porch; that he would only be covering 34% of the lot coverage; and that the neighbors deck is located on the property line and has been there approximately 30 years.

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

Case No. 10431 – Anna Shaffer- southeast of Savannah Road, 240 feet northwest of Woodland Avenue, being Lot 9.

A variance from the minimum lot size and lot width for a parcel.

Mrs. Isaacs presented the case. Anna Shaffer and David Hurst were sworn in and testified requesting a 11,200-square foot variance from the required 20,000-square foot requirement for a parcel and a 20-foot variance from the required 100-foot lot width requirement for a parcel; that they would like to subdivide the parcel; that Lot B does not meet the road frontage requirement and lot width requirement; that Lot B has a rental unit on it; and that Lot C has a rental unit and duplex on it.

The Board found that 2 parties appeared in favor 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 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 variances be **granted since it will not alter the essential character of the neighborhood and since it is unique**. Vote carried 5 – 0.

Case No. 10432 – Jose G. and Mary E. Gutierrez- north of Road 592, 0.95 mile west of Road 565, being Lot A.

A special use exception to retain a manufactured home on less than ten (10) acres.

Mrs. Isaacs presented the case. Jose and Mary Gutierrez were sworn in and testified requesting a special use exception to retain a manufactured home on less than 10 acres; that they purchased the property in 2000; that they would like to sub-divide the parcel to possibly sell lots in the future; that the manufactured home currently on the

property is being rented to a family member; and that they have completely remodeled the manufactured home.

Richard Auscin was sworn in and testified in opposition to the application and stated that the property is a rental property and that he does not want the manufactured home to remain.

David Esch was sworn in and testified in opposition to the application and stated he was told by the applicant that the manufactured home would be removed; that the surrounding homes are stick built; and that if the manufactured home remains it will affect his property value.

Terry Lowe was sworn in and testified in opposition to the application and stated that the Planning & Zoning Commission stated the manufactured home must be removed; and that he does not want the lots made into a trailer park.

In Rebuttal, Mary and Jose Gutierrez stated that they never said the manufactured home would be removed; that there is a manufactured home located down the street; and that the opposition illegally hunts behind there property.

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

The Board found that 3 parties appeared in opposition to the application.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until the July 20, 2009 meeting**. Vote carried 5 – 0.

Case No. 10433 – Flexera, Inc. - intersection of Route One and East Atlantic Street, being Lots 10 and 11.

A special use exception to place a windmill.

Mrs. Isaacs presented the case. Robert Light and Finn McCabe were sworn in and testified requesting a special use exception to place a windmill; that it will be placed on a 45-foot free standing pole; that it will be a Skystream 3.7 model; that the windmill will generate noise in the 40 decibel range; that it will sustain approximately 130 mph winds; and that the property has the perfect wind resource.

The Board found that 8 parties appeared in support of the application.

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

Mrs. Isaacs stated the office received 21 letters in support of the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted since it will substantially affect adjacent and neighboring properties**. Vote carried 5 – 0.

Case No. 10434 – Flexera, Inc. - east of Route 16, east of South Bayshore Drive, being Lot 31 and ½ of Lot 30, Block A, Section 2 within Old Inlet Beach.

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

Mrs. Isaacs presented the case. Robert Light and Finn McCabe who were sworn in at the previous hearing testified requesting a special use exception to place a windmill; that it will be placed on a free standing 35-foot pole; that the Board of Adjustment approved a roof mount windmill on June 16, 2008; that they have received approval from DNREC; that the windmill is rated for 180 mph winds; that the pole is already installed; that they were not aware they needed a variance for the setbacks; that there are towers located throughout the neighborhood; and that it will not alter the character of the neighborhood.

Sam Burke was sworn in and testified in opposition and stated that the previous windmill made lots of noise and shook the house; that the applicant knows the procedure for applying for a special use exception; that there are not recommendations for soil types; that the pole is encroaching on the neighbors property; that the windmill would affect property value; that it could be placed in another location; that the applicant has created the hardship; and that the windmill casts a shadow on the beach.

Linda Madrid was sworn in and testified in opposition to the application and stated she owns the vacant parcel across the street; and that the windmill obstructs the view of the beach.

In Rebuttal, Mr. Light stated that the beach cannot be seen due to the applicant's home; that the windmill is being placed in the best location to utilize the best wind resource; and that the hardship is created by the windmill manufacturer and not the applicant.

The Board found that 7 parties appeared in support of the application.

The Board found that 2 parties appeared in opposition to the application.

Mrs. Isaacs stated the office received 13 letters in favor of the application.

Mrs. Isaacs stated the office received 2 letters in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Workman and carried unanimously that the case be **tabled until the July 20, 2009 meeting**. Vote carried 5 – 0.

Case No. 10435 – Shawn Reedy- north of Route 54, east of Blue Teal Road, being Lot 30, Block B within Swann Keys development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Shawn Reedy was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement; that he would like to construct a sunroom on his manufactured home; that the property has been in the family for thirty (30) years; and that his Aunt owns the adjacent property.

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 be **granted since it will not alter the essential character of the neighborhood and since there was no opposition**. Vote carried 5 – 0.

Case No. 10436 – B. Reed Family Limited Partnership- south of Angola Beach Mobile Home Park, north of Burton Prong.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Donna and Blake Reed were sworn in and testified requesting a 5-foot variance from the required 15-foot side yard setback requirement for an addition; that they called the office for setback requirements for an undersized lot; that they were given setbacks for an undersized lot; and that when they obtained a building permit a survey was provided and it was discovered that the lot is not undersized.

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 will not alter the essential character of the neighborhood**. Vote carried 5 – 0.

The Board took a 5 minute Recess.

Case No. 10437 – Indian River Yacht Club, Inc. - south of River Road (Road 312), being Lot 49 within Oak Orchard.

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

Mrs. Isaacs presented the case. James Roland was sworn in and testified requesting a 0.6-foot variance from the required 10-foot side yard setback requirement; that a tree fell on the existing screen porch; that the rebuilt porch encroaches into the setbacks; and that the porch was constructed in the same footprint.

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

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it is for the side yard only and since it was placed in the same footprint of the previous porch.** Vote carried 5 – 0.

Case No. 10438 – Lyle White and Monica Dwyer- Route 54, east of Route One, being Lot 2 within Fryer Mobile Home Park.

A variance from the front yard and side yard setback requirements and a variance from the separation requirement between units in a mobile home park.

Mrs. Isaacs presented the case. Monica Dwyer and David Epperson were sworn in testified requesting a 2-foot variance from the required 5-foot front yard setback requirement for a manufactured home, a 2-foot variance from the required 5-foot side yard setback requirement for a manufactured home, a 9.5-foot variance from the required 20-foot separation requirement between units, and a 7.2-foot variance from the required 20-foot separation requirement between units; that they would like to replace the existing manufactured home; that the new manufactured home will measure 16' x 52'; that it will be placed in the same footprint; that the park owner does not object; and that they have been residents in the park for thirty-six years (36).

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. McCabe, seconded by Mr. Workman, and carried unanimously that the variances be **granted since it is an old park and since it will not alter the essential character of the neighborhood.** Vote carried 5 – 0.

Case No. 10439 – Ralph E. and Rhoda M. Domenic- south of Route 88, north of Overbrook Drive, being Lot 52 within Overbrook Shores development.

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

Mrs. Isaacs presented the case. Ralph and Rhoda Domenic were sworn in and testified requesting a 25-foot variance from the required 40-foot front yard setback requirement; that they purchased the property in 2004; that the building permit was issued with the incorrect rear yard setback requirement; that the permit was for a 8' x 10' shed; that it is a through lot; and that a certificate of occupancy was issued in 2005.

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. 10440 – HSBC Bank, N.A.- northeast of Louisiana Avenue, 125 feet northwest of Bay Shore Drive, being Lots 22, 24 and 26, Block L, Section 1 within North Shores development.

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. Shannon Carmean, Attorney, testified on behalf of the applicant requesting a 5.1-foot variance from the required 10-foot rear yard setback requirement; that the garage has been on the property since 1974; that the property is unique in shape; that the lots are combined; and that the violation was discovered when a survey was done.

The Board found that no parties appeared in support of or 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.

OLD BUSINESS

Case No. 10400 – Flexera, Inc.- south of Lighthouse Road, east of Roosevelt Avenue, being Lot 28, Block 7 within Cape Windsor development.

A special use exception to place a windmill.

The Board discussed the case, which has been tabled since May 18, 2009.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until the July 20, 2009 meeting**. Vote carried 5 – 0.

Case No. 10420 – Alissa Rosenstein- south of Route 22, west of Brockton Pass, being Unit B10-6 within Fairfield at Long Neck development.

A variance from the separation requirement between units.

The Board discussed the case, which has been tabled since June 15, 2009.

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

Case No. 10113 – Donald Feltenberger- north of Long Neck Road, east of Portside Lane, being Lot J33 within Rehoboth Shores Mobile Home Park.

A variance from the side yard setback requirement and a variance from the separation requirement between units in a mobile home park.

The Board discussed the case, which has been tabled since April 21, 2008.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the manufactured home only**. Vote carried 5 – 0.

OTHER BUSINESS

Case No. 9856 – Greenwood Country Retirement, Inc. - southwest of Route 16, 2,650 feet north of Road 587.

A special use exception for expansion of a convalescent home facility.

This is a request for a time extension.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the request for a time extension be **denied**. Vote carried 5 – 0.

REORGANIZATION

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

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

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

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

Mr. Mills- yea

Mr. Callaway- yea

Mr. Workman- yea

Mr. McCabe- yea

Mr. Hudson- yea

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

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

Meeting adjourned @ 10:00 P.M.