



Board of Adjustment

Agendas & Minutes

MINUTES OF JUNE 26, 2006

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 26, 2006, 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. Callaway, Mr. McCabe, Mr. Mills, Mr. Workman and Mr. Hudson, with Ms. Rebecca Trifillis – Assistant County Attorney, Ms. Hudson – Secretary to the Board and Mrs. Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda with a motion to table Case No. 9356 – William C. Szymanski until July 10, 2006. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously to approve the Minutes of June 19, 2006 as circulated. Vote carried 5 – 0.

Ms. Trifillis read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

Case No. 9530 – Darin and Vicki Shartzter – south of Route 54, south of Cleveland Avenue, being Lot 25 and part of Lot 24, Block 4 within Cape Windsor development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Darin Shartzter was sworn in and testified requesting a 7-foot variance from the required 10-foot side yard setback requirement and a 10-foot variance from the required 10-foot side yard setback requirement for an air conditioning unit; that he wants to either replace the unit or add on to the unit; that the air conditioning unit will be raised to protect from flood waters; and that the new unit or addition will be within the existing footprint.

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.

Case No. 9531 – Ashley Manor LLC – north of Road 382, 1,250 feet east of Road 381, within Ashley Manor development.

A special use exception to place a manufactured home type structure as a sales office.

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Ms. Hudson presented the case. Lincoln Davis was sworn in and testified requesting a special use exception to place a manufactured home type structure as a sales office; that the unit will measure 10' x 56'; that the unit will be removed once the model is completed; that there will be adequate parking; that the site will have landscaping; and that the unit will be needed for approximately 15-months.

George McIlvaney was sworn in and testified in opposition to the application and stated that he owns property in Mill Creek Acres; that he has no objection to the unit; and that his main concern is whether there have been any changes made to the approved plan of the development.

In rebuttal, Lincoln Davis, stated that the development will consist of 95 townhouses; that the units will meet all the required setback requirements; and that they are complying with the plan that was approved by the Planning and Zoning Commission.

By a show of hands, 1 party appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted for a period of 15-months since it will have no substantial effect to the neighborhood**. Vote carried 5 – 0.

Case No. 9532 – The Peninsula At Longneck LLC – northeast of road 299, southeast corner of Road 299A, within The Peninsula development.

A special use exception to place manufactured home type structures as offices.

Ms. Hudson presented the case. Frank Connelly was sworn in with Jim Yori, Attorney, present on behalf of the application, and testified requesting a special use exception to place manufactured home type structures as offices; that there will be 2-units; that one unit will measure 36' x 54' and one will measure 24' x 50'; that the unit located in the model village will be used for sales; that the second unit will be used by golf employees only; that the units will be used until the models and golf clubhouse are completed; that The Peninsula is a gated community; that the units cannot be seen outside of the development; and that there will be adequate parking and the site will have landscaping.

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 special use exception be **granted for both units for a period of 3-years since there will be no substantial effect to the neighborhood**. Vote carried 5 – 0.

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Case No. 9533 – DKR LLC – east of Route 24, south of Steele Drive, being Lot 76 within Steele Land Development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Margaret Foulk was sworn in and testified requesting a 5.5-foot variance from the required 30-foot front yard setback requirement for an existing porch; that she built the dwelling for the Applicant; that a variance was granted for the structure in July 2005; that they measured for the placement of the dwelling themselves; that the mason made an error when they laid the block foundation; that the error went unnoticed until the final placement survey was done; and that the original measurement included the approved variance.

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 for a 5.5-foot variance since it meets the standards for granting a variance**. Vote carried 5 – 0.

Case No. 9534 – Howard and Betty Ellis – south of Route 54, east of Roosevelt Avenue, being Lot 25, Block 7 within Cape Windsor development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Betty Ellis was sworn in and testified requesting an 18-foot variance from the required 40-foot front yard setback requirement for an existing shed; that for years they have felt the property line was marked by a nail in the existing bulkhead; that the new shed was placed within the same footprint as the previous shed; that the neighbors discovered the encroachment when they had a survey done; and that their neighbor's received a variance for the porch they are building.

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 case be **tabled until July 10, 2006**. Vote carried 5 – 0.

Case No. 9535 – Deborah and Jeffrey Sterndale – northwest of Road 312, southeast of Comanche Circle, being Lot 49 within Warwick Park development.

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

Ms. Hudson presented the case. Jeffrey and Deborah Sterndale were sworn in and testified requesting an 18-foot variance from the required 40-foot front yard setback requirement for a proposed pool; that the proposed pool will measure 18'x34'; that the septic system will not allow for the pool to be on the opposite side of the dwelling; that the pool will be in their back yard; and that the lot is considered a thru-lot due to Road 312.

Howard Detweiler was sworn in and testified in opposition to the application and stated that he was representing the Homeowner's Association; that the recorded covenants do not allow for anyone to encroach the required setbacks; that the Homeowner's Association recently took a case to court and had a decision made by this Board overturned; and that they will do the same with this case if it is approved.

In rebuttal, Deborah and Jeffrey Sterndale, stated that they contacted the Homeowner's Association in reference to the pool; that the Homeowner's Association advised them to seek a variance with the Board of Adjustment; that the Homeowner's Association would support this Board's decision; and that they will not use any harsh chemicals in their pool since it is a biodegradable system.

By a show of hands 1 party appeared in opposition to the application.

Ms. Hudson stated that the office received 1 letter of 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 this case. Motion by Mr. Hudson, seconded by Mr. Workman and carried unanimously that the case be **tabled until July 10, 2006**. Vote carried 5 – 0.

Case No. 9536 – Holly Donovan – south of Road 302A, west of Durham Street, being Lot 6, Block E within Avalon Park development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Holly Donovan was sworn in and testified requesting a 1.5-foot variance from the required 30-foot front yard setback requirement for an existing deck and a 0.7-foot variance from the required 30-foot front yard setback requirement for an existing dwelling; that she sold the property in April 2006; that the survey done for settlement shows the encroachment; that she purchased the property in

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1997 and the encroachment was not an issue; that she hired a contractor to obtain the building permits and build the decks in 1999; and that the shed has been moved into compliance.

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 with the condition that the Applicant obtain the building permit for the decks**. Vote carried 5 – 0.

Case No. 9537 – Layne Thomas Builders – south of Route 54, east of Monroe Street, being Lot 2, Block 3 within Edgewater Acres development.

A variance from the maximum allowable height requirement.

Ms. Hudson presented the case. George Shabolsky was sworn in and testified requesting a 12-inch variance from the required 42-foot maximum height requirement for an existing dwelling; that the dwelling was built following an AE flood plain; that the flood zone changed to an AE; that they did not realize the change until after they obtained the building permits; that they built other dwellings in an AE flood plain and did not take the height into consideration.

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 since it enables reasonable use of the property since it was not created by the Applicant and since it is the minimum variance to afford relief**. Vote carried 5 – 0.

Case No. 9538 – Adrian Phulesar – south of Road 72, 470 feet east of Road 70.

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

Ms. Hudson presented the case. Adrian Phulesar was sworn in and testified requesting a 56-foot variance from the required 150-foot lot width requirement for a parcel; that the property is currently vacant; that he wants to subdivide to allow for his brother to build on the front portion of the lot; and that he plans to build a dwelling on the back portion of the property.

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Jody and Kathy Payne were sworn in and testified in opposition to the application and stated that they own the adjacent property; that when they subdivided the property they were made to meet the 150-foot lot width requirement; and that he feels the Applicant should also have to meet the lot width requirement.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to take the case 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 July 10, 2006**. Vote carried 5 – 0.

Case No. 9539 – Steve McIlvain – northeast of Route 5, north of West James Court, being Lot 67 within Captains Grant development.

A variance from the front yard setback requirement.

No one appeared on behalf of the application.

Motion by Mr. Mills, seconded by Mr. Workman and carried unanimously that the case be **denied due to lack of a record of support**. 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.

Ms. Hudson presented the case. Robert Short was sworn in and testified requesting a special use exception to place a manufactured home for storage purposes; that he has used an existing manufactured home for storage for the past 30-years; that he wants to replace the unit with another; that the unit is used for storage only; and that he has not purchased a unit yet.

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 taken under advisement. Vote carried 5 – 0.

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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 **left open to allow the Applicant to provide pictures of the proposed unit and the size and year of the unit to the Board.** Vote carried 5 – 0.

Case No. 9541 – Thomas J. Reilly, III – south of Road 395, west of Bay View West, being Lot 43, Block 3 within Bay View Estates development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Steve and Thomas Reilly were sworn in and testified requesting a 3.7-foot variance from the required 10-foot side yard setback requirement for an existing dwelling and a 4.7-foot variance from the required 5-foot side yard setback requirement for an existing shed; that his father purchased the property in 1990; that Nanticoke Homes placed the dwelling on the property in 1990; that a sewer line is coming through the area and advised them of the encroachment; and that they were unaware of the encroachment for the past 16-years.

Carl and Leahbelle Chilcoate were sworn in and testified in opposition to the application and stated that they owned the adjacent property; that they just wanted to see the distance between the dwelling and the property line; and that they have no objection to the application.

By a show of hands 2 parties appeared 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. 9542 – Neil J. Booth – north of Route 54, east of Mallard Drive, being Lot 58, Block H within Swann Keys development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Neil Booth was sworn in and testified requesting a 3.6-foot variance from the required 5-foot side yard setback requirement for a shed; that the existing shed has been on the lot since 1973; that the proposed shed will measure 10' x 16'; that there is an existing concrete pad he wants to extend; and that the proposed shed will not encroach any further than the existing shed.

By a show of hands 1 party appeared in support of the application.

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Ms. Hudson stated that the office received 1 letter in support of the application.

Ms. Hudson stated that the office received 1 letter 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 character of the neighborhood**.
Vote carried 5 – 0.

Case No. 9543 – Julia Hemphill – northwest of road 233, 366 feet west of Road 234B, being Lot 1 within Lands of Hubert D. Mock, Jr.

A special use exception to expand a day care facility.

Ms. Hudson presented the case. Julia Hemphill was sworn in and testified requesting a special use exception to expand a day care facility; that she currently cares for 12-children; that she wants the ability to increase the number of children to thirty (30); that the day care is open Monday through Friday from 6:30 a.m. to 5:30 p.m.; and that there is adequate parking available.

By a show of hands 7-parties appeared in support of the application.

Ms. Hudson stated that the office received 2-letters in support of the application.

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

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the special use exception be **granted since it will have no substantial effect to the neighborhood**. Vote carried 5 – 0.

Case No. 9544 – Galen and Beth Mohler – north of Road 351, west of Philadelphia Avenue, being lot 5 within Banks Acres development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Beth Mohler was sworn in and testified requesting an 18.3-foot variance from the required 30-foot front yard setback requirement for an existing carport; that the carport was erected by the previous owner; that a variance was granted for the existing detached garage and shed; that the carport existed then and she does not know why it was not included in the first hearing; and that the zoning inspector advised her she needed to apply for a variance for the carport.

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

Ms. Hudson stated that the office received 1 letter in support of the application.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted since it was not created by the Applicant**. Vote carried 5 – 0.
No opposition

OLD BUSINESS

Case No. 9356 – William C. Szymanski – west of Route One, north of Dodd Avenue, being Lot G-22 within Sea Air Mobile City 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.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until July 10, 2006**. Vote carried 5 – 0.

Meeting Adjourned 8:30 p.m.