



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF MARCH 16, 2009

The regular meeting of the Sussex County Board of Adjustment was held on Monday March 16, 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, Mr. Norman Rickard, 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 February 23, 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. 10358 – Ira Paul Riale- west of Road 261, south of Vincent Avenue, being Lot 31 within Carsyljan Acres development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Ira Paul Riale was sworn in and testified requesting a 21-foot variance from the required 30-foot front yard setback requirement; that he purchased the property in November 2008; that he replaced the existing manufactured home; that the manufactured home was placed in the same footprint; that the new manufactured home measures 14' x 66'; that the neighbors have no objection; and that the manufactured home cannot be moved back due to the location of the well.

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

Mr. Rickard stated the office received 3 letters in support of 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. A motion was made by Mr. Mills to table all cases taken under advisement. The motion failed due to the lack of a second. Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the case be **tabled until the April 6, 2009 meeting**. Vote carried 5 – 0.

Case No. 10359 – Land Design, Inc. - west of Road 341, 400 feet south of Sandy Landing Road, being Lots 9 thru 25 within The Cove At Sandy Landing development.

A variance from the minimum lot width requirement in a Conservation Zone.

Mr. Rickard presented the case. Tom Ford was sworn in and testified on behalf of the applicant requesting a 48.4-foot variance from the required 150-foot lot width requirement in a conservation zone; that the sub-division was originally approved for seventy-seven (77) lots several years ago; that it is now approved for twenty-five (25) one acre lots; that the site is located in a conservation zone; that each lot does not affect the water quality or impact the tidal water body adjacent to the conservation zone; and that twelve (12) lots require a variance.

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

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 can be developed into conformity**. Vote carried 4 – 0. Mr. McCabe abstained from voting.

Case No. 10360 – Fenwick HHG, LLC - north of Route 54, east of Bennett Avenue, being part of Lots 13 thru 15 within Glen Ares development.

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

Mr. Rickard presented the case. Steven Himmelfarb and Don Miller were sworn in and testified requesting a 57.2-foot variance from the required 60-foot front yard setback requirement for a thru-lot and a 43.9-foot variance from the required 60-foot front yard setback requirement for a thru-lot; that they would like to demolish the existing

building and construct a more appealing building; that it would increase parking; that the property is a thru lot; that the top floor would possibly be a restaurant and the bottom floor would be retail; that it is a unique shaped lot; and that there will be parking located underneath the building.

Michael Beck was sworn in and testified in support of the application and stated he is the President of Fenwick Landing; that he would like to see Bennett Street and Madison Avenue a no parking zone on either side; and that he would like to see a landscape buffer on the Route 54 side to break up the noise.

Jerome Nayden was sworn in and testified in opposition to the application and stated that if the application is approved he would like to see a landscape buffer; that it is located on a dangerous street; that he would like to see sidewalks installed; that a new building would increase traffic; and that he feels it is not a hardship.

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

Case No. 10361 – Mountaire Farms, Inc. - south of Route 24.

A special use exception for a resource recovery plant.

Mr. Rickard presented the case. John Wren was sworn in along with Dennis Schrader, Attorney, and testified requesting a special use exception for a resource recovery plant; that the property is zoned HI-1; that the poultry processing has been in existence since the 1950's; that the resource recovery plant will contain state of the art equipment; that the plant will be located behind the existing grain tanks; that the resource recovery plant will be located approximately $\frac{1}{2}$ mile from the closest neighbors; that the structure will be concrete and totally enclosed; that fans will be placed vertically on the top of the building for the noise to escape; that there will be no dust associated with this use; that there will be a thermal oxidizer to eliminate odor inside of the building; that there will be no environmental changes; that there will be less than a $\frac{1}{2}\%$ of increase traffic; and that it will create approximately thirty-eight (38) new jobs.

Patsy Taylor was sworn in and testified in opposition to the application and stated that she has water issues in her community; that she has concerns with hazardous materials; that she also has concerns with health problems; and that due to the nitrates in her water Mountaire provides salt to homeowners.

Faye Burton was sworn in and testified in opposition to the application and stated that she is concerned with the odor; and that the water has been contaminated since Mountaire took over.

Martha Wise was sworn in and testified in opposition to the application and stated that she has concerns if the electric goes out at the plant; and that she is concerned with odor problems.

Junior Lee Wise was sworn in and testified in opposition to the application and stated that he has concerns with increased traffic; and that he also has concerns with water and odor problems.

Wanda Wise was sworn in and testified in opposition to the application and stated that she would like to know where the trucks will be entering the plant; and that she is concerned with the odor.

Preston Wise was sworn in and testified in opposition to the application and stated that he is concerned with the health and environment problems.

In Rebuttal, Mr. Schrader explained the traffic pattern to the opposition; that due to the high nitrate problem in the water, Mountaire has provided bottle water or salt to the surrounding neighbors; that there are nitrates in the water being sprayed on the fields; and that the facility cannot run without the thermal oxidizer.

Lee Beauchamp was sworn in and testified in support of the application and stated that he is an environmental engineer; that Mountaire treats all of there wastewater; and that the typical nitrate level is 120 – 140 parts per million.

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

Mr. Rickard stated the office received 1 letter in support of the application.

The Board found that 6 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until the April 6, 2009 meeting.** Vote carried 5 – 0.

Case No. 10362 – Wendy L. Bauer- north of North Bayshore Drive, northwest of Georgia Avenue, being Lot 8, Block H, Section 1 within Broadkill Beach.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Larry Fifer, Attorney, testified requesting a 2.75-foot variance from the required 10-foot side yard setback requirement and a 2.125-foot variance from the required 10-foot side yard setback requirement; that the applicant would like to construct a twelve (12) sided house; that two (2) of the sides will encroach

into the setback; that the house will be on pilings; that the lot is narrow; that the applicant received approval for a variance in 2006 but has since lapsed; and that it would be possible to place a different size or design home that would meet setbacks.

Donald Vincent was sworn in and testified in opposition to the application and stated he purchased his property in 2000; that he is aware of the setback requirements; and that he feels the setback requirements should be followed.

Audrey Vincent was sworn in and testified in opposition to the application and stated that she would like to see the property owners abide by the zoning regulations.

Joanne Darlington was sworn in and testified in opposition to the application and stated that she has the same lot size as the applicant; that she lives next door; and that she found a home that would fit on her lot.

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

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

Mr. Rickard stated the office received 1 letter in opposition to the application.

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

Case No. 10363 – Terry Walls- Route 54, west of Swann Drive, being Lot 10, Block A within Swann Keys development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Terry Walls was sworn in and testified requesting a 4-foot variance from the required 10-foot side yard setback requirement; that he would like to replace the existing manufactured home with a new one; that the new manufactured home measures 26' x 52'; and that it is used as a summer home.

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 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 case be **tabled until the April 6, 2009 meeting**. Vote carried 5 – 0.

Case No. 10364 - Keith R. & Denise L. Timmons- east of Emerald Pine, 500 feet north of Route 266.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Shannon Carmean, Attorney, testified on behalf of the applicant and requested a 5.9-foot variance from the required 30-foot front yard setback requirement; that the applicant purchased the property in 2008; that a survey was approved prior to recordation; that the lot is unique in shape; and that there are woods located behind the shed so the shed cannot be moved.

Norma Flemming was sworn in and testified in support of the application and stated that she sold the applicant the property; that she was not aware the shed was in violation; and that she did not obtain a building permit for the shed.

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 variance be **granted since it meets the standards for granting a variance and that a building permit must be obtained for the shed.** Vote carried 5 – 0.

Case No. 10365 – Donald E. Hitchens, Jr. - south of Donald Drive, west intersection with Road 309.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Gina Burton and Richard Harden were sworn in and testified requesting a 16-foot variance from the required 40-foot front yard setback requirement; that the manufactured home was placed in the same footprint as the previous manufactured home; that the previous manufactured home was unlivable; that the home is classified as a Class “C”; that they were not aware the home did not meet setback requirements; and that they received a temporary certificate of occupancy.

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

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until the April 6, 2009 meeting.** Vote carried 5 – 0.

Case No. 10366 – Joseph Paulinski- south of Road 358, east of Pine Needle Road, being Lot 18, Section 1 within Pine Crest Terrace development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Joseph Paulinski was sworn in and testified requesting a 0.9-foot variance from the previously approved 22-foot front yard setback requirement; that he hired a builder to complete the deck; and that when a survey was done it did not meet setback requirements.

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 that a letter be sent to the builder.** Vote carried 5 – 0.

Case No. 10367 – Harold C. and Richard H. Dodd- east of Route One, southeast intersection of Fisher Street and Robinson Drive, being Lot 26, Block F within Dodd's Addition development.

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

Mr. Rickard presented the case. Harold and Richard Dodd were sworn in and testified requesting a 4-foot variance from the required 10-foot side yard setback requirement and a 4.5-foot variance from the required 10-foot rear yard setback requirement; that they would like to construct an addition; that the existing home is small; that the neighbors do not object; and that the addition could be constructed within the setback requirements and there would be no 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 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 April 6, 2009 meeting.** Vote carried 5 – 0.

Case No. 10368 – Darla Taylor- east of Road 331, 70 feet north of Road 331A.

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

Mr. Rickard presented the case. Darla Taylor was sworn in and testified requesting a 0.95-foot variance from the required 10-foot side yard setback requirement and a 1.5-foot variance from the required 10-foot rear yard setback requirement; that she

purchased the home in November 2008; that she is a first time home buyer and was not aware of the setback requirements; that she received a certificate of occupancy; and that she received a violation notice.

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.

OLD BUSINESS

Case No. 10305 – Juli J. Hattier- north and south of Road 344, 600 feet northwest of Road 342.

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

The Board discussed the case, which has been tabled since December 1, 2008.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since the objections have been withdrawn, since it is for a family member and since it will not alter the essential character of the neighborhood.** Vote carried 5 – 0.

Case No. 10343 – Ryan Homes- east of Route 5 and north of Route 23, being Parcel A.

A special use exception for an off-premise sign and a variance from the setback requirements.

The Board discussed the case, which has been tabled since February 23, 2009.

No action was taken and the case will be scheduled for April 6, 2009 for further consideration.

Case No. 10344 – Ryan Homes- west of Route 24, 560 feet north of Road 299, being Lots 12 and 14.

A special use exception for an off-premise sign and a variance from the setback requirements.

The Board discussed the case, which has been tabled since February 23, 2009.

No action was taken and the case will be scheduled for April 6, 2009 for further consideration.

Meeting Adjourned at 11:00 P.M.