



Board of Adjustment

Agendas & Minutes

MINUTES OF MAY 15, 2006

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 15, 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 Mr. Berl – Assistant County Attorney, Ms. Hudson – Secretary to the Board, Melissa Thibodeau – Zoning Inspector, and Mrs. Norwood – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Mills, 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 May 1, 2006 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.

Case No. 9485 – Anthony M. and Brian K. Rogers – east of Road 355, 110 feet southwest of Townsend Drive, being Lot 6 within Townsend Acres development.

A variance from the rear yard setback requirement.

Ms. Hudson presented the case. Anthony Rogers and Brian Rogers were sworn in and testified requesting a 5-foot variance from the required 5-foot rear yard setback requirement for an existing shed; that the shed was built 30-years ago; that their father built the shed on a concrete pad; that they inherited the property in 1997; that the need for the variance was discovered by a survey done for the adjacent neighbor's property; and that they were not aware of the encroachment until the Planning and Zoning Department contacted them.

Thomas Varvola was sworn in and testified in support of the application and stated that he owns an adjacent parcel; that he has lived next door to this property since 1972; that the shed was already on the lot in 1972; and that the shed only became an issue due to other properties in the area being sold.

Rosetta Rhue was sworn in and testified in opposition to the application and stated that she received a letter in reference to this hearing; that she is concerned that the lot line will be moved; and that she has no objection to the shed remaining in the same location.

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

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

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

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it was not created by the Applicant and since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 9486 – Craig and Janice Tunell – northeast of Road 341, north of West Lagoon Road, being Lots 23 and 24, Section 1 within Dogwood Acres development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Janice Tunell and Joe Henderson were sworn in and testified requesting a 3.7-foot variance from the required 30-foot front yard setback requirement for a covered stoop; that the dwelling was set forward on the lot to allow room for the septic system in the rear of the property; that the decision to cover the front stoop was decided during construction; and that they have been issued a temporary Certificate of Compliance.

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 character of the neighborhood and since there have been other variances granted within the development**. Vote carried 5 – 0.

Case No. 9487 – James Carey, Jr. – north of Route 54, east of Swann Drive, being Lot 56, Block A within Swann Keys development.

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

Ms. Hudson presented the case. James Carey, Jr. was sworn in with David Rutt, Attorney, present on behalf of the application, and testified requesting a 4.9-foot variance

from the required 10-foot side yard setback requirement and a 5.2-foot variance from the required 10-foot side yard setback requirement for a proposed manufactured home; that the Applicant acquired the property from his parents; that the lot is irregular shaped; that the previous unit measures 14'x 56'; that the tenant removed the unit; that the proposed unit will measure 14'x 56'; that the unit will be within the same footprint as the previous unit; that without a variance the property cannot be built on; that this variance will enable reasonable use of the property; that the lot size was not created by the Applicant; that the

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previous unit was on the lot for 25-years; that the proposed unit will not alter the character of the neighborhood; that they submitted letters of support from the neighbors; that Swann Keys supports the Board of Adjustment's decision; and that this is the minimum variance to afford relief.

Jane and Wayne Nock were sworn in and testified in support of the application and stated that they own the adjacent lot and have no objection to the application.

Kim Tephabock was sworn in and testified in support of the application and stated that the proposed unit is an enhancement to the community.

Eugene Erway was sworn in and testified in opposition to the application and stated that the majority of the adjacent lot owners are family members; that since the lot has been vacant large vehicles have easier access to turn around in the cul-de-sac; that when the unit is on the lot cars park in the cul-de-sac; and that he feels the vacant lot creates a more attractive park.

By a show of hands 3 parties appeared in support of the application.

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

Ms. Hudson stated that the office received 3 letters in support of 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. 9488 – Walter T. Bonneville – east of Road 62, 120 feet south of Road 456.

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

Ms. Hudson presented the case. Walter Bonneville was sworn in and testified requesting a 20-foot variance from the required 40-foot front yard setback requirement for an existing manufactured home; that he recently purchased the property; that the unit was placed in 1989; that it would create a hardship to move the unit into compliance after

all this time; that the wheels have been removed from the unit; and that the septic system is located in the rear of the property.

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

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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. 9489 – John H. Colucci – north of Route 54, south of Pintail Drive, being Lot 49, Block I within Swann Keys development.

A variance from the side yard setback requirements.

Ms. Hudson presented the case. John Colucci was sworn in and testified requesting a 10-inch variance from the required 5-foot side yard setback requirement for an existing shed; that the previous shed has been removed; that he has owned the property for 11-years; that the new shed is the exact size as the previous shed; that he thought that by placing the shed within the same distance from the lot line as the previous shed he would comply with all required setbacks; and that he could not place the shed to the rear of the property due to an existing porch.

John Postanowicz was sworn in and testified in opposition to the application and stated that according to the bi-laws all shed must maintain 5-foot distance from property lines; that a Planning and Zoning Inspector and a County Constable have been to the Applicant in reference to this encroachment; and that this variance will set a precedent.

Robert Berkheimer was sworn in and testified in opposition to the application and stated that he is a new resident to Swann Keys; that he purchased a smaller dwelling in order to comply with the setback requirements; and that he is unable to have a shed since he cannot meet the setback requirements.

William Bruce was sworn in and testified in opposition to the application and stated that he is on the Board of Directors; that the maintenance manager told the Applicant that the shed would not comply with the setback requirements; and that the placement of the shed creates a fire hazard.

In rebuttal, John Colucci, stated that his neighbor's shed, on the adjacent lot, is on the property line; that he can move the shed 3-inches closer to his unit; that there have

been numerous variances granted in the development; and that his neighbor has no objection to the application.

By a show of hands 3 parties appeared in support of the application.

By a show of hands 5 parties appeared in opposition to the application.

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Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood and since there have been numerous variances granted in the development.**

Vote carried 5 – 0.

Case No. 9490 – Thomas C. and Maria A. Harris – north of Route 54, northwest of Canvasback Road, being Lot 86, Block D within Swann Keys development.

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

Ms. Hudson presented the case. Tomi McCafferty was sworn in and testified requesting a 2-foot variance from the required 10-foot side yard setback requirement and a 1.8-foot variance from the required 10-foot front yard setback requirement for a proposed manufactured home; that the proposed unit will measure 16' x 76'; that the proposed unit will be placed within the same footprint as the previous unit; and that the proposed unit is sitting on the lot and has not been set up.

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. 9491 – David and Rosemary Baues – north of Road 298, east of Blue Boulevard, being Lot L-11 within Shawn's Hideaway Mobile Home Park.

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

Ms. Hudson presented the case. David Baues was sworn in and testified requesting a 2-foot variance from the required 20-foot separation requirement between units in a mobile home park for a proposed addition; that he purchased the unit 6-years ago; that only the front corner of the addition will encroach; and that his adjacent neighbor is in support of the application.

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 will not alter the character of the neighborhood, since it will enable reasonable use of the property, and that since it is the minimum variance to afford relief**. Vote carried 5 – 0.

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Case No. 9492 – Brett Reilly – south of Road 270A, south of First Street, being Lot 1, Section C within Tru-Vale Acres development.

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

Ms. Hudson presented the case. Brett Reilly was sworn in and testified requesting a 1.5-foot variance from the required 15-foot side yard setback requirement, a 1.3-foot variance from the required 10-foot side yard setback requirement and a 0.9-foot variance from the required 30-foot front yard setback requirement for existing deck and steps; that the unit was placed in the fall; that Luv Homes placed the unit; that the sub-contractor obtained the building permit; and that a temporary Certificate of Compliance was issued.

Anthony Surello was sworn in and testified in support of the application and stated that the steps and deck were not taken into consideration at the time of the placement of the unit; that the unit was already placed when he was hired to build the deck and steps; and that they were not able to reconfigure the steps and deck to comply with the required setbacks.

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

Ms. Hudson stated that the office received 1 letter of opposition to the application.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **left open for a representative to be subpoenaed to appear before the Board**. Vote carried 5 – 0.

Case No. 9493 – Greg Barin – southwest of intersection of Road 265 and Route One, being Parcel A within Nassau Grove development.

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

Ms. Hudson presented the case. Greg Barin was sworn in and testified requesting a special use exception for a temporary sales trailer; that the unit will measure 24'x 64';

that the unit will only be needed for approximately an 8-month period; and that there will be adequate parking and that the unit will have landscaping.

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

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Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for a period of eight (8) months**.
Vote carried 5 – 0.

Case No. 9494 – Marion Thomas Brady, Sr. – northeast of U.S. Route 113, 408 feet southwest of Betts Lane, being Lot 15 within John L. Betts development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. David Brady and Marion Brady were sworn in and testified requesting a 19-foot variance from the required 30-foot front yard setback requirement for an addition; that the addition measures 20'x 39'; that he is building the addition for his parents; that he was given incorrect setback requirements when he called the office; that he has the block foundation laid; that the neighbor's have no objection to the application; and that the setback requirements were correct on the building permit.

Pansie Ross was sworn in and testified in support of the application and stated that the addition will enhance the neighborhood; that the property is on a dead end street; and that the addition will not hinder any visibility from the road.

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

Ms. Hudson stated the office received a petition with 16-signatures in support of the application.

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

Motion by Mr. Hudson, 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. 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. 9495 – Prestons Millsboro Auto Mart – northeast of Route One, 1,800 feet west of Road 271.

A special use exception for a tent sale and to place a manufactured home type structure as a sales office.

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Ms. Hudson presented the case. Dale Schaffner was sworn in and testified requesting a special use exception to hold three (3) five (5) day car sales throughout the year and a special use for a sales trailer; that they were previously approved for a one time event last year; that the sale was a success and that they would like to hold three sales this year; that they neglected to ask for a special use exception for the unit on the first application; that she did not realize the rental company did not remove the unit within a reasonable amount of time; that she will try to enforce having the unit removed within allotted time; and that the trailer is needed for their computer and phone lines and possible inclement weather.

Ms. Hudson stated that the office received 2 letters in opposition to the application.

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. Workman, seconded by Mr. Mills, and carried unanimously that the case be **tabled until June 5, 2006**. Vote carried 5 – 0.

Case No. 9496 – Beazer Homes Corp. – south of Road 360, 950 feet west of Route One, within North Beach development.

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

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 site plan for the development was approved in January 2006; that construction began in April 2006; that the unit will measure 10' x 56'; that the unit will be needed for approximately a nine (9) month period; that there will be adequate parking

and landscaping around the unit; and that the sales office will be relocated to a model home when construction is completed.

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

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Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of nine (9) months**.
Vote carried 5 – 0.

Case No. 9497 – Louise and Herman Short, Sr. – north side of the intersection of Road 61 and Road 26.

A special use exception to place a third on-farm manufactured home.

Ms. Hudson presented the case. Louise Short was sworn in and testified requesting a special use exception to place a third on-farm manufactured home; that her daughter lives in one unit; that the second unit is rented to a man that helps with the plumbing; that the third unit will be used for farm help; that they grow vegetables on the farm; that they run a produce stand on the farm; and that they own a 99-acre parcel.

Ms. Hudson stated that she sent a violation notice to the property owner over three years ago in reference to this unit.

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

Motion by Mr. Workman, 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. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **denied since it substantially effects the character of the neighborhood**. Vote carried 5 – 0.

The Board recessed for 10-minutes.

Case No. 9498 – Craig and Nancy Brightbill – northeast of Route One, northeast of Colonial Lane, being Lot 42 within Colonial East Mobile Home Park.

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

Ms. Hudson presented the case. Craig Brightbill was sworn in and testified requesting a 2.4-foot variance from the required 20-foot separation requirement between units in a mobile home park; that they are building an a-roof over the unit and want to extend the roof over the existing patio; and that the park is in support of the application.

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The Board members 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 will enable reasonable use of the property, since it will not alter the character of the neighborhood and since it is the minimum variance to afford relief**. Vote carried 5 – 0.

Case No. 9499 – Steve Charlton – south of Route 54, west of Cleveland Road, being Lot 45, Block 4 within Cape Windsor development.

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

Ms. Hudson presented the case. Holly Burns was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that the rear yard setback variance is no longer needed; that they reconfigured the placement of the dwelling on the lot to satisfy the Homeowner's Association; that the dwelling will be on pilings; that the variance request is within the character of the neighborhood; that the deck is only on the first level; and that the side yard variance for the dwelling is all that is needed.

Catherine Hayes and Margaret Blair Hayes were sworn in and testified in opposition to the application and stated that they recently purchased the adjacent unit; that they were only opposed to the rear yard variance; and that they were concerned the dwelling would exceed the height requirement.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted for the side yard only since it meets the standards for granting a variance**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 9272 – George and Louise Edwards – east of Route One, south of Atlantic Avenue, being Lot F105 within Sea Air Mobile City Mobile Home Park.

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

Ms. Hudson stated that the Applicant wishes to withdraw their application.

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

Case No. 9282 – Leahbelle Chilcoate and Stephanie Downs – east of Road 346, west of Sylvan Vue Drive, being Lot 19, Section 2 within Blackwater Cove development.

A variance from the front yard setback requirement.

Ms. Hudson stated that the Applicant wishes to withdraw their application.

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

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.

Ms. Hudson read a letter from the Applicant's surveyor stating reasons why the survey has not yet been completed.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until the Applicant provides a survey to the Board**. Vote carried 5 – 0.

Case No. 9358 – Dorothy Wheatley – south of Road 244, 900 feet east of Road 246.

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

Ms. Hudson stated that the Applicant wishes to withdraw their application.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the special use exception be **denied**. Vote carried 5 – 0.

Case No. 9473 – George and Eugenia Romilly – east of Pennsylvania Avenue, south of Ayres Road, being Unit #4 within Sussex Shores.

A variance from the rear yard setback requirement.

The Board discussed the case which has been tabled since May 1, 2006.

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Mr. McCabe abstained from the vote.

Motion by Mr. Mills to approve failed due to lack of a second.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until June 5, 2006**. Vote carried 4 – 0.

Case No. 9479 – Tile Market of Delaware, Inc. – southeast of Dartmouth Drive, 375 feet southwest of Route One.

A variance for additional wall signs and a variance from the maximum square footage of a sign.

The Board discussed the case which has been tabled since May 1, 2006.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for one (1) sign no more than 200-square-foot in size**. Vote carried 5 – 0.

OTHER BUSINESS

Case No. 9445 – Irma J. Ball – north of Road 506, 610 feet southwest of Road 498.

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

Ms. Hudson read a letter from the Applicant requesting a rehearing.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the request to re-apply be **granted and that the fee be waived**. Vote carried 5 – 0.

Case No. 9457 – LTL Acres LP – north side of the intersection of Road 462 and U.S. Route 13.

A variance from the maximum allowable square footage requirement for a sign and a variance for additional wall signs.

Ms. Hudson read a letter from the Applicant requesting a rehearing.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the request to re-apply be **granted and that the Applicant be required to pay the fee.**
Vote carried 5 – 0.

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Meeting Adjourned 9:45 p.m.