



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF MAY 19, 2008

The regular meeting of the Sussex County Board of Adjustment was held on Monday May 19, 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. Brent Workman, Mr. Jeff Hudson, Mr. John Mills, with Mr. Richard Berl – Assistant County Attorney and staff members, Mr. Norman Rickard and Mrs. Susan Isaacs – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda with the correction that Case No. 10145 – Donald Feltenberger be moved to the beginning of the Agenda. Vote carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of May 5, 2008 as circulated. Vote carried 4 – 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. 10013** – 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.

Mr. Rickard presented the case. Gill Fleming with Oakwood Homes was sworn in. The case was left open so the Applicant could supply the Board with a proper survey. Mr. Rickard read a letter from Charles Coffman, surveyor, explaining that a proper survey could not be done since Rehoboth Shores Mobile Home Park does not have a controlling plat on record that has distances or bearings.

Mr. Berl stated that Rehoboth Shores Mobile Home Park will have to provide the County with a survey of the park as they have requested with other Mobile Home Parks.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled for a period of 6 months to submit a proper survey of the mobile home park**. Vote carried 4 – 0.

**Case No. 10140** – Lester and Barbara Deitrick – south of Road 349, west of West Ocean Road, being Lot 25 within West Ocean Farms development.

A variance from the maximum fence height requirement.

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Mr. Rickard presented the case. Lester Deitrick was sworn in requesting a 2.5-foot variance from the required 3.5-foot maximum height for a fence; that he submitted photographs; that the height of the fence in the front yard is 6-foot; that he has a pure breed Siberian Husky dog; that his dog would jump over a 3.5-foot height fence; that he owns the adjacent parcels; that the fence has been there for 4 years; that the fence sits 3-foot in from the property line; and that he was unaware that a permit was needed.

Mr. Glen Densmore was sworn in and testified in support of the application; that the fence is in good shape; and that he used to be the president of the Home Owner's Association.

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

Millard Ventro and Bert Miller were sworn in and testified that they are in opposition to the application; that they submitted 2 letters in opposition from Frank J. Vella and Robert Kavlich; that they submitted a copy of the covenants and restrictions of West Ocean Farms; that they have complained several times to the Planning and Zoning Department about the fence; that they consider the fence to be an eye sore; and that the fence has never been maintained.

Mr. Mills asked who maintains the grass behind the fence.

In rebuttal, Mr. Dietrick stated that he maintains the grass behind the fence; that West Ocean Farms is in the process of changing their covenants; that the fence was discussed at a meeting in 2006 with the homeowner's association; and that there were no issues about the fence at the meeting.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 4 – 0.

At the conclusion of the public hearings, the Chairman referred back to the case. Motion by Mr. Hudson, seconded by Mr. Mills and carried unanimously that the variance

be approved since it will not alter the essential character of the neighborhood and the type of pet that he has. Vote carried 4 – 0.

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.

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Mr. Rickard presented the case. Edwin J. Jacobsen was sworn in and testified requesting a special use exception to place a windmill; that he would like to incorporate this case with Case No. 10142; that he owns both parcels; that he submitted a packet with photographs; that it is a newer generation for wind turbines; that the wind turbines are attached to the homes; that he proposes a stacking 2 tier system which will double the efficiency of the system; that the wind turbine has 7 blades; that the turbines meet setback requirements; that the pole is 2 inches in diameter similar to the size of a flag pole; that the width of the blades are 6 inches; that the turbine pole is supported by metal arms in an A-frame type of design; that the height of the wind turbine on Lot 30 is 49-feet; that the height of the wind turbine on Lot 41 is 46-feet; and that the turbines will cut off at wind speeds of 55 miles per hour.

Mr. Mills stated that a height variance was not asked for.

Mr. Mills expressed concerns of the size of the pole that it may not be able to handle the wind turbine at the wind speeds we get here.

Mr. Hudson asked if the manufacturer had any information on the installation of the pole.

Mr. Jacobsen stated that he will research and go by the manufacturer's recommendations for installation of the turbines.

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

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the case be taken under advisement. Vote carried 4 – 0.

At the conclusion of the public hearings, the Chairman referred back to the case. Motion by Mr. Mills, seconded by Mr. Hudson that the special use exception be **tabled so the applicant can apply for a height variance and that the applicant not pay the application fee.** Vote carried 4 – 0.

**Case No. 10142** – Edwin F. Jacobsen – east of Road 357, west of Marshy Hope Way, being Lot 41 within W. Glyn Newton’s development.

A special use exception to place a windmill.

This case was incorporated with Case No. 10141.

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Motion by Mr. Mills, seconded by Mr. Hudson that the special use exception be **tabled so the applicant can apply for a height variance and that the applicant not pay the application fee.** Vote carried 4 – 0.

**Case No. 10143** - David Ritter – south of Downs Landing Road, ¼ mile west of River Road, being within Riverview Farms Development.

A variance from the front yard setback requirement.

No one appeared on behalf of the application.

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the case be **denied due to lack of representation.** Vote carried 4 – 0.

**Case No. 10144** – Cedars Academy LLC – south of Road 545 (Rifle Range Road), 3,500 feet west of Road 594.

A special use exception to place a manufactured home as a classroom.

Mr. Rickard presented the case. John Singleton was sworn in and testified requesting a special use exception to place a manufactured home as a classroom; that the unit will be used for classrooms and an office; that it is a special needs school; that they need the extra space due to the school growing; that there is another manufactured home on site that they use for classrooms which was approved by the Board approved 1 year ago; and that a permanent structure should be built within 4 years.

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

Motion by Mr. Workman, seconded by Mr. Hudson and carried unanimously that the variance be **granted for a period of 4 years.** Vote carried 4 – 0.

**Case No. 10145** – Richard and Judith Johnson – south of Route 54, south of Tyler Avenue, being Lot 23, Block 5 within Cape Windsor development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Richard and Lorraine Johnson were sworn in and testified requesting a 5-foot side yard setback from the required 10-foot side yard setback requirement for an attached garage; that the variance is for both side yards; that the garage will measure 30x24; that the Board approved the exact same variance in 2005; that his wife became ill and that the variance had expired.

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

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the variance be **approved since it will not alter the essential character of the neighborhood and since other variances have been granted in the area.**  
Vote carried 4 – 0.

**Case No. 10146** – Twoforone LLC – northeast intersection of Route 16 and Route 30.

A variance from the minimum parking space requirement and a variance from the front yard setback requirement.

Mr. Rickard presented the case. John Murray with Kercher Engineering was sworn in and testified requesting a variance of 13 parking spaces from the minimum of 32 parking spaces required and a 0.5-foot variance from the required 40-foot front yard setback requirement; that Kemp's Liquor store is adding on a small sub shop with an apartment above; that the liquor store has been there for 40 years; that the sub shop will only have seating for 6 patrons; that the sub shop is intended for carry out only; and that the paved parking area is wide open with limited curbing.

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 **approved since it will not alter the essential character of the neighborhood, since it is the minimum variance to afford relief and it is a unique shaped lot.** Vote carried 4 – 0.

**Case No. 10147** – Caroline Richards – south of Route 54, west of Blue Teal Road, being Lot 2, Block C within Swann Keys development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. James Richards, Jr. was sworn in and testified requesting a 4-foot variance from the required 10-foot side yard setback requirement for a dwelling; that a 14'x70' manufactured home with a porch has existed on the site since 1976; and that the new home will measure 24'x70'.

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. Workman and carried unanimously that the variance be **approved since it will not alter the essential character of the neighborhood, since it is a unique shaped lot, and since it is the minimum variance to afford relief.** Vote carried 4 – 0.

**Case No. 10148** – Susan Calero – south of Route 54, west of Swann Drive, being Lot 3, Block A, within Swann Keys development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Gill Fleming was sworn in and testified requesting a 2.2-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that the variance is for both side yards; that the existing home has been there since 1967; that the new home will go in the same footprint as the existing home; and that the homeowner's association is in favor of 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. Hudson and carried unanimously that the variance be **granted since it is a unique shaped lot, since it will not alter the essential character of the neighborhood, and since it is the minimum variance to afford relief.** Vote carried 4 – 0.

**Case No. 10149** – Catherine Schroeder – north of Route 54, west of Laws Point Road, being Lot 29, Block F within Swann Keys development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Charles Fields was sworn in and testified requesting a 1.5-foot variance from the required 5-foot side yard setback requirement for

an open deck; that the neighbor is in favor of the application; and that the deck has been there for 3 years.

Mr. Rickard stated that the office received 1 letter in favor of 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 variance be **granted since it is a unique shaped lot, since it will not alter the**

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**essential character of the neighborhood, and since it is the minimum variance to afford relief.** Vote carried 4 – 0.

**Case No. 10150** – Robert and Rita McClanahan – east of Road 265, being Lots 67 and 68 within Red Mill Farms development.

A variance from the minimum lot width and lot size requirements.

Mr. Rickard presented the case. Robert McClanahan was sworn in and testified requesting a 60-foot variance from the required 150-foot lot width requirement for a parcel and a 16, 068 square foot variance from the required 32, 670 square foot requirement for a parcel; that he built a dwelling in 1987; that his dwelling encroaches 12-foot onto Lot 68; and that he will like to sell Lot 68.

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 variances be **granted since it will not alter the essential character of the neighborhood, since it is the minimum variance to afford relief, and since it is a unique situation.** Vote carried 4 – 0.

**Case No. 10151** – All In Development LLC – southwest of Martins Way, west of Cedar Neck Road, being Lot 11.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Roland Allen was sworn in and testified requesting a 0.6-foot variance from the required 10-foot side yard setback requirement for an existing dwelling; and that the contractor built the foundation too close.

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 variance be **approved since it was the intent of the applicant to build to setback requirements, since it is a small encroachment, since it is a unique shaped lot, since it will not alter the essential character of the neighborhood, and since it is the minimum variance to afford relief.** Vote carried 4 – 0.

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**Case No. 10152** – Charles and Judy Moore – northeast of Road 34, northeast of Road 583.

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

Mr. Rickard presented the case. Charles Moore was sworn in and testified requesting a special use exception to place a manufactured home on a medical hardship basis; that it is for his father; that the unit will meet the setback requirements; and that the unit is brand new.

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 a period of 2 years since it will not substantially affect adversely the uses of adjacent and neighboring properties.** Vote carried 4 – 0.

**Case No. 10153** – Carol and Les Pape – west of Route 54, east of Grant Avenue, being Lot 24, Block B within Cape Windsor development.

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

Mr. Rickard presented the case. Brett Riley was sworn in and testified requesting a 2.9-foot variance from the required 5-foot front yard setback requirement for an awning and a 0.7-foot variance from the required 20-foot rear yard setback requirement for steps with a landing.



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 other variances have been granted in the area, since it is a unique lot size; since it will not alter the essential character of the neighborhood, and since it is the minimum variance to afford relief.** Vote carried 4 – 0.

**Case No. 10154** – Keith R. and Kevin J. Holm-Hudson – south of Route 54, east of Keenwick Road, being Lot 7, Block G within Keen-Wik Subdivison 3.

A variance from the front yard setback requirement.

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Mr. Rickard presented the case. Paul Ravilious was sworn in with Steve Ellis, Attorney, on behalf of the applicant, and testified requesting a 0.2-foot variance from the required 30-foot front yard setback requirement for an existing dwelling; that the dwelling has been there since 1986; and that a survey detected the violation.

Mr. Rickard stated that the office received 1 letter in favor 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. Hudson and carried unanimously that the 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 4 – 0.

### **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.

The Board discussed the case, which has been tabled since January 9, 2007 for the applicant to provide a survey.

Mr. Rickard stated that a survey has been provided; that any new structures in Sea Air Mobile Home Park must conform to County setback requirements; and that all existing structures are considered to be non-conforming.

Per the survey the applicant is requesting an 11.8-foot variance from the required 20-foot separation requirement between units in a mobile home park for a deck.

Motion by Mr. Mills, seconded by Mr. Workman and carried unanimously that the variance be **granted since it will not alter the essential character of the neighborhood, since the variance is necessary to enable reasonable use of the property, and since it is a unique shaped lot.** Vote carried 4 – 0.

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**Case No. 9483** – Dawn Smith – south of Route One, northwest of Atlantic Avenue, being Lot E-30 within Sea Air Mobile City Mobile Home Park.

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

Mr. Berl explained to the Board that this case was denied on March 17, 2008 due to not receiving a survey. However, the survey was received by the Planning and Zoning Department and was overlooked and that the Board would need to make a motion to reconsider the case.

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the case be reconsidered for discussion. Vote carried 4 – 0.

The Board discussed the case and that the existing manufactured home and shed are considered to be non-conforming.

Motion by Mr. Mills, seconded by Mr. Workman and carried unanimously that the case be **granted since it will not alter the essential character of the neighborhood, since the variance is necessary to enable reasonable use of the property, and since it is a unique shaped lot.** Vote carried 4 – 0.

**Case No. 9551** – Ray and Patricia Beaver – southeast of Route One, southeast of Center Avenue, being Lot D-35 within Sea Air City Mobile Home Park.

A variance from the side yard setback requirement, a variance from the separation requirement between units in a mobile home park, and a variance from the maximum allowable lot coverage.

The Board discussed the case, which has been tabled since July 10, 2006 for the applicant to provide a survey.

Mr. Rickard stated that a survey has been provided; that any new structures in Sea Air Mobile Home Park must conform to County setback requirements; and that the existing structures are considered to be non-conforming.

Per the survey the applicant is requesting a 1.3-foot variance from the required 5-foot front yard setback requirement for a porch, a 3.8-foot variance from the required 5-foot side yard setback requirement for a porch, a 0-foot setback from the required 5-foot side yard setback requirement for a deck and a 14.9-foot variance from the required 20-foot separation requirement between units in a mobile home park for a deck.

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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, since the variance is necessary to enable reasonable use of the property, and since it is a unique shaped lot.** Vote carried 4 – 0.

**Case No. 9886** – Avelina Kramedas – west of Route One, west of Salt Hat Drive, being Lot 5 within Wharton's Cove Garth development.

A variance from the side yard setback requirement.

The Board discussed the case, which has been tabled since July 16, 2007 for the applicant to provide a survey.

Mr. Rickard stated to the Board that a survey has been received.

Per the survey the applicant is requesting a 5-foot variance from the required 10-foot side yard setback requirement for an elevator.

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the variance be **tabled until June 2, 2007 for more information on the deck.** Vote carried 4 – 0.

**Case No. 10091** – Raymond Childs – northeast of Road 507, 1,425 feet west of Road 507.

A variance from the minimum acreage to place a manufactured home.

Ms. Dawn Hudson attended the meeting to explain to the Board what Mr. Childs actually needs; that she helped Mr. Childs fill out a Board of Adjustment application a year ago; that he was suppose to bring in the application to the Planning and Zoning

Department; that the applicant needs an 8-foot variance from the required 24-foot width requirement for a manufactured home and a 10-foot variance from the required side yard setback requirement; and that the manufactured home was placed 4 years ago after an old home caught fire.

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the case be **denied so the applicant can reapply for the correct request.**

Vote carried 4 – 0.

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**Case No. 10120** – Baxter Farms Inc. – north of Road 48, 1,170 feet east of Road 326.

A variance from the setback requirement for a manure shed.

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

Mr. Rickard stated that the structure had been blown down from a storm.

Mr. Berl stated that the applicant would have to reapply since the structure has not been in use for at least 2 years.

Motion by Mr. Mills, seconded by Mr. Workman and carried unanimously that the case be **denied since it is no longer needed.** Vote carried 4 – 0.

**Case No. 10125** – Jennifer Ellis and Antoine Trammell – north of Route 9, west of Ward Avenue, being Lot 5, Block 2 within Delaware Sand Company development.

A special use exception to place a manufactured home.

The Board discussed the case, which has been tabled since May 5, 2008.

Motion by Mr. Mills, seconded by Mr. Workman and carried unanimously that the case be **approved since it will no substantially affect adversely the uses of adjacent and neighboring properties.** Vote carried 4 – 0.

**Case No. 10137** – Jeffrey A. Bagley – north of Road 297A, east of Russell Avenue, being Lot 55 within Delaware Oyster Farms development.

A variance from the side yard setback requirements.

The Board discussed the case, which has been tabled since May 5, 2008.

Motion by Mr. Hudson, seconded by Mr. Workman and carried unanimously that the case be **approved since the lot size is unique, since it is necessary to enable reasonable use of the property, since it was not created by the applicant, and since it will not alter the essential character of the neighborhood.** Vote carried 4 – 0.

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### **OTHER BUSINESS**

**Case No. 9477** – Cingular Wireless – east of U.S. 113, 2,100 feet south of Road 213.

A special use exception to place a telecommunications tower.  
Request for a time extension.

The Board discussed the case.

Mr. Rickard read a letter from Cliff Shaffer, Authorized Agent for AT & T, asking for a time extension.

Motion by Mr. Workman, seconded by Mr. Hudson and carried unanimously that the **request for a time extension be denied.** Vote carried 4 – 0.

**Meeting Adjourned at 10:05 P.M.**