



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF May 5, 2008

The regular meeting of the Sussex County Board of Adjustment was held on Monday May 5, 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. 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 and Mrs. Kelly Passwaters – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Revised Agenda with the correction that Case No. 10120 – Baxter Farms be tabled until the May 19, 2008 meeting for Legal Advise. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Minutes of April 7, 2008 and April 21, 2008 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. 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.

Mrs. Isaacs presented the case. Jennifer Ellis and Antoine Trammell were sworn in and testified requesting a special use exception to place a manufactured home; that the property is zoned C-1; that they have removed a lot of junk from the property; that an abandoned manufactured home has been removed; that the manufactured home they would like place is a 1986; that the manufactured home measures 12' x 60'; and that it is the same size as the manufactured home that was removed.

Sandra Boone was sworn in and testified in opposition to the application and stated that she owns a rental property next door; that the driveway that is on the property that the applicant would rent goes right up towards her back door; that she does not want

the applicant to use this driveway; and that she had her property surveyed and the driveway is not located on her property.

Braven Duffie was sworn in and testified in support of the application and stated his property line runs approximately 4-foot from the neighbor's back door; and that he would rather sell the property instead of renting it to the applicant.

Odelia Duffy was sworn in and testified in support of the application and stated she agrees with everything her husband stated.

The Board found that 2 parties 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 this case. Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until the May 19, 2008 meeting**. Vote carried 5 – 0.

Case No. 10126 – Ronald A. Breeding- south of Route 20, 1,850 feet east of Road 552.

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. Ronald Breeding was sworn in and testified requesting a 60-foot variance from the required 100-foot side yard setback requirement for a manure shed; that he has lived at his current residence for 19 years; that there is an existing concrete pad; that he would like to build the manure shed over the existing concrete pad; that the manure shed will measure 20' x 24'; and that he received a grant from the Sussex Conservation District.

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 meets the standards for granting a variance**. Vote carried 5 – 0.

Case No. 10127 – Roger and Louise Wilbrandt- south of Route 54, east of Pintail Drive, being Lot 42, Block 1 within Swann Keys development,

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. Roger Wilbrandt was sworn in and testified requesting a 3-foot variance from the required 10-foot side yard setback requirement for a shed; that he removed the existing singlewide home; that he replaced it with a stick built home; that he would like to place a shed; and that the shed will measure 8' x 12'.

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

Mrs. Isaacs stated 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 essential character of the neighborhood and since other variances have been granted in the area.** Vote carried 5 – 0.

Case No. 10128 – Northern Star LLC – south of Route One, being Lot 2.

A special use exception to replace and existing billboard.

Mrs. Isaacs presented the case. Dale McCalister was sworn in and testified requesting a special use exception to replace an existing billboard with a double stacked steele monopole; that he would like to replace the existing billboard with a double stacked steele monopole structure; that each sign measures 12' x 48'; and that he needs a 40-foot height variance.

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 **denied as unnecessary.** Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the applicant must **reapply for a height variance and that the applicant not pay the application fee.** Vote carried 5 – 0.

Case No. 10129 – Jill D. Bragen- north of Route 26, south of Chipiwa Drive, being Lot 19, Block I within Blackwater Village development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Mark Sheppard was sworn in and testified requesting a 4.5-foot variance from the required 10-foot side yard setback requirement for a attached garage; that the dwelling was built 6 months ago; that he would like to place an attached garage; and that he has received an approval letter from the Homeowners Association.

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.

Case No. 10130 – The Washington Savings Bank FSB- intersection of Route 54 and Madison Avenue, being Lots 1, 2 and 3 within Glen Acres/Edgewater Acres.

A variance from the minimum lot width and lot area for parcels and a variance from the side yard setback requirement.

Mrs. Isaacs presented the case. David Weidman, Attorney, present on behalf of the applicant testified requesting a 9.87-foot variance from the required 100-foot lot width requirement for Lot 1, a 5-foot variance from the required 15-foot side yard setback requirement for Lot 1, a 3,162 square foot variance from the required 20,000 square foot requirement for Lot 1, a 40-foot variance from the required 100-foot lot width requirement for Lot 2, a 5-foot variance from the required 15-foot side yard setback requirement for Lot 2, a 11,223-square foot variance from the required 20,000-square foot requirement for Lot 2, a 39.69-foot variance from the required 100-foot lot width requirement for Lot 3, a 5-foot variance from the required 15-foot side yard setback requirement for Lot 3 and a 12,287-square foot variance from the required 20,000-square foot requirement for Lot 3; that the 3 lots were plotted 44 years ago; that the bank acquired the property through foreclosure; that in 1974 DelDot abandoned the Right of Way by resolution; that the abandoned parts were never properly conveyed; and that Lot 1 is landlocked.

Gregory Baugher was sworn in and testified stating that he is confirming the testimony that Mr. Weidman presented; and that the bank made a loan on the three (3) lots in 2004.

Brian Sullivan was sworn in and testified stating the Right of Way was abandoned by resolution and was not incorporated into the deed; and that they went to Chancery Court and the Chancellor confirmed the change of title and reformed it to be included into the mortgage.

The Board found that 1 party appeared in support of the application.

Mrs. Isaacs stated the office received 1 letter in opposition to the application.

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

Case No. 10131 – William A. Cassatt- south of Road 312, 380 feet west of Road 312A, being Lot 34.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. William Cassatt was sworn in and testified requesting a 8-foot variance from the required 10-foot side yard setback requirement; that the contractor placed a roof over an existing deck; that a building permit was obtained; that the deck was placed in the 1980's; and that a permit was not obtained for the deck.

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

Motion by Mr. Hudson, seconded by Mr. McCabe, 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 and that a letter be sent to the contractor and that the applicant obtain a permit for the deck.** Vote carried 5 – 0.

Case No. 10132 – Coastal Café LLC- intersection of Route One and Road 275A.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Derek Shockro was sworn in and testified requesting a 25-foot variance from the required 60-foot front yard setback requirement for an existing shed and proposed deck; that the existing shed has been on the property for years; that the lot is pie shaped; that he remodeled the shed; and that he has demolished two (2) buildings on the property.

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 meets the standards for granting a variance.** Vote carried 5 – 0.

Case No. 10133 – County Seat Homes Inc.- east of Road 274, corner of M Street and White Oak Drive, being Lot M-1 within Rehoboth Bay Mobile Home Park.

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

Mrs. Isaacs presented the case. Wayne Pepper was sworn in and testified requesting a 0.6-foot variance from the required 20-foot separation requirement between units and a 1.5-foot variance from the required 20-foot separation requirement between

units; that the manufactured home was placed on a leased lot; that the manufactured home measures 20' x 64'; that the surveyor thought the 20-foot requirement was measured from home to home; and that it is a corner lot.

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 variances be **granted since it is an odd shaped lot, since it will not alter the essential character of the neighborhood and that a letter be sent to the surveyor and the contractor that placed the home.** Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. McCabe to amend the motion to be approved with the stipulations and listed above.

Case No. 10134 – Louis Gerth – southwest of Route 23, east of Lakeshore Circle, being Lot 2755 within Pot Nets Lakeside Mobile Home Park.

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

Mrs. Isaacs presented the case. Louis Gerth was sworn in and testified requesting a 5-foot variance from the 10-foot side yard setback requirement for a handicap ramp and a 6-foot variance from the required 20-foot separation requirement between units; that he purchased the home in March 2008; that a handicap ramp is needed for his wife to enter and exist the home with no problems; and that the handicap ramp measures 40' x 3'.

Charles Pratt was sworn in and testified in support of the application and stated he lives next door to Mr. Gerth; that the ramp will not inconvenience him; and that the variance is strongly needed.

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. Hudson, and carried unanimously that the variances be **granted since it is the minimum variance to afford relief and since it will not substantially affect adversely the uses of adjacent and neighboring properties.** Vote carried 5 – 0.

Case No. 10135 – Reva M. Genthert – south of Road 276, 1,041 feet southwest of Route One.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Reva Genthert was sworn in and testified requesting a 21-foot variance from the required 40-foot front yard setback requirement for a front porch; that a building permit was obtained to construct the porch; and that she did not realize the setback requirements.

Mrs. Isaacs stated the office received 1 letter in support of the application.

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

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted since the original home is non-conforming and since it will not alter the essential character of the neighborhood.** Vote carried 5 – 0.

Case No. 10136 – William C. and Emily J. Spicer- south of Road 78, south of Marvil Drive, being Lots 10 and 11, Block C within Woodland Heights development.

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

Mrs. Isaacs presented the case. William and Emily Spicer were sworn in and testified requesting a 8.5-foot variance from the required 15-foot side yard setback requirement, a 14-foot variance from the required 20-foot rear yard setback requirement and a 3-foot variance from the required 5-foot side yard setback requirement for an existing shed; that the existing foundation measures 42' x 40'; that they would like to construct a garage on the existing foundation; and that the shed was on the property before they purchased it.

Mrs. Isaacs stated the office received 4 letters 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 enables reasonable use of the property and since it will not alter the essential character of the neighborhood.** Vote carried 5 – 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.

Mrs. Isaacs presented the case. Jeffrey Bagley was sworn in along with Bill Schab, Attorney, and testified requesting a 5.3-foot variance from the required 10-foot side yard setback requirement for a dwelling, a 4.7-foot variance from the required 10-foot side yard setback requirement for a dwelling and a 5-foot variance from the required 5-foot side yard setback requirement for steps; that a side yard setback variance was approved in November 1997; that the applicant purchased the property in 2005; that the

home that was placed does not meet the setback requirements it was approved for in 1997; that the violations were discovered when a survey was done; that it would cause a hardship to correct the violations; that there have been no complaints from the neighbors; that if the steps had to be removed the applicant would not be able to access the inside of the home; that the steps were turned so they did not encroach over the property line; and that the certificate of occupancy was issued.

Robert Bennethum, Jr. was sworn in and testified in opposition to the application and stated that they purchased the property next to the applicant; that he objects to the variance for the steps; that the steps in there current location does not allow for traffic to the rear of the home; that they plan to construct a new dwelling next year; and that if the variance is approved they will put up a fence.

Marion Bennethum was sworn in and testified in opposition to the application and stated that she has some concerns if reference to where the steps are placed.

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

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

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be **tabled until the May 19, 2008 meeting**. Vote carried 5 – 0.

Case No. 10138 – Joshua Robert Gray- east of Route One, southeast of Palmer Avenue, being Lots 2, 4 and 25, Section A within Rehoboth-Indian Beach development.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Bill Schab, Attorney, present on behalf of the applicant and testified requesting a 8.7-foot variance from the required 30-foot front yard setback requirement for a 2nd floor deck; that the encroachment has existed for 10 years; that if the variance was denied it would require removal of 9-foot of the deck; and that it would cause an extreme hardship to correct the situation.

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 it will not substantially affect the uses of adjacent and neighboring properties**. Vote carried 5 – 0.

Case No. 10139 – Carrie E. and Paul W. Kercher, II- south of Road 302A, east of Celtic Street, being Lot 14, Block C within Avalon Park development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Bill Schab, Attorney, present on behalf of the applicant and testified requesting a 0.3-foot variance from the required 10-foot side yard setback requirement for a manufactured home; that the home has been on the property since 1996; that the 2 sheds have been moved; that the home cannot be moved; and that it would case an extreme hardship to correct the encroachment.

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 substantially affect adversely the uses of adjacent and neighboring properties**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 10076 – Douglas and Sharon McIlvain- north of Road 329, 70-feet west of Road 469.

A variance from the side yard setback requirement.

The Board discussed the case, which has been tabled since March 3, 2008.

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

Case No. 10120 – Baxter Farms Inc. north of Road 48, 1,710 feet east of Road 326.

A variance from the setback requirement for a manure shed.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until the May 19, 2008 meeting for Legal Advise**. Vote carried 5 – 0.

OTHER BUSINESS

Case No. 10089 – Randy and Kathy Hill- north of Road 78, 4 feet west of Road 487A, being Lot 1.

A variance from the minimum square footage requirement for a parcel.

Mrs. Isaacs read a letter from the applicant requesting reconsideration.

Mr. Berl advised the Board that the request should be denied.

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

Case No. 10115 – David and Tonya Quester- east of Route One, south of Collins Avenue, being Lot 7 within Indian Beach development.

A variance from the side yard setback requirement.

The Board discussed the case. A letter was read from Eddy Parker, Director of Assessment. A letter of apology will not be sent to the applicant due to the correct information being listed on the permit. A refund will be sent to the applicant.

Meeting Adjourned at 9:25 P.M.