



Board of Adjustment
Agendas & Minutes

MINUTES OF NOVEMBER 27, 2006

The regular meeting of the Sussex County Board of Adjustment was held on Monday, November 27, 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. Dale Callaway, Mr. Ronald McCabe, Mr. John Mills, Mr. Brent Workman, and Mr. Jeff Hudson, with Mr. Rick Berl – Assistant County Attorney, Ms. Dawn Hudson – Secretary to the Board, Mrs. Melissa Thibodeau – Zoning Inspector and Mrs. Susan Isaacs – 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 November 13, 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. 9673 – J & Y Parker Family LP – northeast of U.S. Route 113, southwest corner of Road 83.

A variance from the front yard setback requirement.

Mrs. Thibodeau presented the case. John H. Parker was sworn in and testified requesting an 18-foot variance from the required 60-foot front yard setback requirement from Route 113 and a 44-foot variance from the required 60-foot front yard setback requirement from Road 83 for a portable shed; that the tenants want to sell seafood to raise money for their minister; that the minister needs surgery; that they have a license from the Department of Health and approval from the Fire Marshal; that they will operate on Friday and Saturday from 9:00 a.m. to 5:00 p.m. and only in the summer; that they will only operate 6-months of the year; and that they will apply for site plan approval through the Planning & Zoning Commission.

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.

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 case be **tabled until December 11, 2006**. Vote carried 5 – 0.

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Case No. 9674 – J & Y Parker Family LP – south of Road 334, 400 feet southeast of Road 333, being 74-78 within Houston Acres development.

A special use exception for a billboard, a variance from the maximum allowable size requirement, a variance from the sign height requirement and a variance from the setback requirement.

Mrs. Thibodeau presented the case. John H. Parker was sworn in and testified requesting a special use exception for a billboard, a 300-square-foot variance from the required 300-square-foot maximum allowable size requirement for a billboard on each side, a 10-foot variance from the required 25-foot maximum height requirement for a billboard and a 25-foot variance from the required 25-foot setback requirement for a billboard; that he has owned the properties for over 25-years; that the location of the sign will not effect parking; that the structure will be a steel structure; that he would like to have a double-sided sign on each side; and that there are other billboards in the area.

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 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. McCabe, and carried unanimously that the special use exception and variances be **granted with the stipulation that the billboard be a steel monopole structure since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 9675 – Stephen M. Hylbert – west of Road 44, 831 feet south of Road 224, being Lot 3.

A variance from the minimum lot width requirement.

Mrs. Thibodeau presented the case. Stephen Hylbert was sworn in and testified requesting a 3.49-foot variance from the required 150-foot lot width requirement and a 14.84-foot variance from the required 150-foot lot width requirement for a lot; that he advised the original surveyor to leave 300-foot of road frontage; that the new surveyor discovered that there was an overlap of property lines with the McBroom Subdivision; that the property was subdivided in August 1996; and that he wants to give the proposed lots to his daughters.

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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 variances be **granted since the situation presents a unique problem, 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. 9676 – Bruce and Janet Hoover – north of Route 54, east of Canvasback Drive, being Lot 36, Block D within Swann Keys development.

A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. Bruce and Janet Hoover were sworn in and testified requesting an 8-foot variance from the required 10-foot side yard setback requirement for a set of steps; that the lot is only 40-foot wide; that the unit is 24-foot wide; that they have approval from the Board for the shed; and that the steps were not included in the first application.

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.** Vote carried 5 – 0.

Case No. 9677 – Eugene R. and Susan E. Shellenberger – southwest of Road 270A, northeast of Third Street, being Lot 6 and part of Lot 7, Block H within Tru-Vale Acres development.

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

Mrs. Thibodeau presented the case. Eugene Shellenberger was sworn in and testified requesting a 2-foot variance from the required 10-foot side yard setback requirement and a 10-foot variance from the 30-foot front yard setback requirement for a proposed dwelling; that he wants to replace the existing single-wide; that the proposed dwelling will measure 32'x 50'; that his father built the 24'x 28' detached garage; that he needs clearance between the existing detached garage and proposed dwelling; and that this will be his residence after retirement in September 2007.

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 variances be **granted since it will not alter the character of the neighborhood**.
Vote carried 5 – 0.

Case No. 9678 – Tom Rudloff – north of Road 279B, 231 feet west of Hunt Club Road, being Lots 85 and 90 within Joy Beach development.

A variance from the front yard setback requirement.

Mrs. Thibodeau presented the case. Tom Rudloff was sworn in and testified requesting a 16-foot variance from the required 30-foot front yard setback requirement and a 0.5-foot variance from the required 30-foot front yard setback requirement for a second story addition; that the dwelling is located next to a lagoon; that DNREC approve a huge septic system which will cover the entire front yard; that the dwelling was built in 1982; and that the Homeowner's Association supports the application.

By a show of hands 2 parties 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. 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. 9679 – Moonlight Investments LLC – south of Road 395, being Lot 1, Block 1 within Bay View Estates development.

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

Mrs. Thibodeau presented the case. Eric Mooney, Attorney, was present on behalf of the application and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for a dwelling, a 2.9-foot variance from the required 5-foot side

yard setback requirement for a shed, and a 0.7-foot variance from the required 40-foot front yard setback requirement for a dwelling; that the encroachments were discovered when a survey was done for settlement; that the Certificate of Compliance was issued on the dwelling in 1987; that the shed was built in 1994; and that there is no Certificate of Compliance for the shed.

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

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

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Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variances be **granted since it does not alter the character of the neighborhood and since it is the minimum variance to afford relief**. Vote carried 5 – 0.

Case No. 9680 – Thomas Ritchey – south of Route 54, west of Grant Avenue, being Lot 61, Block 6 within Cape Windsor development.

A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. Thomas Ritchey was sworn in and testified requesting a 10-foot variance from the required 10-foot side yard setback requirement for an air-conditioning unit and a set of steps; that he was granted a variance for the unit in May 1, 2006; that he did not include the air conditioning unit and steps in the first application; and that he submitted pictures.

Ms. Hudson stated that there are numerous variances in the development.

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

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

Case No. 9681 – Deborah J. Kovach and Barry Ziegler – south of Road 312, 600 feet east of Warwick Drive, being ½ of Lot 14.

A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. Deborah Kovach was sworn in and testified requesting an 8.2-foot variance from the required 10-foot side yard setback requirement and a 2.5-foot variance from the required 10-foot side yard setback requirement for a

proposed dwelling and shed; that the property is 25-foot wide; that she needs a 5.5-foot variance on the side yard to include the steps; and that she submitted pictures.

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 variances be **granted since the lot is unique in size, since it was not created by the Applicant, and since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

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Case No. 9682 – Denise Baker – southwest of Road 279, 1,725 feet southeast of Route 30, being Parcel B.

A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. Denise Baker and Matt McCrea were sworn in and testified requesting a 5.1-foot variance from the required 10-foot side yard setback requirement for an existing shed; that her parents purchased the property in 1979 or 1980; that she and her brother inherited the property from their mother; that the manufactured home was placed in 1982; and that the property has always been two separate parcels.

By a show of hands 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 will not alter the character of the neighborhood, and since it was not created by the Applicant.** Vote carried 5 – 0.

Case No. 9683 – Donald and Rita Baker – southeast of Road 28, 1,380 feet northeast of U.S. Route 13.

A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. Donald and Rita Baker were sworn in and testified requesting a 0.1-foot variance from the required 15-foot side yard setback requirement for an existing manufactured home; that the encroachment was discovered when a survey was done for a mortgage loan; that the unit has been on the lot since 1982; and that the previous owner of the property placed the unit.

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**. Vote carried 5 – 0.

Case No. 9864 – Albert Pauksts – south of Road 368, 600 feet west of Road 361.

A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. Greg Hastings was sworn in and testified requesting a 7.2-foot variance from the required 15-foot side yard setback requirement

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for a proposed attached garage; that the Applicant's are in their late 60's or early 70's and would like an attached garage for security reasons; and that the garage will have two separate doors for easier access.

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**. Vote carried 5 – 0.

Case No. 9685 – Community Bank DE – north of Route One, southwest corner of Kings Highway (Road 268).

A variance from the front yard setback requirement.

Ms. Hudson read a letter to the Board from the Applicant requesting permission to withdraw their application from the Agenda.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the Applicant be **permitted to withdraw the application from the Agenda**. Vote carried 5 – 0.

Case No. 9686 – Jeffrey A. Stone – north of First Street, 375 feet west of Crazy Lane and 500 feet east of Bald Eagle Road (Road 273A), being Lots 21 and 22 within Bay Vista development.

A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. Jeffrey Stone was sworn in and testified requesting a 3-foot variance from the required 5-foot side yard setback requirement for a shed; that he was not aware a Certificate of Compliance was needed for a shed; and that he submitted pictures.

Mrs. Thibodeau stated that the office received 2 letters in support of the application.

Mrs. Thibodeau stated that the office received 2 letters in opposition to the application.

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

Case No. 9687 – Cingular Wireless – north of Walker Road (Road 260), 0.6 miles west of Hudson Road (Road 258).

A special use exception to erect a telecommunications tower.

Mrs. Thibodeau presented the case. Bill Panick, Mark Rubin and Tom Zolna were sworn in with Pamela Scott, Attorney, present on behalf of the application and testified requesting a special use exception to erect a telecommunications tower; that the tower will be 150-foot in height; that the property is 216-acres in size; that the tower will meet all the requirements of the Sussex County Zoning Ordinance; that there is a gap in service and the proposed location will help fill the gap; that the tower will be surrounded by trees; that the property is in the Delaware Farm Preservation Act and they have approved the site; that there will be a 60'x 60' fenced in area at the base of the tower; that there will be access to the tower site for maintenance purposes only; that there are no other sites in the area to provide co-location; and that they submitted pictures, reports and a petition in support of the application.

Stan Sakowski was sworn in and testified in opposition to the application and stated that he lives within ½ mile of the proposed site; and that he is concerned the tower will interfere with his satellite reception.

In rebuttal, Mark Rubin, stated that the tower consists of very sophisticated equipment; and that the towers have never interfered with satellites, telephone, garage door openers and or baby monitors.

Mrs. Thibodeau stated a petition with 82-signatures was submitted in support of the application.

Mrs. Thibodeau stated the office received 2 letters in opposition to the application.

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

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the case be **tabled until December 11, 2006**. Vote carried 5 – 0.

OLD BUSINESS

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Case No. 9672 – Brenda and Lee Mumford – south of Route 54, west of Hidden Acres Drive, being Lot 51 within Hidden Acres development.

A variance from the side yard setback requirement.

The Board discussed the case which has been tabled since November 13, 2006.

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 it is the minimum variance to afford relief**. Vote carried 5 – 0.

OTHER BUSINESS

Case No. 9249 – Axiom Engineering, L.L.C. – north of Route One, 1,000 feet south of Route 9.

A variance from the front yard setback requirement.

Mrs. Thibodeau read a letter from the Applicant requesting a time extension.

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

Case No. 9353 – Cingular Wireless, LLC – south of Road 78, 190 feet northwest of Road 490A.

A special use exception to place a telecommunications tower and a variance from the maximum height and lighting requirements. Motion to reopen Case No. 9353 to

incorporate historic study and for consideration of writing comments regarding historic study.

Mr. Berl stated that he received the final letter from the Historic study.

There was a consensus of the Board to place this case on the December 18, 2006 agenda as an Old Business item.

Meeting Adjourned 10:00 p.m.