



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF NOVEMBER 5, 2007

The regular meeting of the Sussex County Board of Adjustment was held on Monday November 5, 2007, 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. Melissa Thibodeau, Mr. Russell Warrington and Mrs. Kelly Passwaters – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to approve the Minutes of October 15, 2007 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. 9974 – Jacquelyn Rams-Martin, Richard J. Loy and Grace M. Loy- east of Ridge Court, being Lot 100 within Oak Crest Farms development.

A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. Jacquelyn Rams-Martin and Katherine Potts were sworn in along with Daniel Myers, Attorney, and testified requesting a 0.7-foot variance from the required 10-foot side yard setback requirement; that the home was constructed in 2003; that it was purchased from the developer; that when it was purchased the developer had a survey done and there were no setback violations; that the surveyor that was used has since passed away; that the house is being sold; and that when a new survey was done the setback violations were discovered.

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. McCabe, seconded by Mr. Workman, 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. 9975 – Michael Bradley- Golden Eagle Boulevard, being Lot 35 within Hawkseye Subdivision.

A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. Michael Bradley was sworn in and testified requesting a 4.7-foot variance from the required 15-foot side yard setback requirement; that the dwelling is currently under construction; that the roof is already on; that the mason made a mistake and the house encroaches into the setback; that the basement is below grade; and that it has a window well on the right side.

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

Case No. 9976 – AAA Storage, LP and Laura Ritter- southwest of Route One, 2,800 feet southeast of Road 265.

A special use exception to replace an existing billboard, a variance from the front yard and side yard setback requirements, and a variance from the square footage and height requirements.

Mrs. Thibodeau presented the case. Laura Ritter was sworn in and testified requesting a special use exception to replace an existing billboard, a 43-foot variance from the required 50-foot side yard setback requirement; a 40.5-foot variance from the required 50-foot side yard setback requirement; a 25-foot variance from the required 25-foot height requirement; a 10-foot variance from the required 25-foot height requirement; a 660-square foot variance from the required 300-square foot maximum allowable, and a 84-square foot variance from the required 300-square foot maximum allowable for a billboard; that the existing billboards are more than 40 years old; that they would be replaced with steel monopoles; that they will be placed in the same exact place; that it would increase property value; and that the case was previously approved but has expired.

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. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception and variances be **granted since it will not affect adversely the uses of neighboring and adjacent properties**. Vote carried 5 – 0.

Robert Light and NextGen Energy, Inc.- southeast of Cave Neck Road, southeast of South Mill Run, being Lot 81 within Overbrook Shores development.

A special use exception to place a windmill.

Mrs. Thibodeau presented the case. Brian Lisiewski and Robert Light were sworn and testified requesting a special use exception to place a windmill in the AR-2 District; that it will be a vertical windmill; that it will measure 43-feet in height; that it will measure 79-inches in diameter; that it will tie in with the color of the home; that it will not generate noise; that other towers are located within the development; that the Homeowners Association has approved the request; and that Delaware Electric Cooperative has approved the request.

Kim Furtado was sworn in and testified in support of the application and stated that she is possibly purchasing a windmill in the future; and that she would like to see an ordinance in place that allows windmill use.

Aubrey Bosworth was sworn in and testified in opposition to the application and stated that he lives within Overbrook Shores; that Mr. Light did not contact him in reference to the windmill; that the property is adjacent to Red Mill Pond; and that he has concerns about how the windmill could harm the wildlife.

Mr. Lisiewski, in rebuttal, testified that the vertical windmill is viewed as a solid to birds; and that it is designed to minimize bird fatalities.

By a show of hands 13 parties appeared in support of the application.

By a show of hands 2 parties 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 special use exception be **granted since it will not substantially affect adversely the uses of adjacent and neighboring properties**. Vote carried 5 – 0.

Case No. 9978 – Christiana Excavating Co.- south of a private road, 675 feet west of Road 225.

A special use exception to operate a non-metallic mineral processing plant.

Mrs. Thibodeau presented the case. Michael Joseph Connor was sworn in along with Dennis Schrader, Attorney, and testified requesting a

special use exception to operate a non-metallic mineral processing plant; that the property is located on both sides of the railroad tracks; that currently there is an office, mechanic shop and scale house on the site; that the Director of Planning & Zoning has determined the use to be a potential hazardous use; that the applicant proposes to operate a non-metallic mineral processing plant; that it will be used to crush and screen concrete, asphalt, rock, block and brick; that the site would be used to crush concrete on site instead of burying it on job sites; that the concrete will be brought back from the job sites to be crushed; that it will be crushed to create reusable aggregate; that the applicant has already received approval from the State of Delaware; that the applicant purchased a 2000 gallon tanker to cut down on the dust; and that the crusher is equipped with a spray system.

Nathaniel Carlson was sworn in and testified in support of the application and stated that he works for Duffield Associates; that he is an environmental scientist; that he went to the site; that he took 17 different data points for sound and dust levels; that they were done at 5 different locations; that the sound did not increase from background levels; that a dust meter was used to test particles; and that the use of water is helpful in decreasing the amount of dust.

Thomas Jester was sworn and testified that he was not support of or in opposition to the application; that he is representing the community; that he wanted to read a letter with stipulations from the community; that he stated he has spoken with Mr. Connor in regards to the stipulations that the community wanted and requested that Crushing operations shall only operate between 7:00 a.m. to 5:00 p.m.; that no crushing operations shall be permitted on State or Federal Holidays; that there shall be no crushing operations on weekends; that Mr. Connor provide any road repair necessary to Swains Private Road due to increased truck traffic; and that he maintain the repairs of the road throughout the year.

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 special use exception be **granted with the stipulations provided by the community and since it will not substantially affect adversely the uses of adjacent and neighboring property.** Vote carried 5 – 0.

Case No. 9979- Mattie Palmer and Lynette Roberts- east of Road 576, 1,360 feet south of Road 404.

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

Mrs. Thibodeau presented the case. Terrance Roberts, Sr. and Lynette Roberts were sworn in and testified requesting to retain a manufactured home on a medical hardship basis; that it was previously approved in 1999; that it was previously approved for her grandfather; that it is now for her grandmother; that there is a for sale sign in the yard; and that they have decided not to sell 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. 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 property**. Vote carried 5 – 0.

Case No. 9980 – Shirley A. Hollingsworth- southeast of Road 641, 30 feet east of U.S. Route 113.

A variance from the minimum lot width requirement for parcels.

Mrs. Thibodeau presented the case. Robert Hollingsworth was sworn in and testified requesting a 73.05-foot variance from the required 150-foot road frontage for a new parcel and a 57.43-foot variance from the required 150-foot road frontage for the remaining parcel; that the case was previously approved in 2003; that the property is being sold; that the house that was burnt out on the property has been removed; and that the 2 story home on the property is being remodeled.

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. McCabe, and seconded by Mr. Workman, and carried unanimously that the variances be **approved since it was previously approved**. Vote carried 5 – 0.

Case No. 9981 – Community Bank of Delaware- northeast of Route One, west corner of Road 268.

A variance for additional wall signs.

Mrs. Thibodeau presented the case. Darlene Matthes was sworn in and testified requesting a variance to place 2 additional wall signs; that the building is unique in shape; that the corner of the building looks like a 3 sided tower; that the additional 2 sides will have signs; and that each sign will measure 50" x 127.5".

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. 9982 – George Campbell, Jr.- south of Road 527, 700 feet west of U.S. Route 113.

A variance from the maximum age requirement of a manufactured home placement.

Mrs. Thibodeau presented the case. George Campbell was sworn in and testified requesting a variance from the required 5 year age limit to place a doublewide; that he would like to place the doublewide on his property for one of his children; that he purchased the property in 1984; that the doublewide is a 1997; that the doublewide will be placed on a permanent foundation; and that the parcel is going to be subdivided.

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**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 9967 – Robert Light (NextGen Energy, Inc.)- east of Old Landing Road, 400 feet north of Seaside Drive, being Lot 26, Block B within Rehoboth Shores development.

A special use exception to place a windmill on less than five (5) acres.

The Board discussed the case, which has been tabled since October 15, 2007.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted since it will not substantially affect adversely the uses of adjacent and neighboring property**. Vote carried 4 – 0. Mr. McCabe did not vote since he was not present the night of the hearing.

Case No. 9968 – Robert Light (NextGen Energy, Inc.)- south of Peach Tree Drive, 500 feet southwest of Road 269A, being Lot 50 within Nassau Station development.

A special use exception to place a windmill on less than five (5) acres.

The Board discussed the case, which has been tabled since October 15, 2007.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **denied**. Vote carried 2 – 2, based on a roll call with the members voting as follows:

Mr. Workman -	yes
Mr. Mills -	no
Mr. Hudson -	no
Mr. Callaway -	yes

Mr. McCabe did not vote since he was not present the night of the hearing.

Since the vote was 2 – 2 there was no decision made. The case will have to be brought back before the Board.

Case No. 9969 – Brian K. Steele- west of Road 38, north of Road 222, being Lot 1 within Primehook Farms, Inc. development.

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

The Board discussed the case, which has been tabled since October 15, 2007.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variances 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. Mr. McCabe did not vote since he was not present the night of the hearing.

Case No. 9972 – Gerald Hocker – northeast of Road 17, south of Route 26.

A special use exception to place a billboard, a variance for additional signs on billboard, and a variance from the maximum height requirement for a sign.

The Board discussed the case, which has been tabled since October 15, 2007.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled**. Vote carried 4 – 0. Mr. McCabe did not vote since he was not present the night of the hearing.

Case No. 9973 – Gerald Hocker – northeast of Road 17, south of Route 26.

A special use exception to place a billboard, a variance for additional signs on billboard, and a variance from the maximum height requirement for a sign.

The Board discussed the case, which has been tabled since October 15, 2007.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled**. Vote carried 4 – 0. Mr. McCabe did not vote since he was not present the night of the hearing.

Meeting adjourned at 9:23 p.m.