



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF OCTOBER 15, 2007

The regular meeting of the Sussex County Board of Adjustment was held on Monday October 15, 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. John Mills, Mr. Brent Workman and Mr. Jeff Hudson, with Mr. Richard Berl – Assistant County Attorney and staff members Mr. Norman Rickard, 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. Workman, and carried unanimously to approve the Minutes of October 1, 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. 9960 – Timothy and Mary Ellen Mack- east of Turlock Court, being Lot 30 within Grants Way development.

A variance from the front yard setback requirement.

Mrs. Thibodeau presented the case. Timothy Mack was sworn in and testified requesting a 3-foot variance from the required 30-foot front yard setback requirement; that the applicant was the builder of the porch; that the porch encroaches into the setback; and that he obtained a permit for the porch.

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. Workman, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it is the minimum variance to afford relief**. Vote carried 4 – 0.

Case No. 9961 – David and Ann Bristow- east of Road 638, 1,100 feet south of Route 40.

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

Mrs. Thibodeau presented the case. David Bristow was sworn in and testified requesting a special use exception to retain a manufactured home on a medical hardship basis; that the hardship is for his mother; that he did not realize that it had expired; and that it was previously approved in 2004.

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

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

Motion by Mr. Hudson, seconded by Mr. Mills, 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. 9962 – Gene Kelly- west of Road 283A (Ward Road), south of private road (Misty Lane).

A variance from the side yard setback requirements.

Mrs. Thibodeau presented the case. Gene Kelly was sworn in along with Stephen Spence, Attorney, and testified requesting a 4-foot variance from the required 10-foot side yard setback requirement for a 2-story dwelling, a 4-foot variance from the required 10-foot side yard setback requirement for an attached garage, a 0-foot setback from the required 10-foot side yard setback requirement for a deck and a 0.02-foot variance from the required 5-foot side yard setback requirement for a shed; that he started with a idea to place a 2nd story on a non-conforming structure; that building code approved his plans for the 2nd story addition; that he obtained a building permit; that upon starting the work and demo of the existing roof structures and the footers being dug out it was discovered that there was no foundation under the existing structure; that he was told by the Planning & Zoning office that if one wall was left up during construction that the home would remain non-conforming and that he could continue with construction; that he received a call from Planning & Zoning 2 weeks later and was told that he needed a variance for the 2nd story addition; that he applied for the variance and continued with construction for approximately one week; that while the house was being framed the wall fell down and the sub-contractor disposed of it in the dumpster; that Mrs. Isaacs visited the construction site and said that everything was fine and then responded two weeks later saying that since the wall fell down the structure was no longer non-conforming and that he must apply for a variance for the entire structure; that he then expressed concern and Mrs. Isaacs stated that she would grant him a temporary certificate of occupancy; that he met with Mr. David Baker and met with Building Code and they said that they had everything

they needed from him; that he told Mr. Baker in good faith that he would stop all work; that it was his fault he did not go to Planning & Zoning initially to find out if a variance was needed; that Mrs. Isaacs stated that if he stayed in the same footprint as the existing structure that a variance would not be needed; that the home was built between 1963 – 1965; that he was aware that the existing structure did not meet setback requirements; and that a new survey was provided at the suggestion of Mr. Spence.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **left open for Mrs. Susan Isaacs to be present**. Vote carried 3 – 1.

Case No. 9963 – William and Elizabeth Miller- south of Woodland Circle, west of Elmwood Avenue West, being Lot 14 and part of Lot 15, Block C, Section 1 within Angola By The Bay development.

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

Mrs. Thibodeau presented the case. William Miller was sworn in and testified requesting a 4.7-foot variance from the required 30-foot front yard setback requirement and a 1.3-foot variance from the required 10-foot side yard setback requirement; that the home currently on the property is being removed and donated to a non-profit organization; that the new home will not meet setback requirements; that he has received approval from the Homeowners Association; and that the home will be built further back.

By a show 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 that the variances be **granted since it meets the standards for granting a variance**. Vote carried 4 – 0.

Case No. 9964 - Robert Hackley- east of Route 54, east of Laws Point Road, being Lot 21, Block E within Swann Keys development.

A variance from the side yard setback requirements.

Mrs. Thibodeau presented the case. Robert Hackley was sworn in and testified requesting a 2-foot variance from the required 10-foot side yard setback requirement; that he would like to remove the existing mobile home; that the existing home measures 14' x 70'; and that he would like to replace the existing mobile home with a new doublewide that measures 24' x 60'.

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 meets the standards for granting a variance.** Vote carried 4 – 0.

Case No. 9965 – Dagsboro American Legion- north of Route 26, 1,000 feet west of U. S. Route 113.

A variance from the minimum parking space and paving requirements.

Mrs. Thibodeau presented the case. Ken Christenbury was sworn in and testified requesting a 34 parking space variance from the required 105 required by code and a variance from the paving regulations; that the variance was approved in June 2005; that they have received site plan approvals from various agencies; that they have been approved for the use of a temporary holding tank; that once sanitary sewer is available the holding tank must be removed; that they wish to have a gravel parking lot until the connection to sanitary sewer is completed; and that the variances will not be needed when parking requirements are met.

By a show of hands 3 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 variances be **granted for as long as they are needed with the stipulation that once sewer is provided they revert to the required parking spaces.** Vote carried 4 – 0.

Case No. 9966 – Wayne A. and Peggy J. Morris- west of Road 331B, 237 feet northwest of Road 331A.

A variance from the side yard setback requirement.

Mrs. Thibodeau presented the case. Wayne Morris was sworn in and testified requesting a 2.5-foot variance from the required 10-foot side yard setback requirement; that his parents lived next door to him; that he is selling that property because they have passed away; that he had the property surveyed and it showed that his garage encroached; and that the garage was built in 1972.

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

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.

Mrs. Thibodeau presented the case. Brian Lisiewski and Bob Light were sworn in and testified requesting a special use exception to place a windmill; that it will be a

vertical windmill; that it will measure 42-feet in height; that it will measure 6-feet in diameter; that it will reduce the homeowners utility bill; that it will not generate noise; and that it will be maintenance free for 10 years.

Susan Wimmer was sworn in and testified in opposition to the application and stated that she lives in Nassau Station; that she does not want the windmill in her community; and that she has concerns with the noise that it may generate.

John Bondrowski was sworn in and testified in opposition to the application and stated that he lives in Nassau Station; that he does not want the windmill in his community; and that he has concerns with the noise that it may generate.

Patricia Bondrowski was sworn in and testified in opposition to the application and stated that she lives in Nassau Station; that she opposes the location of the windmill; and that Nassau Station has restrictions.

Bob Wimmer was sworn in and testified in opposition to the application and stated that he lives in Nassau Station; that not all property owners in Nassau Station were notified; and that the public notice sign provided by the county is too small for residents to properly see.

Pamela Rutherford was sworn in and testified in opposition to the application and stated she was raised in Sussex County; and that she is worried how it will affect her property value.

Ronald Bass was sworn in and testified in support of the application and stated that he is the applicant requesting the special use exception; that the opposition does not live in his community; that he spoke with his neighbors that live within 200-feet of his property; and that they have no objection.

Bruce Durham was sworn in and testified in support of the application and stated that he is also seeking a special use exception to place a windmill on his property; that he tries to keep his home environmentally friendly; that he took a serious look at possibly using solar panels; and that he would not place something on his property that would decrease his property value.

Tom Colucci was sworn in and testified in support of the application and stated that the windmill is quieter than your household refrigerator; that it increases your

property value by approximately \$6,000.00; and that it would cut back on the need for more transmission lines.

David Lurty was sworn in and testified in support of the application and stated that he is in favor of ways to eliminate the use of fossil fuels; and that he is interested in possibly purchasing a windmill.

Ms. Thibodeau stated that office received 2 letters in favor of the application.

By a show of hands 9 parties appeared in opposition to the application.

By a show of hands 7 people appeared in support of the application.

Motion by Mr. Workman, 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 this case. Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be **tabled until the November 5, 2007 meeting**. Vote carried 4 – 0.

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.

Mr. Berl recommended that the Board adopt the testimony from the last case.

Mrs. Thibodeau presented the case. Brian Lisiewski and Bob Light were sworn in and testified requesting a special use exception to place a windmill; that it will be a vertical windmill; and that it will measure 32 to 35-feet in height.

Mr. Berl recommended that Board adopt the testimony in opposition from the last case.

John Bondrowski was sworn in and testified in opposition to the application and stated that Mr. Durham has a nice home; that the homes in the community are too close together; and that the windmill will not look proper in the community.

Virginia Eitner was sworn in and testified in opposition to the application and stated that she would like to know how much energy a 2KW windmill will generate; and that one windmill will not generate enough electric in a home.

By a show of hands 9 parties appeared in opposition to the application.

By a show of hands 10 people appeared in support 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 this case. Motion by Mr. Mills, seconded by Hudson, and carried unanimously that the case be **tabled until the November 5, 2007 meeting**. Vote carried 4 - 0.

The Board took a 5 minutes Recess

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.

Brian Steele was sworn in with Bill Schab, Attorney, and testified requesting a 15-foot variance from the required 20-foot rear yard setback requirement and a 10-foot variance from the required 15-foot side yard setback requirement; that Mr. Steele purchased the property in May 2007, that the closest resident is 0.25 miles away; that he was hired to become the caretaker of the additional property owned by Prime Hook Farms; that Mr. Steele needs a building more than 600-square feet to store his farm equipment; and that the building will measure 30' x 50'.

Wayne Carter was sworn in and testified in opposition to the application and stated that he is the Executive Director of the Paralyzed Veterans of America; that there is some confusion on the case; that it was his understanding that the building would be built within 100-feet of there duck blind; and that they will only have a issue with the application if there is something built within 100-feet of there duck blind.

William Tucker was sworn in and testified in opposition to the application and stated that Mr. Steele approached him and stated that he was constructing the building so they could not hunt that duck blind; and that he has no problem with the building being built.

Joe Larrimore was sworn in and testified in opposition to the application and stated that his son has put a lot of work into building the duck blind; and that he doesn't want to see it affected.

Theodore Jones was sworn in and testified in opposition to the application and stated that he wanted to make sure that the building was being built down the road.

By a show of hands 11 parties appeared in opposition to the application.

After hearing the testimony, the parties that appeared in opposition decided they were no longer in opposition.

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

Motion by Mr. Workman, 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 this case. Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be **tabled until the November 5, 2007 meeting**. Vote carried 4 – 0.

Case No. 9970 – Mark F. and Susan E. Cummings- southeast of Oyster Bay Lane, north of Clam Shell Lane, being Lot 40 within Keenwick West Development.

A variance from the front yard setback requirement.

Mark Cummings was sworn in with Bill Schab, Attorney, and testified requesting a 7-foot variance from the required 30-foot front yard setback requirement; that the front steps encroach into the setback; that the home was placed on the property in 1983; that the applicant purchased the property in August 2007; that when a survey was done at settlement the encroachment was discovered; and that a certificate of occupancy was issued.

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

Mrs. Thibodeau stated the office received 1 letter if 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 meets the standards for granting a variance**. Vote carried 4 – 0.

Case No. 9971 – Valerie L. Wham and Emanuel W. Kanas- north of Road 297, south of Circle Drive, being Lot 37 within Orchard Manor development.

A variance from the front yard setback requirements.

Bill Schab, Attorney, testified requesting a 10.2-foot variance from the required 40-foot front yard setback requirement; that the property was purchased in August 2006; that it is a through lot; and that it would be an extreme hardship to correct without a variance.

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

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted since it meets the standards for granting a variance**. Vote carried 4 – 0.

Case No. 9972 – Gerald Hocker- north east of Road 17, south of Route 26.

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

Gerald Hocker, Jr. was sworn in and testified requesting a special use exception to place a billboard, a variance for 2 additional signs on a billboard and a 13-foot variance from the required 25-foot height requirement; that he would like to place the billboard on his property located at Route 26 and Route 17; that the 2 billboards will be located 300-feet apart; that he would like to stay away from the commercial portion and entrance of the property; that the billboards will be 38-feet in height; and that there will be a total of 8 signs on the billboards.

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 4 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until the November 5, 2007 meeting**. Vote carried 4 – 0.

Case No. 9973 – Gerald Hocker- north east 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.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to adopt the testimony from Case No. 9972. Vote carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, 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 this case. Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until the November 5, 2007 meeting**. Vote carried 4 – 0.

OLD BUSINESS

Case No. 9925 – Gary and Margaret Oxbrough- south of Driftwood Court, 250 feet southwest of Road 361, being Unit 684 within Bethany Meadow Phase 6.

A variance from the separation requirement between multi-family structures.

The Board discussed the case, which has been tabled since September 10, 2007.

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 4 – 0.

Case No. 9939 – Alyn and Patricia Hulse- southeast of Road 381, south of Road 368, being Lot 616 within Bay Breeze development.

A variance from the separation requirement between multi-family structures.

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 4 – 0.

Meeting Adjourned at 10:08 p.m.