



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF OCTOBER 19, 2009

The regular meeting of the Sussex County Board of Adjustment was held on Monday October 19, 2009, 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 and Mr. Brent Workman., with Mr. Richard Berl – Assistant County Attorney and staff members, Mrs. Susan Isaacs and Mrs. Kelly Passwaters – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously to approve the Revised Agenda as circulated. Vote carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to table the approval of the Minutes of the October 5, 2009 meeting until November 2, 2009. 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. 10501 – Robert and Theresa Parker-** east of Route 16, southeast of North Carolina Avenue, being Lot 21, Block E within Broadkiln Beach.

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

Mrs. Isaacs presented the case. Robert and Theresa Parker were sworn in and testified requesting a 10-foot variance from the required 10-foot side yard setback requirement for a deck, a 2-foot variance from the required 5-foot side yard setback requirement for a shed and a 0.5-foot variance from the required 5-foot rear yard setback requirement; that they purchased the home in 2001; that they would like to construct a deck on the side of the home with French doors; that the house only has one door; that a variance is needed for a shed that was placed be in 1997; and that the certificate of occupancy was issued for the shed.

Sam Burke was sworn in and testified in opposition to the application and stated that he is part owner of the property next door; that the applicant has not met the standards for granting a variance; that the drawings submitted show a deck but no steps to enter/exit the deck; that there is plenty of room in the rear yard to construct a deck; and that he would not oppose a variance of 4-feet for a platform.

In Rebuttal, Mr. and Mrs. Parker stated that the holding tank and AC unit is in the rear yard; and that the house cannot be seen until you get to the end of the street.

The Board found that no 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. Workman, and carried unanimously that that the case be left open until after Case No. 10503 is heard. Vote carried 4 – 0.

At the conclusion of Case No. 10503, Mr. & Mrs. Parker stated that the home only has one (1) fire exit; that the adjacent property is wetlands and cannot be built on; that they have spoken to some of the neighbors; and that the deck will be cantilevered.

In Rebuttal, Mr. Burke stated that the property is not unique; that the applicants have owned the property since 2001; that they only want to improve the property; and that they are enabling reasonable use the property.

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. Workman, and carried unanimously that the case be **tabled until the November 2, 2009 meeting**. Vote carried 4 – 0.

**Case No. 10502 – Laurence S. Cordrey Rev. Trust-** north of Road 297 (Mt. Joy Road), 820 feet east of Route 30.

A variance from the minimum lot width requirement.

Mrs. Isaacs presented the case. Sara Holland and Doug Warner were sworn in and testified requesting 31.4-foot variance from the required 100-foot lot width requirement for Lot 3, a 68.4-foot variance from the required 100-foot lot width requirement for Lot 4, a 67.9-foot variance from the required 100-foot lot width requirement for Lot 5, a 57.2-foot variance from the required 100-foot lot width requirement for Lot 6 and a 67.2-foot variance from the required 100-foot lot width requirement for Lot 7; that Sawmill Run consists of seven (7) single family lots; that the lots range in size from 2.2 to 14.6 acres; that due to the shape of the existing property and limited septic areas it provides no other

way to allow for seven (7) large lots while preserving as much of the existing woods as possible; that the covenants and restrictions will limit the amount of trees that can be cleared from a lot; that the object is to provide large forested lots where houses will be tucked back into the woods; and that the proposed variance is the minimum that will allow each of the lots in question to access suitable soil for a septic system.

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

**Case No. 10503 – Jeffrey and Brenda Swartswelder-** east of Road 258, west of West Lake Drive, being Lot 35 within Lazy Lake development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Jeffrey Swartswelder was sworn in and testified requesting a 2-foot variance from the required 5-foot side yard setback requirement; that the shed has been on the property for four (4) years; that he placed a new roof on the shed due to a neighbor's tree falling on it; that the lean that was added is in violation.

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

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

Motion by Mr. Mills, seconded by Mr. McCabe, 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. 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 is the minimum variance to afford relief**. Vote carried 4 – 0.

**Case No. 10504 – Janet L. Wilson-** southeast of Road 66, 1.75 mile southwest of Road 455.

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

Mrs. Isaacs presented the case. Janet Wilson and David Williams were sworn in and testified requesting a 2-foot variance from the required 15-foot side yard setback requirement and a 2-foot variance from the required 20-foot rear yard setback requirement; that the pole building was constructed by Delmarva Pole Buildings; that she

had her property surveyed and the neighbors fence was on her property; that she removed the fence and her neighbor was mad; and that her neighbors also have garages.

Ronald Johnson was sworn in and testified in opposition to the application and stated that the concrete floor was poured months before the garage was constructed; that her lot lines are clearly marked; and that he owns the property to the side and rear of the applicant.

The Board found that no 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. McCabe, 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. Workman, and carried unanimously that the case be **tabled until the November 2, 2009 meeting for the staff to report on the possible subdivision of the adjacent property.** Vote carried 4 – 0.

**Case No. 10505 – John W. Cooper-** south of Route 54 (Blackwater Road), west of Boyer Road, being Lot 11 within Boyer Village development.

A variance from the front yard setback requirement for a through lot.

Mrs. Isaacs presented the case. Guy Cooper was sworn in and testified requesting a 17-foot variance from the required 40-foot front yard setback requirement; that he is purchasing the property from his parents; that he would like to enclose the existing deck; that it measures 12' x 24'; and that it is a through lot.

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 was not created by the applicant.** Vote carried 4 – 0.

**Case No. 10506 – Adam Rones-** south of Route 54, east of Wilson Avenue, being Lot 8, Block 3 within Cape Windsor development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Bruce Stoehr was sworn in and testified on behalf on the applicant requesting a 5-foot variance from the required 10-foot side yard setback requirement; that the lot measures 50' x 100'; that the lots in Cape Windsor were

originally created for singlewides; that the applicant would like to replace the existing home; and that other variances have been granted in the area.

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 many variances have been granted in the area.** Vote carried 4 – 0.

**Case No. 10507 – Thong and Michael Siphavanh-** south of Road 381A (Wilgus Cemetery Road).

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Michael Siphavanh and Steve Becker were sworn in and testified requesting a 3.6-foot variance from the required 15-foot side yard setback requirement; that the garage was placed in 2002; that the violation was discovered when a survey was done; that the applicant cannot get the certificate of occupancy on the home due to the garage being in violation; and that the neighbor has no objections to the request.

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 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. 10508 – Albert J. and Patricia Riedinger-** north of Maryland Avenue, being Lot 7, Section C.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Albert Riedinger was sworn in along with John Sergovic and testified requesting a 3.6-foot variance from the required 21.5-foot average front yard setback requirement; that the applicant has owned the property since 1964; that they would like to construct a balcony/deck on the front of the house; that they were approved in 2003 to raise a nonconforming structure and create a new first floor; that the variance request in 2006 that was denied was for steps; that other variance have been granted in the area; that the home only has one entrance; that the front yard setback is an average along the street; and that they submitted letters in support from the neighbors.

Dominick Marra was sworn in and testified in opposition and stated that he was present in support for the variance request in 2003; that the house was not place in the

center of the lot; that there is a staircase located in the garage; that the stairs on the outside of the home were not completely removed; and that there is plenty of room in the rear of the home to place a deck.

Leslie Marra was sworn in and testified in opposition and stated that there is plenty of room in the rear of the home to place a deck; that the lots are narrow; and that she would like to keep the average setback requirement along the front yard.

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

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

Mrs. Isaacs stated the office received 7 letters in support of the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until the November 2, 2009 meeting for the staff to report on the property history.** Vote carried 4 – 0.

**Case No. 10509 – Frederick G. and Diane C. Searby-** east of Long Neck Road, northwest corner of Bald Cypress Street and Walnut Street, being Lot 38 within Bay City Mobile Home Park.

A variance from the maximum allowable lot coverage in a mobile home park.

Mrs. Isaacs presented the case. Frederick and Diane Searby were sworn in and testified requesting a 244.60-square foot variance from the required 35% lot coverage requirement; that they purchased the home in 2003; that they would like to enclose the existing deck; that they placed a shed in 2003; that they were not aware a building permit was needed for the shed; that they will be using the home as a permanent residence once they sell their home in New Jersey; that they need additional living space for when family members visit; and that they were not aware they exceeded the 35% lot coverage requirement until a survey was done.

Patricia Weyl was sworn in and testified in opposition and stated that she owns a home in Bay City; that Bay City does not have proper drainage; that before the survey in Bay City was done the applicants lot was 5000-square feet and it is now 5405-square feet; and that exceeding the 35% lot coverage creates health and safety concerns.

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

The Board found that 6 parties appeared in opposition to the application.

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

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that that variance be **denied since it does not meet the standards for granting a variance.** Vote carried 4 – 0.

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**The Board took a 10-minute Recess**

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**OLD BUSINESS**

**Case No. 10491- AT & T-** east of Route One, 100 feet north of Jefferson Bridge Road.

A special use exception for a telecommunication tower.

The Board discussed the case, which has been tabled since September 21, 2009.

Mr. Berl read a legal opinion in reference to notice.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the request for a rehearing be **denied as Mr. Berl suggested the proper notice was given.** Vote carried 4 – 0.

Motion by Mr. Workman, seconded by Mr. Mills, and carried unanimously that the case be **tabled until the November 2, 2009 meeting.** Vote carried 4 – 0.

**Case No. 10498 – Gregory L. Smith and Margaret C. Earman-** south of Route 54, west of Oak Road, being Lot 12, Block B within Keen-Wik Subdivision 2 development.

A variance from the side yard setback requirement.

The Board discussed the case, which has been tabled since October 5, 2009.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until the November 2, 2009 meeting.** Vote carried 4 – 0.

**Case No. 10499 – Telemon Corporation-** east of Road 275, 650 feet south of Road 276, being Lot 3.

A special use exception for a day care center.

The Board discussed the case, which has been tabled since October 5, 2009.

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until the November 2, 2009 meeting**. Vote carried 4 – 0.

**Case No. 10500 – Jeanne Sisk-** west of Route One, north of Sea Air Avenue, being Lot A-16 within Sea Air Mobile City Mobile Home Park.

A variance from the side yard and rear yard setback requirements, a variance from the separation requirement between units in a mobile home park, and appealing the decision of the Director regarding need for a variance.

The Board discussed the case, which has been tabled since October 5, 2009.

Mr. Mills stated to the Board members that the request for an appeal and variance were not made in a timely manner; that having the property record card corrected is not the decision of the Board; that the Board cannot make any determinations for the need of a variance without knowing where the property lines are; and that no building permit was issued for the shed that was placed in the 1990's therefore you cannot replace it.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to **deny the appeal and the variance as the appeal was not made in a timely manner and that a variance cannot be determined without a survey**. Vote carried 4 – 0.

**Meeting adjourned at 10:45 P.M.**