



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF OCTOBER 4, 2010

The regular meeting of the Sussex County Board of Adjustment was held on Monday, October 4, 2010, 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 – Chief Zoning Inspector, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated with Case No. 10701 T-Mobile Northeast, LLC being withdrawn. Vote carried 5 – 0.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously to approve the Minutes of the September 20, 2010 meeting 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. 10697 – Saverio and Deborah Pulice** – west of Road 412 north of Lakeview Drive, being Lot 22, Section 1 within Lakeview Estates development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Saverio Pulice and Jerry McCabe were sworn in and testified requesting a 2.8-foot variance from the required 15-foot side yard setback requirement for a proposed addition; that the addition will measure 14'x 24'; that the existing dwelling is 15-foot from the property line; that the addition will extend further from the dwelling to accommodate a billiard table; that the location of the proposed

addition will extend from the existing family room; and that the proposed location will not block their view of the lake or the neighbors view of the lake.

Peccolia Simmons was sworn in and testified in opposition to the application and stated that she owns the adjacent lots on the opposite side of the requested variance; that there is also an existing shed on the Applicant's property; that by adding this addition their lot will be completely full; and that the adjacent homeowner on the variance side is deceased.

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

The Board found that 1 party appeared in opposition to the application.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until October 18, 2010 to allow the Applicant to better prepare his case.** Vote carried 5 – 0.

**Case No. 10698 – Joanna C. Pappas** – north of Route 24, 1,073 feet northeast of Road 313A.

A special use exception to operate a veterinary hospital and a variance from the minimum lot size and setback requirements for a veterinary hospital.

Mrs. Issacs presented the case. Demetrius Pappas and Richard O'Brien were sworn in and testified requesting a special use exception to operate a veterinary hospital, a 184.8-foot variance from the required 200-foot side yard setback requirement, a 105-foot variance from the required 200-foot side yard setback requirement and a 63-foot variance from the required 200-foot side yard setback requirement for a veterinary hospital; that the Board approved the same application in 2007; that they were not able to get financing to start the business and the approval has now lapsed; that the existing building will be used for the veterinary hospital; that the property is surrounded by farm land and the use will not alter the character of the neighborhood; and that this is the minimum variance to afford relief due to the fact the buildings already exist.

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. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception and the variances be **granted since it meets the standards for granting a special use exception and a variance.** Vote carried 5 – 0.

**Case No. 10699 – Gail and Barry Furman** – north of Route One, northwest of Terrace Road, being Lot 11, Block D within Silver Lake Manor development.

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

Mrs. Isaacs presented the case. Gail and Barry Furman was sworn in and testified requesting an 11.3-foot variance from the required 30-foot front yard setback requirement for a proposed porch, a 4.72-foot variance from the required 5-foot side yard setback requirement and a 2.61-foot variance from the required 5-foot rear yard setback requirement for an existing shed; that they replaced the existing shed; that the new shed

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was placed within the same footprint; that the dwelling was built without a porch; that a porch cannot be added without a variance; that the proposed porch will enhance the property; that the proposed porch will not effect the parking availability; and that this is the minimum variance to afford relief.

The Board found that 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 and is the minimum variance to afford relief.** Vote carried 5 – 0.

**Case No. 10700 – Rehoboth Beach Country Club, Inc.** – dead end of East Side Drive, 0.6 mile south of Road 273 (Country Club Road), within Rehoboth Beach Yacht and Country Club development.

A special use exception to place a manufactured home type structure for a temporary pro-shop.

Mrs. Isaacs presented the case. Jim Killian was sworn in and testified requesting a special use exception to place a manufactured home type structure for a temporary pro-shop; that the existing pro-shop was built in the 1960's and has been torn down; that the new pro-shop is under construction; that they were not aware that they needed a special use exception to place the unit; that the plans submitted for the new pro-shop showed the proposed temporary structure; and that they hope to have the new pro-shop complete by May 2011.

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 special use exception be **granted for a period of one (1) year since it will not substantially affect adversely the uses of adjacent and neighboring property.**

Vote carried 5 – 0.

**Case No. 10702 – J. Richards and Mary C. Wood** – east of Route 24, east of White Pine Drive, being Lot 26 within The Pines At Long Neck Phase 1 development.

A variance from the side yard setback requirement.

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Mrs. Isaacs presented the case. J. Richards and Mary Wood were sworn in and testified requesting a 1.5-foot variance from the required 10-foot side yard setback requirement for an existing screen porch; that the screen porch was built on an existing deck; that the piers of the deck meet the required setback requirements; that the overhang of the existing deck and new screen porch encroach; that their son built the screen porch; that they were not aware that adding a screen porch would change the required setback requirements; that the screen porch is needed to enjoy the property; that there is no adverse effect to adjacent properties; and that it is the minimum variance to afford relief.

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

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 5 – 0.

**Case No. 10703 – Stephen and Amy Pierson** – north of Road 298, 1,454.18 feet northeast of Big Oak Lane.

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

Mrs. Isaacs presented the case. Amy Pierson was sworn in and testified requesting a 12-foot variance from the required 15-foot rear yard setback requirement for an existing deck, a 5-foot variance from the required 5-foot side yard setback requirement for an existing deck and a 2-foot variance from the required 10-foot side yard setback requirement for a cantilevered dining room addition; the deck was built as a ground level deck; that the ground slopes down at the rear of the property; that they built the dwelling over to one side due to an existing boat ramp that all homeowner's in the development

have access to; that the neighbor adjacent to the deck is over 100-foot from the property; that the property was originally used as a parking area for the boat ramp; that the deck is necessary to enable reasonable use of the property; that it will not alter the character of the neighborhood; and that the cantilevered portion of the dining room is a bay window.

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 case be taken under advisement. Vote carried 5 – 0.

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At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until October 18, 2010**. Vote carried 5 – 0.

**Case No. 10704 – Kenneth F. Spencer, Sr.** – east of Aby's Hill Road, 786 feet northeast of Powell Farm Road, being Lot 3.

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

Mrs. Isaacs presented the case. Kenneth Spencer, Sr. was sworn in and testified requesting a 10-foot variance from the required 20-foot rear yard setback requirement and a 5-foot variance from the required 15-foot side yard setback requirement for a proposed 28'x 32' pole building; that the building cannot be built in compliance due to an existing well on the property; that with the variance he will be able to access the building to store his boat; that the property is unique due to large existing pine trees on each side; that his septic system is in the front yard; that the building will be approximately 20-foot from his dwelling; and that he submitted a letter of support.

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 character of the neighborhood and is the minimum variance to afford relief**. Vote carried 5 – 0.

**Case No. 10705 – Robert W. and Nancy R. Miller** – south of Long Neck Road, west of West Harbor Drive, being Lot W-64 within White House Beach Mobile Home Park.

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

Mrs. Isaacs presented the case. Nancy and Robert Miller were sworn in and testified requesting a 4-foot variance from the required 20-foot separation requirement between units in a mobile home park; that he built the deck in 2007; that he receive notice 2-months ago that it did not comply with the setback requirements; that he thought the 20-foot separation requirement was between the manufactured homes only; that he did not realize the setback requirement was for the deck; that her father lives on the adjacent lot; that they moved to the park to help care for her father; and that the deck measures 8'x 12'.

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

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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. Mills, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

**Case No. 10706 – Lawrence Folly** – south of Road 277, north of Woodland Court North, being Lot 71, Block J, Section 2 within Angola By The Bay development.

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. Lawrence Folly was sworn in and testified requesting a 2.2-foot variance from the required 20-foot rear yard setback requirement for a roof over an existing deck; that he built the deck and addition 2-years ago; that the deck is needed to gain access to the rear door on the addition; that the property is unique since the rear property line is curved; that the rear of the property is adjacent to common area in the development; that the roof on the deck will offer protection in inclement weather; that the variance will not alter the character of the neighborhood; and that it is the minimum variance to afford relief.

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

**Case No. 10797 – Ed Ide** – south of private road, 122 feet west of Burbage Lane, west of Road 357.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Ed Ide was sworn in and testified requesting a 3.4-foot variance from the required 30-foot front yard setback requirement for a proposed porch; that he submitted information packets to the Board; that he is the builder representing the Applicant; that the existing dwelling was moved to another lot; that the owner's want a roof over the existing walkway; that the walkway is handicap accessible; that the lot is narrow; and that the proposed roof will not alter the character of the neighborhood.

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Joseph & Sally Schaeffer were sworn in and testified in opposition to the application and stated that they own the adjacent property; that they feel the variance requested will block their view of the water; that the Applicant has already built a large dwelling on the lot; that they were unclear on the location of the proposed variance when they received notice in the mail because the Applicant's name was not mentioned; that the property was never posted; and that there is handicap access through the existing garage.

In rebuttal, Ed Ide stated that the proposed roof will not project any further into the setback than the previous dwelling; and that the Applicant, throughout the construction, has taken the neighbor's view into consideration.

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. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted with the stipulation that the overhang will not exceed the requested 3.4-foot variance since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

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**The Board took a 5-minute recess.**

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**Case No. 10708 – Ed Ide** – south of Burbage Lane, 136 feet west of Road 357.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Ed Ide was sworn in and testified requesting a 2-foot variance from the required 5-foot side yard setback requirement for an existing handicap ramp; that the dwelling and decks were relocated to this property; that the ramp is new construction; that there is an existing fence on the property line; that the property line is not straight; that there is no room for the ramp at the rear of the property; that the existing shed will be moved into compliance; and that the ramp will not alter the character of the neighborhood.

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 variance be **granted since it will not alter the character of the neighborhood and will enable reasonable use of the property.** Vote carried 5 – 0.

**Case No. 10709 – Randall H. Weaber** – south of Road 368, north of Ocean Air Lane, being Lot B-10 within Ocean Air development.

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

Mrs. Isaacs presented the case. Randall Weaber was sworn in and testified requesting a 2-foot variance from the required 40-foot front yard setback requirement for a proposed manufactured home; that he wants to replace the existing unit; that DelDOT purchased 5-foot of his property; that the proposed unit will measure 16' x 72'; that the loss of property makes it unique; that it was not created by the Applicant; that it cannot be otherwise developed; that it will not alter the character of the neighborhood; and that it is the minimum variance to afford relief.

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. 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. 10710 – Liberty Towers, LLC** – southwest of Little Assawoman Bay, 1,600 feet northeast of Road 58B.

A special use exception to place a communication tower and a variance from the maximum height requirement for a tower.



Mrs. Isaacs presented the case. Brian Seidel was sworn in with Crystal Fisher, Attorney and testified requesting a special use exception to place a communication tower and a 10-foot variance from the required 150-foot maximum height requirement for a tower; that they no longer request the height variance; that the tower will be 150-foot in height in order to comply with the required maximum height requirement; that the 109-acre parcel is zoned AR-1; that they will be leasing a 100'x 100' section of this parcel; that the tower will be placed on a 10'x 20' concrete pad; that there will be an 8-foot fence around an area of 70'x 80'; that the tower and equipment buildings will be constructed within the fenced in area; that there will be a 12-foot wide gravel road to access the tower area; that there will be 2 parking spaces outside the fenced in area; that there are no other sites in the area for co-location; and that they submitted information packets.

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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 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. 10711 – Larry C. and Cynthia F. Lees** – south of Road 277, east of Holly Way West, being Lot 35, Block L, Section 2 within Angola By The Bay development.

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

Mrs. Isaacs presented the case. Chris Altman, Attorney, testified on behalf of the applicant requesting a 1.1-foot variance from the required 20-foot rear yard setback requirement for an existing covered porch and a 4-foot variance from the required 10-foot side yard setback requirement for an outside shower; that the property is narrow and shallow in size making it unique; that the rear of the property is adjacent to the common area in the development; that a Certificate of Compliance was issued on the porch and outside shower by Planning & Zoning; and that the previous owner built the porch and outside shower in 1991.

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 variances be **granted since it meets the standards for granting a variance.** Vote carried 5 – 0.

### **OLD BUSINESS**

**Case No. 10688 – Doggies At The Beach** – north of Route 24, 939 feet southwest of Route One.

A variance from the setback requirement for a dog day care facility.

The Board discussed the case which has been tabled since September 20, 2010.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the case be **tabled to allow Counsel to further review the case**. Vote carried 5 – 0.

**Meeting Adjourned 10:10 p.m.**