



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF SEPTEMBER 10, 2007

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 10, 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. Jeffrey Hudson; with Mr. Richard Berl – Assistant County Attorney, Mr. Russell Warrington – Zoning Inspector, Mr. Norman Rickard, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Workman, 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 August 20, 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.

**Case No. 9918 – John R. and Claire C. Stecher** – Piney Point Road, being Lot 25 within Piney Point Acres development.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Jane Patchell, Attorney, was present on behalf of the application, and testified requesting a 0.5-foot variance from the required 10-foot rear yard setback requirement for an existing detached pole shed; that the structure measures 40' x 30'; that the Applicant purchased the property in June 2007; that the survey done for settlement showed the encroachment; that the structure was built in 1990; and that she submitted a letter of support from the neighbors.

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 character of the neighborhood**. Vote carried 5 – 0.

**Case No. 9919 – Violet Waters** – east of Road 516, 700 feet north of Road 525.

A variance from the front yard setback requirement and a special use exception to expand an existing day care facility.

Mr. Rickard presented the case. Violet Waters was sworn in and testified requesting a 9-foot variance from the required 40-foot front yard setback requirement for a proposed addition and a special use exception to expand an existing day care facility; that the proposed addition will measure 27' x 32'; that the addition will allow her to expand her day care; that the addition cannot be built in the rear of the property due to the existing septic system; that she plans to increase the number of children from 14 to 75; that the ages of the children are 18-months and up; that the hours of operation will be 24-hours a day, 5-days a

week; that the State regulates the number of employees she will need; and that approximately 12-children would stay overnight.

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

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

**Case No. 9920 – Mary A. Waters-Langrell and Lynda Webster** – intersection of James A Street and Fisher Street, being Lot 28, Block C within Dodds Addition development.

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

Mr. Rickard presented the case. Mary Waters-Langrell, Lynda Webster, John Langrell and Laurie Bronstein were sworn in and testified requesting a 10.2-foot variance from the required 30-foot front yard setback requirement and a 3.3-foot variance from the required 10-foot side yard setback requirement for an existing deck; that they purchased the property in 1972; that the cottage and deck were built in 1980; that Larry's Homes placed the cottage; and that the encroachment was discovered by a survey done for settlement.

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.

Mr. Rickard stated that the office received 1 letter of 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. 9921 – Donna M. Joseph** – east of Road 365, 650 feet north of Road 353, being Lot 1.

A special use exception to retain a manufactured home on less than ten (10) acres.

Mr. Rickard presented the case. Donna Joseph was sworn in and testified requesting a special use exception to retain a manufactured home on less than ten (10) acres; that the unit was placed on the farm in 1994; that her father gave the 50-acres to her son; that her son has had the property subdivided and has given her an acre; and that she lives in the unit.

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.

Mr. Rickard stated that the office received 1 letter of opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted since it will not substantially effect the neighborhood and that the unit has been on the property for several years**. Vote carried 5 – 0.

**Case No. 9922 – Jon Toberman** – southwest of Route 54, east of Cleveland Avenue, being Lot 9, Block 4 within Cape Windsor development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Jon Toberman was sworn in and testified requesting a 9-foot variance from the required 10-foot side yard setback requirement for an air conditioning unit; that the air conditioning unit is on a platform; that Royal Plus installed the unit; that he was granted a variance for the manufactured home in April 2006; and that he is not exactly sure how much of a variance is needed.

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

Mr. Rickard 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 **left open to allow the Applicant to measure for the exact variance needed and that if the variance is approved the Applicant must notify the installer of the encroachment**. Vote carried 5 – 0.

**Case No. 9923 – Desiree Lee Black** – north of Road 538, 600 feet east of Maryland-Delaware Line.

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

Mr. Rickard presented the case. Desiree Lee Black and Thomas Gibson were sworn in and testified requesting a special use exception to retain a manufactured home on a medical hardship basis; that the unit was originally placed on the property for her father; that her father passed away in March 2007; that the medical hardship is still needed in order to care for her mother; that she was not aware the medical hardship approval expired after 2-years or after her father's death; and that she now understands the requirements for a medical hardship case.

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.

Mr. Rickard stated that the office received 1 letter in support of the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of two (2) years since it will have no adverse effect to the neighborhood**. Vote carried 5 – 0.

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

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

Mr. Rickard presented the case. Gary and Margaret Oxbrough were sworn in and testified requesting an 8-foot variance from the required 40-foot separation requirement between multi-family structures; that the deck was built in April 2007; that they obtained approval for the deck from the Condominium Association; that they hired a contractor to build the deck; that the contractor advised them he obtained a post permit from the County; and that there are 3 other decks built in the open area between the multi-family structures.

Glenn Prettyman was sworn in and testified in opposition to the application and stated that he owns 7-units within the Bethany Meadows Phase 6 area; that he is also the developer of Bethany Meadows; that Phase 6 of Bethany Meadows is made up of 95-townhomes and they have their own Condo

Association; that a few years back he explained to the Applicant that there was a required 40-foot separation requirement between units; that the 95-units own the open area and should have to go before the Board as a whole to encroach into the 40-foot separation requirement between units; and that the Condo Association approved the proposed deck with the understanding the proper permits would be applied for.

George Carlson was sworn in and testified in opposition to the application and stated that he is the President of the Condo Association; that the Association is against individual variances; that the Association did vote to allow decks within the community; that the 40-foot separation requirement was not taken into consideration for the approval of the Applicant's deck; that the contractor did claim to have a post permit to build the deck; that the builder explained that a post permit requires; that he pays a double fee so construction may begin prior to obtaining the official permit; and that the Association did not approve the construction of a deck until all the proper building permits were obtained.

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

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

Mr. Rickard stated that the office received 3 letters in support of the application.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the case be **tabled until September 24, 2007**. Vote carried 5 – 0.

**Case No. 9926 – Colter Construction, Inc.** – south of Cedar Street, east of Road 39B being Lot 4 within Primehook Beach.

A variance from the side yard setback requirements.

Mr. Rickard presented the case. Terrance Babbie was sworn in and testified requesting a 10.2-foot variance from the required 15-foot side yard setback requirement and a 5.2-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that the lot measures 50' x 150'; that DNREC requirements and the setback requirements create a practical difficulty; that the proposed dwelling will measure 37' x 73', with a 7' x 4' stairway; that the variances will enable reasonable use of the property; that the lot size was not created by the Applicant; and that the proposed dwelling will not alter the character of the neighborhood.

Edward Carney, Jr. and Elaine Carney were sworn in and testified in opposition to the application and stated that they own the adjacent property; that they have owned the property for 47-years; that the proposed dwelling will effect their quality of life; that the property owner never discussed the plan of the proposed dwelling with them; that there was no sign posted on the property for the upcoming hearing; that when he phoned into the County office he was given vague information on the pending case; that all the lots in the area are the same size; that other dwelling have been built in the area without variances; and that they submitted pictures.

Charles Peters was sworn in and testified in opposition to the application and stated that the proposed dwelling will encroach on the beach access road; that he feels the Applicant does not meet the standards for granting a variance; that the property is not unique because all the lots in the area are the same size; and that others have built within the required guidelines without variances.

Judy Baines was sworn in and testified in opposition to the application and stated that the current owners of the property have tried to prevent others from using the beach access that runs along their property line; that her family uses that beach access everyday and that there was never a sign posted on the property for the upcoming hearing; and that they would like to see the character of Primehook Beach preserved and do not want to see another Broadkill Beach.

Ken Adams was sworn in and testified in opposition to the application and stated that he built a new dwelling 2-years ago, and that he maintained the required setbacks.

Thomas Davidson was sworn in and testified in opposition to the application and stated that he built a dwelling in 1998; that his lot is also 50' x 150'; and that he built within the required setback requirements.

By a show of hands 15 parties appeared in opposition to the application.

Mr. Rickard stated that the office received a petition with 40-signatures in opposition to the application.

Motion by Mr. Workman, and seconded by Mr. Hudson, and carried unanimously that the case be **tabled until September 24, 2007**. Vote carried 5 – 0.

The Board recessed for 10-minutes.

**Case No. 9927 – Linda Kulis** – northwest of Route 22, south of East River Drive, being Lot 11B within White House Beach Mobile Home Park.

A variance from the separation requirement between units in a mobile home park, a variance from the front yard setback requirement, and a variance from the maximum allowable lot coverage.

Mr. Rickard presented the case. Linda Kulis, Norma Vedeloff, Patricia Walker and Phil Clark were sworn in and testified requesting a 6.5-foot variance from the required 20-foot separation requirement between units in a mobile home park, a 3.8-foot variance from the required 5-foot front yard setback requirement for a set of steps with a landing, and a 323.20-square-foot variance from the required 35% maximum allowable lot coverage in a mobile home park; that the manufactured home was placed within the required setbacks; that the proposed deck will not meet the required 20-foot separation requirement from the neighbor's shed; that the proposed deck will give access to the unit's sliding glass doors and the door off the utility room; that the unit is set approximately 6-foot high which doesn't allow for a standard type of steps to enter the unit; that to access the unit steps must be built; and that with the unit and proposed decking the lot coverage will be at approximately 41%.

Jerry Lysnicki was sworn in and testified in opposition to the application and stated that it is his shed that won't allow the deck to meet the required 20-foot separation requirement; that he is concerned that if the deck is too close it can create a fire hazard; and that he feels an adjustment can be made to the proposed deck to have it meet the required setback requirement.

James Lysnicki was sworn in and testified in opposition to the application and stated that he feels the setback requirements should be followed; and that he is concerned variances create fire hazards.

George Snyder, Jr. and Alice Snyder were sworn in with Seth Thompson, Attorney, and testified in opposition to the application and stated that the variance application does not meet the standards for granting a variance; that there is nothing unique about the lot; that the property can be otherwise developed; that the hardship was created by the Applicant when they chose a larger home to place on the lot; that the larger unit does alter the character of the neighborhood; that the tenants of the park sign a lease that does state they will have a view of the water; that the road is very narrow and feel the variances may create trouble for people towing their boats; that this is not the minimum variance to afford relief; and that they submitted pictures.

In rebuttal, Patricia Walker, stated that the park owner suggested this lot for the placement of this manufactured home; that due to the height of the unit decks are needed for access; and that the location of the proposed deck will not impede anyone's view.

In rebuttal, Seth Thompson, stated that the survey submitted shows the manufactured home at only 9-foot from the lot line; and that he questioned what the required setbacks are for the park.

In rebuttal, Norma Vedeloff, stated that she is the owner of the manufactured home; and that she feels any size unit would block the view of the water.

Motion by Mr. Mills, 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. Mills, seconded by Mr. Workman, and carried unanimously that the variances be **denied since it does not meet the standards for granting a variance**. Vote carried 5 – 0.

**Case No. 9928 – Iris and Earl Downing** – southwest of Road 213, south of Wild Cherry Street, being Lot 33 within Walker Acres development.

A special use exception to expand an existing day care facility.

Mr. Rickard presented the case. Iris Downing was sworn in and testified requesting a special use exception to expand an existing day care facility; that she would like to increase the number of children to 90; that the center is approximately 3,000-square-foot in size; that she plans to put an addition on the center in the future; that the addition will meet the required setback requirements; that the age of the children range from infant to 13-years of age; that the center will be open 7-days a week from 6:30 a.m. to 5:30 p.m.

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 special use exception be **granted since it will have no substantial effect to the neighborhood**. Vote carried 5 – 0.

**Case No. 9929 – Michael Arduino** – south of Long Neck Road at end of Route 22C and being north of Hillenwood Road, 100 feet west of Pinebrine Road, being Lot 108 within Pot Nets Bayside Mobile Home Park.

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

Mr. Rickard presented the case. Michael Arduino was sworn in and testified requesting a 79-square-foot variance from the required 35% maximum allowable lot coverage in a mobile home park; that his family has owned the unit since 1991; that the deck will measure 13'6"x 18'; and that the deck will meet all the required setback requirements.

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. 9930 – Dorothy Williston** – north of Road 312, north of Comanche Circle, being Lot 6, Block B within Warwick Park development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Dorothy Williston was sworn in and testified requesting a 7-foot variance from the required 15-foot side yard setback requirement for an existing dwelling; that she

purchased the lot in 1985; that the dwelling was built in 1986; that she had a survey done of her property prior to erecting a new fence; and that the survey showed the encroachment.

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. Hudson, seconded by Mr. Workman, 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. 9931 – James and Mabel Bailey** – west of Road 293, 1,180 feet north of Road 292.

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

Mr. Rickard presented the case. James and Mabel Bailey were sworn in and testified requesting a special use exception to retain a manufactured home on a medical hardship basis; that his daughter lives in the manufactured home; that they had to re-apply since the first medical hardship expired; that they thought they would receive a letter from the County when it was time to re-apply; and that they understand the procedure now.

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 for a period of two (2) years since it will have no substantial effect to the neighborhood**. Vote carried 5 – 0.

**Case No. 9905 – Michael and Christie L. Butterworth** – east of Gravel Hill Road, 3.2 miles north of Town of Millsboro.

A special use exception to retain a manufactured home for storage purposes.

Mr. Rickard presented the case. Christie Butterworth was sworn in and testified requesting a special use exception to retain a manufactured home for storage purposes; that the unit is a 1986, 14' x 48'; that the unit will be used strictly for storage only; and that there will be no plumbing facilities in the unit; and that the unit will have electricity.

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

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for storage purposes only**. Vote carried 4 – 0. Mr. Hudson abstained from the case.

#### **OLD BUSINESS**

**Case No. 9894 – Michael S. Melson** – north and south of Road 573, 336 feet south of Road 575.

A special use exception to retain a manufactured home on less than ten (10) acres.

The Board discussed the case which has been tabled since August 20, 2007.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the special use exception be **denied since it does not meet the standards for granting a special use exception**. Vote carried 4 – 0. Mr. Workman did not vote was absent from the hearing.

**Case No. 9908 – Richard Kroos** – east of Captains Lane, being Lot 70, Block 1 within Bayview Estates development.

A variance from the front yard setback requirement.

The Board discussed the case which has been tabled since August 20, 2007.

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.

**Meeting Adjourned 10:04 p.m.**