



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF SEPTEMBER 21, 2009

The regular meeting of the Sussex County Board of Adjustment was held on Monday September 21, 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. John Mills, Mr. Brent Workman and Mr. Jeff Hudson, with Mr. Richard Berl – Assistant County Attorney and staff members, Mrs. Susan Isaacs and Mrs. Kelly Passwaters – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, 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 September 14, 2009 meeting until October 5, 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. 10484 – Myralon Webb- east of Bald Eagle Road, south of First Street, being Lots 61- 64 within Bay Vista development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Myralon Webb was sworn in along with Jim Griffin, Attorney, and testified requesting a 0.9-foot variance from the required 10-foot side yard setback requirement; that the applicant would like to sub-divide the parcel into two (2) parcels; that the homes are currently being used as rental homes; that the variance is needed for the side yards; that the homes were constructed over thirty (30) years ago; that the applicant was not aware that the homes did not meet setbacks; and that it enables reasonable use of the property.

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

The Board found that 3 parties appeared in opposition to the application.

John Reichert was sworn in and testified in opposition to the application and stated that there is water problems between 1st Street and Basin Street.

Mr. Mills explained to Mr. Reichert what the applicant was requesting and there was no longer any opposition to the case.

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. 10485 – Gary, Lyn, Douglas and Carol Everngam- west of Route One, corner of Davis Street and Assawoman Street, being Lots 17 and 18 within Bay View Park development.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Douglas Everngam was sworn in and testified requesting an 18-foot variance from the required 30-foot front yard setback requirement; that he inherited the property from his parents; that one of the applicants is permanently disabled; that the house has suffered water and termite damage; and that the house is not handicap accessible.

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. Workman, and carried unanimously that the variance be **granted for a 7-foot front yard variance since it meets the standards for granting a variance**. Vote carried 4 – 0.

Case No. 10486 – Douglas Ritter and DKR, LLC- north of Road 299, north of Steele Drive, being Lot 19, Block A and B within Steele Land Development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Douglas Ritter was sworn in and testified requesting 0.8-foot variance from the required 10-foot side yard setback requirement; that he purchased the property with just a garage on it; that the manufactured home installer set the home to close to the property line; that the certificate of occupancy was issued;

that when a survey was done the violation was discovered; and that the surveyor feels the monuments were moved.

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 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. 10487 – WITHDRAWN

Case No. 10488 – Robert Robertson- east of Road 271, northeast of Trent Court, being Lot 290 within Canal Point development.

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. Kyle Hamilton was sworn in and testified on behalf of the applicant requesting 2-foot variance from the required 10-foot rear yard setback requirement; that the applicant purchased the home two (2) years ago; that they would like to construct a screen porch; and that the lot is unique in shape.

The Board found that 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 variance be **granted for a cantilevered deck since the lot is unique in shape, 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. 10489 – Donald M. O'Bier, Jr. - west of Road 229, 1,735 feet south of Road 38, being Lot 1.

A variance from the lot width requirement for a parcel.

Mrs. Isaacs presented the case. Donald and Mary Louise O'Bier were sworn in and testified requesting a 31-foot variance from the required 150-foot lot width requirement for a parcel; that they would like to subdivide the parcel; that it was previously approved on May 1, 2006; that they did not record the subdivision; and that they do not intend to subdivide the parcel any further.

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 variance be **granted since it will not alter the essential character of the neighborhood, since the lot is unique in shape, and since it enables reasonable use of the property.** Vote carried 4 – 0.

Case No. 10490 – Richard and Lorraine Cox- intersection of Road 315 and Road 317, being Lot 3.

A special use exception for a commercial dog kennel and a variance from the setback requirements for a kennel.

Mrs. Isaacs presented the case. Richard and Lorraine Cox were sworn in and testified requesting a special use exception for a commercial dog kennel and a variance from the setback requirements for a kennel; that they were not aware there was a ordinance in reference to the number of dogs; that the dogs live inside; that they do not breed dogs and they are only for personal enjoyment only; that the neighbors complained to animal control that the dogs had no outside shelter; that animal control has been out on two (2) different complaints and found no problems; that the dogs are groomed everyday; that there is no urine smell inside the home or outside; and that currently they own ten (10) dogs.

John Thorme was sworn in and testified in opposition to the application and stated he lives next door to the applicant; that the dogs constantly bark all hours of the day and night; that he has to go inside his home when the dogs are outside; that he has health concerns with the dog urine and feces; that the dogs have gotten loose; and that the applicants fence is on the property line.

Latisha Taylor was sworn in and testified in opposition to the application and stated the dogs constantly bark; and that she has filed a complaint with the constable's office.

Dean Johnson was sworn in and testified in opposition to the application and stated that he lives to the north of the applicant; that the applicant started with only two (2) dogs and now has ten (10); that he has talked with the applicants and suggested bark collars for the dogs; that he constructed an addition on his house for privacy from the dogs; that he has called animal control; that one of the dogs got loose and cornered his daughter in his garage; and that when he went into the garage there was a pack of dogs and he swung a club at them to get them away from his daughter.

Joann Taylor was sworn in and testified in opposition to the application and stated that she lives two (2) houses down from the applicant; that her house is currently for sale; that if the realtor comes to her house with a potential buyer the barking dogs may deter them from buying her home; and that it decreases her property value.

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

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

By a show of hands the Board found that 10 parties were present in opposition to the application.

Mrs. Isaacs stated the office received 18 letters 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 4 – 0.

Motion by Mr. Workman, seconded by Mr. Mills, and carried unanimously that the case be **tabled until the October 5, 2009 meeting**. Vote carried 4 – 0.

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

A special use exception for a telecommunication tower.

Mrs. Isaacs presented the case. Bruce DiCentio, Tom Zolna and Bill Panek were sworn in along with Pamela Scott, Attorney and testified requesting a special use exception to place a telecommunication tower; that they would like to erect a 100-foot tall telecommunications tower on commercially zoned property; that currently they experience a gap in coverage along Route 1; that the monopole has been designed to accommodate at least two (2) additional carriers; that the monopole will be set back at least 1/3 the height of the tower; that the ground equipment will be surrounded by a minimum six (6) foot tall fence; that the monopole will have warning lights placed every fifty (50) feet of elevation and shall meet all applicable requirements of the FCC and FAA; that in the event that the monopole is not operated for a continuous period of six (6) months, Cingular shall remove it within ninety (90) days of receipt of notice from the County to remove it; that it will not affect property value; and that they submitted a RF Emissions compliance report.

William Pepper was sworn in and testified in favor of the application and stated that he supplies cell phones to all his employee's to keep in contact in case of an emergency; and that the tower would help with the gap in coverage.

Lew Killmer was sworn in and testified in opposition to the application and stated that he is a member of the Bethany Beach Town Council; that he feels the property was not properly posted; that the tower will affect the residential community; that he feels AT

& T should have notified the town of there request; and that there is no need for additional service in the area.

Dan Castello was sworn in and testified in opposition and stated that he is a member of the Bethany Beach Landowners Association; that this is a residential community; that he see's no reason for approval; that the advertisement sign was located on a property that is for sale; and that he would like to see telecommunication towers located at least 500-feet from residential properties.

Hal Marriott was sworn in and testified in opposition to the application and stated that he is a customer of AT & T; that he occasionally has lost calls; and that he would like to know the reasons that there could not be four (4) 25-foot towers or two (2) 50-foot towers versus the 100-foot tower.

Margaret Young was sworn in and testified in opposition to the application and stated that she does not see the need for a tower; and that it will affect property value.

John Hoefflerle was sworn in and testified in opposition to the application and stated that he represents the property owners in Sea Pines; that he has concerns with the height of the tower; that there are drainage problems; that the tower will have a negative impact on property value; and that if a tower is approved he would like to see the tower at 60-foot in height.

In Rebuttal, Pamela Scott stated that the trees in the area can exceed 65-feet in height; and that anything at or below the tree line will not help the gap in coverage.

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

The Board found that 8 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until the October 19, 2009 meeting**. Vote carried 4 – 0.

The Board took a 10-minute Recess

Case No. 10492 – Robert M. Catron- north of Route 54, west of dirt and stone road being Lot 5 within Mason Dixon Court Mobile Home Park.

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

Mrs. Isaacs presented the case. Robert and Becky Catron were sworn in and testified requesting a 2-foot variance from the required 20-foot separation requirement between mobile #6 and mobile #5 and a 9-foot variance from the required 20-foot

separation requirement between mobile #5 and mobile #4; that the variance was previously approved on June 2, 2008; that the mobile home park is non-conforming; that they cannot find a mobile home small enough to meet the setback requirements; that the lot is narrow; and that it would increase the property value.

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

Case No. 10493 – Mark V. and Sherry L. Redlich- south of Road 224, 1,650 feet east of Road 44.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Sherry Redlich was sworn in and testified requesting a 4-foot variance from the required 15-foot side yard setback requirement for a carport; that they would like to construct a carport on the side of the garage; that she has talked to the neighbors and they do not object.

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 variance be **granted since it is the minimum variance to afford relief, since it is an odd shaped lot, and since it will not alter the essential character of the neighborhood**. Vote carried 4 – 0.

Case No. 10494 – Indian River Power LLC- north of Road 332.

A special use exception for installation of additional air pollution controls.

Mrs. Isaacs presented the case. Jerry Hopper and Amanda Black were sworn in and testified requesting a special use exception for installation of additional air pollution controls; that they would like to install additional state of the art air emission control equipment on Units 3 and 4 at the Indian River Generating Station; that it would reduce the quantity of NOx, SO2 and Hg released to the atmosphere; and that they have applied to DNREC's Air and Waste Management Section for a permit.

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 be **granted since it will not substantially affect adversely the uses of adjacent and neighboring properties**. Vote carried 4 – 0.

Case No. 10495 – Prime LLC- northwest of Road 305, southwest of Route 24.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Martin Ingram was sworn in along with Daniel Myers, Attorney and testified requesting a 24-foot variance from the required 40-foot front yard setback requirement; that the applicant purchased the property in 2008; that he demolished the existing home which had been there since the 1930's; that he constructed a garage with an apartment above; that he thought the setbacks were grandfathered in; and that the septic system can only be placed to the rear of the property.

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. 10496 – Henry James Johnson- west of Route 305, 3,200 feet north of Route 24.

A special use exception for a private garage for more than four (4) automobiles and larger than nine hundred (900) square feet.

Mrs. Isaacs presented the case. David Hutt, Attorney, testified on behalf of the applicant requesting a special use exception for a private garage for more than four (4) automobiles and larger than nine hundred (900) square feet; that the garage measures 40' x 60'; that the garage has five (5) doors across the front and two (2) doors on the back; that the garage has already been constructed; and that the neighbors do not object.

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. 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 properties**. Vote carried 4 – 0.

OLD BUSINESS

Case No. 10450 – Lorene C. Breasure- southeast of Road 321, 533 feet southwest of Road 323, being Parcel B.

A special use exception for a miniature golf course and to retain a golf driving range.

The Board discussed the case, which has been tabled since August 3, 2009.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of two (2) years and that the nets be fixed before March 1, 2010.** Vote carried 3 – 0. Mr. Mills abstained from voting.

Case No. 10481 – Bridle Ridge Properties, LLC- west of Road 275, north of Sandcastle Cove, being Lot 262 within Henlopen Landing Phase 4 development.

A variance from the front yard setback requirement.

The Board discussed the case, which has been tabled since September 14, 2009.

Motion by Mr. Workman, seconded by Mr. Mills, 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 11:00 P.M.