



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF SEPTEMBER 24, 2007

The regular meeting of the Sussex County Board of Adjustment was held on Monday September 24, 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. Lawrence Lank – Director, Mr. Russell Warrington and Mrs. Kelly Passwaters – Recording Secretary.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of September 10, 2007 as circulated. 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. 9932 – Harry E. Joseph- north of Road 262, corner of Road 281 and Road 262.

A variance from the front yard setback requirement.

Mr. Lank presented the case. Harry E. Joseph and Wayne Mitchell were sworn in and testified requesting a 2-foot variance from the required 40-foot front yard setback requirement; that Mr. Joseph plans to add on to the existing home; that he would like the home to retain the farm house look; that the home has been on the property for over 50 years; and that he has already obtained a building permit.

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 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. 9933 – Lacrosse Homes- north of Road 207, south of Blue Spruce Drive, being Lot 6 within Blueberry Hill development.

A variance from the front yard setback requirement.

Mr. Lank presented the case. Darrin Simpson was sworn in and testified requesting a 3.52-foot variance from the required 60-foot front yard setback requirement; that it is a new home for a wounded veteran; that the plans for the home had the garage placed on the right side; that the garage was moved to the left side of the home at the last minute; that the lot is on a cul-de-sac; and that the streets are dedicated to public use.

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 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. 9934 – P & A LLC- east of U. S. Route 13, 2, 050 feet south of Road 452.

A special use exception to place a manufactured home type structure as an office.

Mr. Lank presented the case. Jack Herbert was sworn in with Eric Howard, Attorney, and testified requesting to place a manufactured home as an office; that the company acquired the business 3 years ago; that there are currently 2 manufactured homes on the property; that they are being used for an office and lab; that he would like to replace them in the future with a pole building; that the new manufactured home would be used for additional office space; and that the property is zoned HI-1.

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 special use exception be **granted for a period of 3 years since it will not affect adversely the uses of adjacent and neighboring properties**. Vote carried 4 – 0.

Case No. 9935 – David Pusey and Pusey & Raffensperger Inc.- west of Woodland Way, 288 feet east of Route 24, being Lot 48 within Angola By The Bay development.

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

Mr. Lank presented the case. David Pusey and Steven Baker were sworn in and testified requesting a 4-foot variance from the required 10-foot side yard setback requirement and a 6-foot variance from the required 20-foot rear yard setback requirement; that Mr. Baker would like to add a 6-foot deck that will run the entire length of the home; that he would like to extend the screen porch; that construction has not been started; that the property is adjacent to the common area; and that the property is located on a cul-de-sac.

Cheryl Murray was sworn in and testified in opposition to the application and stated that she would like to know what is actually being built on the property.

Frank Akers was sworn in and testified in opposition to the application and stated he feels that the setback requirements should be met; and that there should be 20-feet between units.

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

By a show of hands 2 parties appeared 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.

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 variance be **granted for the rear yard setback only since the side yard setback is unnecessary and since it meets the standards for granting a variance.** Vote carried 4 – 0.

Case No. 9936 – Lingard I. Whiteford, IV- east of Seafarer Road, south of Route 22, being Lot 76 within White House Beach Mobile Home Park.

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

Mr. Lank presented the case. Lingard Whiteford was sworn in and testified requesting a 14-foot variance from the required 20-foot between units in a mobile home park; that he purchased the mobile home in January 2007; that the original mobile home measures 12' x 56'; that the original mobile home has been torn down; that he would like to replace it with a 24' x 56' doublewide; and that the building permit was obtained by Atlantis Homes.

Kathleen Levering was sworn in and testified stating she lives to the left of the applicant; that she would like clarification because she has also been before the Board of Adjustment; and that she is not in opposition to the application.

Mr. Lank stated he received 1 letter in opposition to the application.

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

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **left open until a survey is submitted**. Vote carried 4 – 0.

Case No. 9937 – Jay Mancuso- Road 277, East Bridgeway Court, being Lot 16 and north ½ Lot 17, Block T within Angola By The Bay development.

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

Mr. Lank presented the case. Jay Mancuso was sworn in and testified requesting a 6.4-foot variance from the required 30-foot front yard setback requirement, a 1.8-foot variance from the required 10-foot side yard setback requirement and a 0.1-foot variance from the required 10-foot side yard setback requirement; that it is a undersized lot; that he obtained a building permit in 2006; that the 2nd story addition encroaches into the side yard setback; that the addition was constructed by the applicant; and that he has owned the property since 1999.

Deborah Gore was sworn in and testified in support of the application and stated that she is the adjacent neighbor; that she feels the addition adds value to the property; and that she would like the variances to be approved.

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 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. Mills, and carried unanimously that the variances be **granted since it will not alter the essential character of the neighborhood**. Vote carried 4 – 0.

Case No. 9938 – M. Catherine Cohee- north of Abbott Drive, 543.77 feet east of Marshall Street (Road 225), being Lot 7 within Eastman Heights development.

A variance from the side yard setback requirement.

Mr. Lank presented the case. M. Catherine Cohee was sworn in and testified requesting a 3-foot variance from the required 15-foot side yard setback requirement; that the variance is for the west side of the property; and that it is for a two (2)-car garage.

Mr. Lank stated the office received 2 letters 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 variance be **granted since it will not alter the essential character of the neighborhood**. 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.

Mr. Lank presented the case. Alyn and Patricia Hulse were sworn in and testified requesting a 8-foot variance from the required 40-foot separation between multi-family structures; that the deck has already been constructed; that the contractor did not obtain a permit; and that the deck measures 10' x 16'.

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 case be taken under advisement. Vote carried 4 – 0.

At the conclusion of the public hearings, the Chairman referred back to his case. Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until the next regular meeting on October 1, 2007**. Vote carried 4 – 0.

Case No. 9940 – Lillian E. Wannall- north of Route 26, 4,300 feet west of Road 340.

A variance from the front yard setback requirement.

Mr. Lank presented the case. Lillian Wannall was sworn in and testified requesting a 9-foot variance from the required 40-foot front yard setback requirement; that the porch has been constructed; that she obtained a building permit; and that the porch wraps around the house.

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 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 next regular meeting on October 1, 2007**. Vote carried 4 – 0.

Case No. 9941 – William T. Miller- intersection of Harmons Lane and Road 273, being Lot 17 within Rehoboth Manor development.

A variance from the front yard setback requirement.

Mr. Lank presented the case. William Miller was sworn in and testified requesting a 8-foot variance from the required 10-foot side yard setback requirement; that he would like to construct a 2nd story deck on his garage; that it would be used for the people that smoke; and that construction has not been started.

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. 9942 – Elizabeth J. Thoman- east of Bay Front Drive, north of Road 357, being Lot 43 within Quillen's Point development.

A variance from the side yard setback requirement.

Mr. Lank presented the case. Elizabeth Thoman and Basil Wisner were sworn in and testified requesting a 4.5-foot variance from the required 5-foot side yard setback requirement; that they would like to build a 6' x 16' tool shed for lawn equipment; that they would like it to be concealed from public view; that they have obtained a building permit; that construction had been started but they have stopped.

David Metzger was sworn in and testified in opposition to the application and stated he is the past president of the Homeowners Association; that construction on the shed was started without approval from the Homeowners Association; that the applicant has not submitted plans to the Homeowners Associations; that he feels due process was not followed; and that the Homeowners Associations did not tell them to obtain a variance.

Carol Tinnin was sworn in and testified in opposition to the application and stated that she is the current Vice President of the Homeowners Association; that there are other

locations on the property to place the shed; and that the covenants do not permit variances.

Mr. Lank stated the office received 3 letters in opposition to the application.

By a show of hands 2 parties appeared in opposition to the application.

The Board found that no parties 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 Mr. Hudson, and carried unanimously that the variance be **granted since it will not alter the essential character of the neighborhood**. Vote carried 4 – 0.

Case No. 9943 – Garry A. and Mary E. McFarland- Canvasback Drive, being Lot 50D within Swann Keys development.

A variance from the side yard setback requirement.

Mr. Lank presented the case. Mary McFarland was sworn in and testified requesting a 2-foot variance from the required 10-foot side yard setback requirement; that the trailer has been torn down; that they would like to construct a new dwelling on the property; that the dwelling will measure 24' x 56'; and that other variances have been approved in the area.

Mr. Lank stated that the office received 1 letter in favor 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. 9944 – Gordon E. and Mary E. Seaman- intersection of Road 422 and Road 421, being Lot 4.

A variance from the side yard setback requirements.

Mr. Lank presented the case. Gordon and Mary Seaman were sworn in and testified requesting a 4-foot variance from the required 15-foot side yard setback requirement; that they purchased the property in 2005; that when the home was placed on the property you were not suppose to see the garage from the kitchen; that when he

measured the distance from the home to the garage that's when he discovered the encroachment; and that he purchased the home from Oakwood Homes.

Vivian Porter was sworn in and testified in support to the application and stated that she is the next door neighbor and that she does not object to the variance.

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. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted since it is the minimum variance to afford relief, since it was not created by the applicant and that a letter be sent to Oakwood Homes.** Vote carried 4 – 0.

The Board took a 10-minute Recess

Case No. 9945 – John R. French, Jr.- south of Road 46, 649 feet north of Shore Drive, being Lots 16 and 17, Block B within Lakeshores development.

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

Mr. Lank presented the case. John French was sworn in and testified requesting a 3.5-foot variance from the required 30-foot front yard setback requirement and a 8-foot variance from the required 15-foot side yard setback requirement; that he built a game room for his grandchild; that he enclosed the porch; and that he is requesting that the application fee be waived.

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 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. 9946 – Thomas L. and Linda L. Anderson- south of Road 502, west of Penn Central.

A special use exception for a tire recycling processing facility.

Mr. Lank presented the case. Thomas and Linda Anderson were sworn in and testified requesting a special use exception for the operation of a tire recycling processing facility; that the facility would be open from 8:00 a.m. – 5:00 p.m. Monday thru Friday and from 8:00 a.m. – 3:00p.m. on Saturday; that he has all the required permits; that it

will not create any noise; that the tires will be brought in by truck loads; and that they will be sorted and shredded.

Mr. Berl stated to the applicants that the office received a letter from the State of Delaware in reference to deficiencies and that they must come in compliance with what is required.

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 with the stipulation that they receive all government agency approvals and since it will not affect adversely the uses of adjacent and neighboring properties.** Vote carried 4 – 0.

OLD BUSINESS

Case No. 9909 – James E. Cregan- west of road 362, north of Holly Street, being Lot 9, Section 3, Block E within Shady Dell Park development.

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

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances 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. 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.

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

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 and that a letter be sent to the HVAC contractor.** Vote carried 4 – 0.

Case No. 9925 – Gary and Margaret Oxbridge- 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. Hudson, seconded by Mr. Mills, and carried unanimously that the case be **tabled until the next regular meeting on October 1, 2007**. Vote carried 4 – 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.

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.

OTHER BUSINESS

Case No. 9641 – Michael and Gloria Brandon- west of Road 273, southeast of Burton Avenue, being Lot 21-A within West Rehoboth.

A variance from the front yard setback requirement.

Mr. Lank read a letter from the Applicant requesting a time extension.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the request for a time extension be **granted for a period of 1 year**. Vote carried 4 – 0.

Case No. 9633 – County Bank- south of Route One, 1350 feet east of Road 271.

A variance from the minimum parking space requirement, a variance from the minimum loading space requirement, and a variance from the minimum buffer requirement.

Mr. Lank read a letter from the Applicant requesting a time extension.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the request for a time extension be **granted for a period of 1 year**. Vote carried 4 – 0.

Meeting Adjourned at 9:55 p.m.