



Board of Adjustment

Agendas & Minutes

MINUTES OF SEPTEMBER 25, 2006

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 25, 2006, 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. Rick Berl – Assistant County Attorney, Ms. Dawn Hudson – Secretary to the Board, Mrs. Melissa Thibodeau – 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. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of September 11, 2006 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. 9616 – Joseph and Alberta Peronti – north of Road 358, southeast of Quail Road, being Lot 79 within Bay Shore Mobile Home Park.

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

Ms. Hudson presented the case. Joseph and Alberta Peronti were sworn in and testified requesting a 3-foot variance from the required 20-foot separation requirement between units in a mobile home park, a 2-foot variance from the required 5-foot rear yard setback requirement, a 10%-variance from the required 35% maximum allowable lot coverage requirement in a mobile home park, and a 320-square-foot variance from the 1,120-square-foot maximum allowable square footage for the lot; that the lot is only 40-foot wide; that the proposed unit is 14' x 72'; that there will also be an 8' x 50' deck; that

the neighboring unit is only 3-foot off the property line; and that the mobile home park is in support of the application.

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 variances be **granted since the lot is unique in size**. Vote carried 5 – 0.

Case No. 9617 – Luella M. Derrickson – north of Route 18, east corner of Ritter Road.

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A variance from the minimum lot width for a parcel and a variance from the minimum square footage requirement for a parcel.

Ms. Hudson presented the case. Kathy Ford and Jim Hudson were sworn in and testified requesting a 50-foot variance from the required 150-foot lot width requirement, a 50.16-foot variance from the required 150-foot lot width requirement for a parcel and a 1,755-square-foot variance from the required 20,000-square-foot lot size requirement for a parcel; that the Applicant has owned the property since 1950; that they want to subdivide the parcel and create 3-lots; that the rear lot was a separate parcel at one time; that DelDOT has granted a new access on Ritter Road for Lot 2; that the access for Lot 2 off Savannah Road will be removed; that only Lot 3 will have access from Savannah Road; that the family owns the adjacent property; that the family will retain ownership of Lot 1; that there is a pending contract on Lot 2; and that Lot 3 will be sold as a single-family building 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 variances be **granted since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 9618 – Frank S. and Lisa L. Bennett – southeast of Route 54, 767 feet northeast of Road 356.

A variance from the maximum age requirement for placement of a manufactured home.

Ms. Hudson presented the case. Frank and Lisa Bennett were sworn in and testified requesting a variance from the maximum age requirement for placement of a manufactured home; that the land where their manufactured home is currently located has

been sold; that they want to purchase this property to place their manufactured home; that the unit is a 1997 double-wide with a tag room; and that they submitted pictures.

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. Hudson, seconded by Mr. Mills, and carried unanimously to re-open the hearing. Vote carried 5 – 0.

Mr. Hudson wanted to verify that the Applicant's owned the manufactured home and not the land where the unit is currently located.

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. 9619 – Tracey Shaffer Carey – south of Route 54, east of Keenwik Road, being Lot 6, Block G within Keen-Wik Subdivision 3.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Charles Killen was sworn in and testified requesting a 5-foot variance from the required 30-foot front yard setback requirement for a proposed dwelling; that the proposed dwelling will be in line with the existing dwellings on the street; that the average front yard is at 25-foot; and that he believes the existing dwelling was also at 25-foot.

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

Ms. Hudson stated that the office received 1-letter in opposition to the application.

Ms. Hudson stated that there have been numerous variances granted in the development.

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. 9620 – Peter and Maryann Saporosa – north of Route 54, east of Blue Teal Road, being Lot 16, Block B within Swann Keys development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Peter Saporosa and Charles Killen were sworn in and testified requesting a 4-foot variance from the required 10-foot side yard setback requirement for an air conditioning unit and a set of steps; that they plan to replace the

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existing unit; that the proposed unit will measure 24' x 60'; that the original application did not include a set of steps; and that they will re-apply for a variance on the opposite side.

The Board members 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. 9621 – Miller and Lewis – east of Road 279, 1,150 feet north of Road 279A.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Tim Miller was sworn in and testified requesting a 0.5-foot variance from the required 10-foot side yard setback requirement for an existing manufactured home; that there was a miscommunication between the surveyor and the mobile home company; that Atlantis Homes placed the unit; that the surveyors staked out the lot; and that rather than centering the unit between the stakes the mobile home company tried to line it up with the stakes on one side.

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 since it is the minimum variance to afford relief**. Vote carried 5 – 0.

Case No. 9622 – Joseph and Kirsten Robinson – northeast of Route 20, 260 feet southeast of private road, being Lot 1 within Abington Lake development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Joseph and Kirsten Robinson were sworn in and testified requesting a 0.4-foot variance from the required 15-foot side yard setback requirement for an existing dwelling; that he was the general contractor; that he measured from the foundation to meet the setback requirement; that the encroachment was created when he added brick to the foundation; and that the neighbors support the application.

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The Board members 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 character of the neighborhood and since it is the minimum variance to afford relief**. Vote carried 5 – 0.

Case No. 9623 – John M. Wilkins – southeast of Route 24, west of Meadow Branch Drive, being Lot 15A, Section A within Hollywoods Park development.

A special use exception to build an accessory structure without a main building.

Ms. Hudson presented the case. John Wilkins was sworn in and testified requesting a special use exception to build an accessory structure without a main building; that his dwelling is on Lot 16A; that the proposed garage will be built on Lot 15A; that he uses Lot 15A as his backyard; that the garage will be for his personal use; that the garage doors will face the back of his dwelling; that he has no intention of selling the lots separately; and that the property can be accessed from Meadow Branch Road.

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

Ms. Hudson stated that the office received 1 letter in support of 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 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. Hudson, and carried unanimously that the variance be **granted with the stipulation that both lots maintain common ownership since it will have no substantial effect to the neighborhood.** Vote carried 5 – 0.

Case No. 9624 – Great American Homes, Inc. – west of Road 583, 80.5 feet north of First Street.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Shannon Carmean, Attorney, was present on behalf of the application, and testified requesting a 0.1-foot variance from the required 40-foot front yard setback requirement for an existing dwelling; that the encroachment

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was discovered by a survey done for settlement; that both the seller and buyer were unaware of the encroachment; that the Certificate of Compliance was issued; that to move the dwelling into compliance would create unnecessary hardship; that this is the minimum variance to afford relief; and that it will not alter the character of the neighborhood.

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

Case No. 9625 – Melvin and Wanda Dehn – north of Road 77, 260 feet west of private road, being Lot B.

A variance from the provisions and requirements to place a manufactured home, a variance from the front yard setback requirement and a variance from the maximum age requirement to place a manufactured home.

Ms. Hudson presented the case. Melvin and Wanda Dehn were sworn in and testified requesting a 10-foot variance from the required 24-foot width requirement for a manufactured home, a 9-foot variance from the required 30-foot front yard setback requirement for a shed, a 30-foot variance from the required 30-foot front yard setback requirement for a shed and a variance from the maximum age requirement to place a manufactured home; that they purchased the property in 1996; that they subdivided the property in 1998; that the property had an existing manufactured home on the lot that they sold; that they did not realize they were not permitted to place another manufactured

home on the property; that they placed the manufactured home in 2003; that they obtained a placement permit in 2004; that the permit was issued in error and was voided; and that they obtained permits for the sheds.

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.

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 variances be **granted with the stipulation that the Applicant obtain a placement permit for the manufactured home**. Vote carried 5 – 0.

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Case No. 9626 – Katherine O’Keefe – east of Road 273, north of Mallory Square Circle, being Unit 61 within Keys of Marsh Harbor.

A variance from the rear yard setback requirement.

Ms. Hudson presented the case. Katherine O’Keefe was sworn in and testified requesting a 3.6-foot variance from the required 15-foot rear yard setback requirement for a proposed deck; that the proposed deck will measure 10’x 16’; that the Homeowner’s Association and Architectural Review Board support the application; and that she plans to plant trees on the back property line.

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. 9627 – Bruce and Janet Hoover – north of Route 54, east of Canvasback Drive, being Lot 36, Block D within Swann Keys development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Bruce and Janet Hoover were sworn in and testified requesting a 4-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that the lot measures 40’x 105’; that the unit to be placed on the lot is 24-foot wide; that the existing shed has been granted a variance; that the air conditioning unit will be on the same side as the existing shed; that the application

does not include the steps needed on the side of the requested variance; that she mailed the new drawing to Planning & Zoning however they did not receive it in time for advertisement; and that the Homeowner's Association denied the request and directed the Applicant to apply to the Board.

John McCamant, Howard Zook and Helen Zook were sworn in and stated that they needed clarification of the request.

Mr. Mills explained the variance request to the neighbors; and that after the explanation they were in support of the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for a 4-foot variance on the southwest side of the property and**

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that the application fee be waived on the second variance application needed for the steps since it meets the standards for granting a variance. Vote carried 5 – 0.

Case No. 9628 – Linda Rudnick – north of Road 341, southeast of East Lagoon Road, within Dogwood Acres development.

A variance from the side yard setback requirement and a variance from the maximum height requirement for a fence.

Ms. Hudson presented the case. Linda Rudnick was sworn in and testified requesting a 1-foot variance from the required 7-foot maximum height requirement for a fence and a 10-foot variance from the required 10-foot side yard setback requirement for an existing garage; that she sold the property in July; that the encroachment was discovered on a survey done for settlement; that she purchased the property in 2003; that all the improvements already existed as they are; and that the fence blocks the garage from the neighbor.

The Board members 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 variances be **granted since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

Case No. 9629 – Pennsy Supply, Inc. d/b/a Tilcon Delaware – north of Road 322, 1,400 feet southwest of U.S. Route 113.

A special use exception to renew an asphalt batching plant approval.

Ms. Hudson presented the case. Wayne Ellingsworth and Chris Werner were sworn in with Jim Fuqua, Attorney, present on behalf of the application, and testified requesting a special use exception to renew an asphalt batching plant approval; that the asphalt batching plant has existed for 10-years; that there is still a great need for the plant; that the location of the plant is beneficial to the entire County; that this is a standard request for extension of an existing special use; and that they request the use for 5-years with the same stipulations.

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

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Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that he special use exception be **granted since there is no substantial effect to the neighborhood**. Vote carried 5 – 0.

Case No. 9630 – Cingular Wireless – west of Road 365, north of Road 84.

A special use exception to erect a telecommunications tower.

Ms. Hudson presented the case. Tom Zolna, William Pannik, and Mark Rubin were sworn in with Pamela Scott, Attorney, present on behalf of the application, and testified requesting a special use exception to erect a telecommunications tower; that the tower will be a 150-foot tall steel monopole structure; that there is a gap in coverage in the area of the proposed location; that there are no other structures to collocate on in the area; that the tower will provide collocation for other providers; that the property is a 13-acre parcel; that the property is used for agricultural purposes; that the location of the tower will be along the tree line on the property; that the tower will be 158-foot from the road; that there will be a 12'x 20' equipment shelter; that there will be a 60'x 60' fenced in compound area at the base of the tower; that without the tower there is approximately a 2-mile gap in coverage in that area; that the tower meets the health standards followed by the FCC; that the exposure is so low there could be approximately 300 to 400 towers on this site and still meet the safety standards; and that over 50% of all 911-Emergency calls are phoned in on cellular phones.

Paul Jancovich was sworn in and testified in opposition to the application and stated that he is an adjacent property owner; that he does not understand why the Applicant chose a new location only a few hundred feet from the location that was denied; that he is concerned for the safety of the surrounding property owners; that there are buried gas tanks on this property; that he feels the tower will attract lightning which

will create an explosion due to these leaking gas tanks; that the tower sends out an unknown level of microwave signals that could harm children; that he feels Cingular is misleading the public; and that he submitted articles, pictures and a petition.

Lee Ann Evans was sworn in and testified that she and her husband own the property; that the underground gas tanks have been removed; that DNREC has approved the site and stated there was no leakage from the tanks; that they did not want to purchase the property until the tanks were removed; and that her husband's mother owned the property prior to their ownership.

In rebuttal, Pamela Scott, stated that the information submitted by the opposition is irrelevant and should not be considered; that the Cingular representatives have never had a tower that was struck by lightning to create any explosions; that the towers are

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grounded for safety; that the tower needs to be in this area to cover the gap in coverage; and that the tower meets all requirements governed by the County.

In rebuttal, Paul Jancovich, stated that he does not believe the tanks have been removed; and that the Board should request the Applicant provide proof that the tanks have been removed.

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

By a show of hand 1 party appeared in opposition to the application.

Ms. Hudson stated that the office received a petition with 83-signatures in support of the application.

Ms. Hudson stated that the office received a petition with 77-signatures 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.

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 **left open until October 16, 2006 for submission of FAA lighting regulations**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 9607 – Scott Rukowicz – east of Road 321, north of Hickory Drive, being Lot 14 within Piney Grove Manor development.

A variance from the front yard setback requirement.

The Board discussed the case which has been tabled since September 11, 2006.

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the variance be **granted since it is the minimum variance to afford relief**.
Vote carried 3 – 1.

Case No. 9608 – William C. and Doris R. Betts – southwest of Road 326, 800 feet south of Road 432.

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A variance from the maximum age requirement for placement of a manufactured home.

The Board discussed the case which has been tabled since September 11, 2006.

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.

Case No. 9613 – American Tower Corporation – south of Road 26, 50 feet west of Road 17.

Amend the stipulations of approval for Case No. 9424 (Omnipoint Communications).

The Board discussed the case which has been tabled since September 11, 2006.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until October 16, 2006**. Vote carried 4 – 0.

Meeting Adjourned 10:20 p.m.