



Board of Adjustment
Agendas & Minutes

MINUTES OF FEBRUARY 14, 2005

The regular meeting of the Sussex County Board of Adjustment was held on Monday evening, February 14, 2005, 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. Callaway, Mr. McCabe, Mr. Workman and Mr. Hudson, with Mr. Berl – Assistant County Attorney, Ms. Hudson – Zoning Inspector, II, Mr. Rickard – Secretary to the Board, and Mrs. Norwood – Recording Secretary.

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

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously to approve the Minutes of February 7, 2005 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.

Case No. 8961 – Resort Broadcasting Co. – 300 feet east of Road 288, 3,600 feet south of Road 287.

A special use exception for a special height exception for a 500-foot radio-broadcasting tower.

Mr. Rickard presented the case. Dan Gaffney was sworn in with Jim Fuqua, Attorney, on behalf of the application, and testified requesting a special height exception for a 500 foot radio broadcasting tower; that the existing tower is 300-foot high; that the proposed tower will not exceed 500-foot in height; that the existing tower is 30-years old; that the new tower will improve existing reception to the listening area; that the tower will meet the lighting requirements; that there will be a 6-foot high fence around the base of the tower; that there will be 2 platforms on the new tower for additional equipment; that in order to meet the required setbacks for the tower they have revised the height of the proposed tower to 435-foot high; that by reducing the proposed height to 435-foot they can meet the required 145-foot setback requirement; that the tower currently has equipment to service Redi-call and Conectiv; that the existing buildings will remain the

same; that the proposed tower will be placed more to the rear of the building; that they will submit a new site plan; and that they submitted information packets.

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 case be **tabled until March 7, 2005**. Vote carried 4 – 0.

Minutes
February 14, 2005
Page 2

Case No. 8962 – First State Sign Co. – northeast of Route One, 160 feet southeast of Road 270-A.

A variance for a second wall sign.

Mr. Rickard presented the case. Dale McCallister was sworn in and testified requesting a variance for a second wall sign; that the proposed sign is for the rear of the existing WSFS bank; that the sign will face the rear parking lot; that the sign is not visible from Route One; that the sign is a replica of the sign on the front of the bank; that the sign will measure 51-square-foot; that the wall coverage of the sign is 3.8%; and that most of the banks clients use the rear parking lot.

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 is a minimum variance**. Vote carried 4 – 0.

Case No. 8963 – North Star and Harry Jarvis – south of Route 26, 200 feet east of Road 270-A.

A variance for additional wall signs and a variance from the maximum allowable size for wall signs.

Mr. Rickard presented the case. Harry Jarvis was sworn in and testified requesting a variance for an additional wall sign and a variance from the allowable maximum allowable size for wall signs; that he has been in business for 6-years; that he just moved the business to this location from his residence; that he was not aware that building permits were needed for signs; that he has received violation notices from the Planning and Zoning Department; that the second ground sign will be removed; that one wall sign measures 64-square-foot; that the second wall sign measures 320-square-foot; that the second wall sign covers approximately 15% of wall space; that the entire wall space of that side of the building is 2,090-square-foot; and that he submitted pictures.

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 case be **tabled until March 7, 2005**. Vote carried 4 – 0.

Case No. 8964 – Andrew Hammaker Custom Builder, Inc. – west of Road 273, southwest of Oranmore Avenue, being Lot 66 within Kinsale Glen development.

Minutes
February 14, 2005
Page 3

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Andrew Hammaker was sworn in and testified requesting a 17.6-foot variance from the required 30-foot front yard setback requirement for an existing dwelling; that he has been in business on his own for about one year; that when he purchased the lot a building permit had already been obtained and the property had already been staked out; that he was not aware of the encroachment until about 6-weeks ago; that the lots on this back street are smaller than other lots in the development; that there is a conservation line that also needs to be considered; that due to a bend in the road the encroachment does not stand out; that the dwelling has been built on a half walkout basement; that to relocate the dwelling would cost approximately \$120,000; that he submitted pictures; and that there have been other variances granted in the development.

Margaret Morgan was sworn in and testified in support of the application and stated that she is the future purchaser of the dwelling; that she has had a contract of sale on the dwelling since September 30, 2004; that she has invested \$9,500 in the dwelling; that the dwelling is an enhancement to the community; and that it does not appear out of character with the neighborhood.

Tom Buck was sworn in and testified in support of the application and stated that he is a homeowner in the development; that the encroachment is not visible; and that the dwelling is less intrusive to the conservation line.

John J. Jones was sworn in and testified in opposition to the application and stated that the Homeowner's Association is in opposition to the application; that there have been variances granted in this development, however they were minimum requests; and that he did not notice the encroachment until it was brought to his attention.

In rebuttal, Tom Buck, stated that there are only 5 lots left to build on in the development; and that this would not set a precedent.

In rebuttal, Andrew Hammaker, stated that the bend in the road creates a less intrusive appearance; that he owns 2 of the 5 lots left to build on; and that he has been approached to build a dwelling on the lot adjacent to this lot.

By a show of hands 6 parties appeared in support of the application.

By a show of hands 3 parties appeared in opposition to the application.

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

Minutes
February 14, 2005
Page 4

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be **tabled until March 7, 2005**. Vote carried 4 – 0.

Case No. 8965 – William E. Depuy – north of Route 54, east of Mallard Drive, being Lot 8, Block 8, Block H within Swann Keys development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. William Depuy was sworn in and testified requesting a 2-foot variance from the required 10-foot front yard setback requirement; that the existing unit measures 22' x 64'; that the proposed unit will measure 28' x 70'; and that the unit will be placed within the same basic footprint as the existing unit.

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 4 – 0.

Case No. 8966 – Anthony and Darlene Ferrara – north of Route 54, west of Canvasback Road, being Lot 98, Block D within Swann Keys development.

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

Mr. Rickard presented the case. Anthony Ferrara was sworn in and testified requesting a 3-foot variance from the required 10-foot side yard setback requirement, a 1-foot variance from the required 10-foot side yard setback requirement and a 1.2-foot variance from the required 10-foot front yard setback requirement; that is replacing his existing 24' x 64' unit with a 24' x 80' unit; that the proposed unit will be within

basically the same footprint as the existing unit; and that the length of the unit may be shortened to maintain 10-foot between the unit and bulkhead.

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 variances be **granted since it will not alter the character of the neighborhood**.
Vote carried 4 – 0.

Minutes
February 14, 2005
Page 5

Case No. 8967 – John J. Jennings – south of Road 277, east of Holly Court, being Lot 22, Block J, Section 2 within Angola By The Bay development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. John Jennings was sworn in and testified requesting a 5-foot variance from the required 5-foot side yard setback requirement for a proposed detached garage; that the proposed detached garage will measure 13' x 22'; that he owns the adjacent lot; that he plans to use the garage for both properties; that the two lots use the same driveway; that the garage doors will face the adjacent property; that he plans to make this his permanent residence; and that due to the septic system the garage cannot meet the required setback requirement.

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 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. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted since he owns the adjacent lot and since it will not alter the character of the neighborhood**. Vote carried 4 – 0.

The Board recessed for 10-minutes.

Case No. 8968 – David J. and Jessica H. Lutz – east of Route One, east of Seaside Drive, being Lot 17 within Bethany Village development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Vicki Yorke was sworn in with Doug Marshall, Attorney, on behalf of the application, and testified requesting a 0.2-foot variance from the required 15-foot side yard setback requirement; that the survey prepared for settlement showed the encroachment; that the dwelling is on piling; that the deck is uncovered; that the Certificate of Compliance was issued in 1985; and that there will be no adverse effect to the neighborhood.

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

Minutes
February 14, 2005
Page 6

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 and is a minimum variance**. Vote carried 4 – 0.

Case No. 8969 – Charles Parsons – northeast of Road 370, 300 feet southeast of Road 370-B.

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

Mr. Rickard presented the case. Charles Parsons was sworn in and testified requesting a 21.6-foot variance from the required 150-foot lot width requirement for a parcel; that they want to build a new dwelling; that they plan to subdivide the parcel with the existing dwelling; that the existing dwelling will meet the required setbacks; that the building on the rear of the proposed lot was built in 1965; that he owns the adjacent property; and that his parents own some adjacent property.

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. McCabe, and carried unanimously that the case be **tabled until March 7, 2005**. Vote carried 4 – 0.

Case No. 8970 – Dr. and Mrs. Francis Palermo – Pennsylvania Street east of East Lake Drive, being Lot 6 within Lands of Irene Carpenter Draper development.

A variance from the maximum allowable height requirement for a structure.

Mr. Rickard presented the case. Dr. Francis Palermo and Joe Jancuska were sworn in with Tim Willard, Attorney, on behalf of the application, and testified requesting a 6-foot variance from the required 42-foot maximum allowable height

requirement for a structure; that due to some changes made in the construction of the dwelling the cupola cannot meet the required height requirement; that steel was used rather than wood; that by using steel the ductwork could not be run through the joists; that the dwelling next door is 48-foot in height; that that dwelling was built prior to the ordinance amendment; that all construction was stopped when the encroachment was discovered; that only 11% of the roof area is higher than 42-foot; that they exhausted all other possibilities to correct the problem prior to applying for the variance; the Homeowner's Association approved the original plans that were submitted in August 2003; that in November 2004 the Homeowner's Association was comfortable with the architectural changes; that without the variance the room becomes unusable; that the

Minutes
February 14, 2005
Page 7

cupola was designed to be used as an office and to gain access to a rooftop deck; and that they submitted pictures.

Mary Schrider-Fox, Attorney, on behalf of the application for the opposition stated that the Homeowner's Association approved of the dwelling in August of 2002 based on the assumption that the dwelling would meet all County requirements; that the letter in November 2004 is in favor of a reduced variance request; that the Homeowner's Association feels a 6-foot variance is a significant request; that the Homeowner's Association is dedicated to preserving the view; that though the property is unique, it is not unique from the rest of the development; that although the Homeowner's Association is sympathetic to the Applicant's situation the mistakes made by the General Contractor fall back to the responsibility of the owners; that a superior court judge overturned a decision made by the City of Lewes in a similar situation; that the owners must bear the actions of their contractors; that the need for a variance was discovered in the beginning of construction yet they preceded with the construction; and that there is not a practical difficulty to the Applicant.

In rebuttal, Dr. Francis Palermo, stated that the entire structure does not encroach the height requirement; that the room and deck will be unusable without the variance; that they have made some changes to the dwelling that the Homeowner's Association had requested; that the proposed plan is better than what is currently there; and that he feels that since they did not make all of the changes requested by the Homeowner's Association the Homeowner's Association is opposed to this application.

John Burke was sworn in and testified in opposition to the application and stated that he is concerned that granting the variance will set a precedent; that the large structure will not be uniformed with the development; that the structure will be out of character with the skyline; that the dwelling looks just fine in its current state; and that he submitted letters.

By a show of hands, 3 parties appeared in support of the application.

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

Mr. Rickard stated that the office received 4 letters in support of the application.

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until March 7, 2005**. Vote carried 4 – 0.

Case No. 8971 – Bernard Dera, Jr. – north of Road 357, 146 feet southwest of S. Penny Lane.

Minutes
February 14, 2005
Page 8

A variance from the minimum lot width requirement for parcels.

Mr. Rickard presented the case. Bernard Dera, Jr. was sworn in with David Weidman, Attorney, on behalf of the application and testified requesting a 20.62-foot variance from the required 150-foot lot width requirement and a 58.02-foot variance from the required 150-foot lot width requirement for parcels; that the property is triangle in shape; that he wants to subdivide the property and build a dwelling; that his uncle lives in the adjacent parcel; that DeIDOT has no objections to the application; that the it would create a hardship if he could not live next to his daughter and older relatives; that the existing dwelling is older and has already been added on to; that the proposed parcel could not be otherwise developed; and that a minimum variance has been requested to create the 2-lots.

Roger Dean was sworn in and testified in opposition to the application and stated that the subdivision will increase the traffic problem; and that he lives across the street.

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until March 7, 2005**. Vote carried 4 – 0.

Case No. 8972 – Cingular Pennsylvania, LLC – west of Route 24, 4,400 feet east of Road 277.

A special use exception to erect telecommunications monopole and a variance from the setback requirement.

Mr. Rickard presented the case. Susan Tierney, Andrew Peterson and Tom Zolnar were sworn in with Pam Scott, Attorney, on behalf of the application and testified requesting a special use exception to erect a telecommunications monopole and a 20-foot variance from the required 50-foot front yard setback requirement for a tower; that the tower will be 160-foot in height; that the tower will eliminate the gap in coverage for Cingular; that there is an existing 140-foot tower on the site; that the existing fire

company uses the tower; that the existing tower cannot be used for the proposed use; that the existing tower is a light duty tower intended for a whip type antenna; that due to the existing parking lot and septic system the tower cannot be located anywhere else on the property; that the tower can accommodate the fire company antennas and at least 2 other carriers; that there will be a 6-foot high fence around the tower; and that the tower meets all FAA requirements.

Angela Millman was sworn in and testified in opposition to the application and stated that she lives on Road 277; that the tower will be placed near the rear of her property; that she feels the towers are not very appealing to look at; and that the tower is too close to her property.

Minutes
February 14, 2005
Page 9

Richard Bunting was sworn in and testified in support of the application and stated that the tower is a huge benefit to the citizens in the surrounding areas; that 60% of all 911 calls are made from cell phones; that this number will only increase in time; that the tower will help support the financial needs of the fire company and keep it running; and that to the rear of the property there are electric poles that run across the properties and look very similar to the proposed tower.

By a show of hands, 7 parties appeared in support of the application.

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

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the special use exception and variance be **granted since it will not alter the character of the neighborhood**. Vote carried 4 – 0.

Case No. 8973 – Two Farms Inc. – west of U.S. Route 13, southeast of Concord Road.

A variance for additional wall signs.

Mr. Rickard presented the case. John Sapowsky was sworn in and testified requesting a variance for five (5) additional wall signs; that the signs are standard for Royal Farms; that the proposed signs are the same as the signs on the Bridgeville store; that the signs will cover 5% of the wall; that the total square footage of the signs will only be 18-square-foot over the permitted 100-square-foot requirement; and that he submitted pictures.

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**. Vote carried 4 – 0.

Case No. 8974 – CJR Associates – northeast of Road 312, 378 feet west of Road 312-A, being Lot A-4 within Isaac Harmon development.

A special use exception for extension of non-conforming use and a variance from the minimum required parking spaces.

Mr. Rickard presented the case. Rob Witsil, Attorney, on behalf of the application testified requesting a special use exception for extension of a non-conforming use and a 5 parking space variance from the required 57 parking space requirement; that they plan to

Minutes
February 14, 2005
Page 10

add a 20' x 28' outdoor service area for smoking and a picnic area; that there will be patio type tables and chairs; that the Applicant has been in business for 41-years; that there will be 51-parking spaces available; that there will be no adverse effect to the neighborhood; and that the neighbors are in support of the application.

By a show of hands 7 parties appeared in support of the application.

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

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the special use exception and variance be **granted since it will not alter the character of the neighborhood and is a minimum variance**. Vote carried 4 – 0.

Case No. 8975 – Spencer T. Fogle – south of Route 54, east of Cleveland Avenune, being Lot 7, Block 4 within Cape Windsor development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. John Fogle was sworn in with Rob Witsil, Attorney, on behalf of the application and testified requesting a 1.1-foot variance from the required 10-foot side yard setback requirement for a deck, a 6.1-foot variance from the required 5-foot side yard setback requirement for a dwelling and a 10-foot side yard setback requirement from the required 10-foot side yard setback requirement for an attached shed, deck, steps and air conditioning unit; that the Applicant purchased the property in 1995; that the dwelling was built in 1981; that a variance has been granted previously for this property; that there has been no new construction since 1981; that there was some variances not requested before; and that John Fogle confirmed the testimony.

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. Hudson, and carried unanimously that the variances be **granted**. Vote carried 4 – 0.

Meeting Adjourned 11: 15 p.m.