



Board of Adjustment

Agendas & Minutes

MINUTES OF MARCH 6, 2006

The regular meeting of the Sussex County Board of Adjustment was held on Monday, March 6, 2006, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:05 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Callaway, Mr. McCabe, Mr. Mills, Mr. Workman and Mr. Hudson, with Mr. Berl - Assistant County Attorney, Mr. Rickard – Secretary to the Board, and Mrs. Norwood – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Workman and carried unanimously to approve the Revised Agenda with the correction to move Case No. 9394 – Diana Barone under Old Business to the beginning of the hearings. Vote carried 5 – 0.

Motion by Mr. Mills, seconded Mr. Hudson, and carried unanimously to approve the Minutes of February 27, 2006. 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. 9394 – Diana Barone – south of Route 22, south of West River Drive, being Lot 48 within White House Beach Mobile Home Park.

A variance from the separation requirement between units in a mobile home park and a variance from the side yard and front yard setback requirements.

Mr. Berl stated that William Showell was subpoenaed to attend the meeting.

William Showell and Brian Showell were sworn in and testified on behalf of the park's roll in the placement of this mobile home in the mobile home park; that they marked the lot for the placement of the unit; that the unit was to be placed in the same footprint as the previous unit; that they advised the Applicant to apply for a variance; that a portion of the park is over 50-years old; that there have been numerous variances granted in the park; that the larger units create a chain reaction of units that cannot meet the required setback requirements; that they have been working with a surveyor for approximately 1-month; and that they will meet a Planning & Zoning inspector on the lot to show them the markers.

Motion by Mr. Mills, seconded by Mr. McCabe, 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 with the recommendation from the Board that a temporary Certificate**

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of Compliance be issued to the Applicant with the stipulation that the park owner must provide a survey to the Board within six (6) months. Vote carried 5 – 0.

Case No. 9414 – Billy and Janis Davis – east of Road 70, 720 feet north of Road 451.

A variance from the minimum lot width requirement and a variance from the side yard setback requirement.

Mr. Rickard presented the case. Harold Truxon was sworn in and testified requesting a 29.43-foot variance from the required 150-foot lot width requirement for a parcel and a 1.4-foot variance from the required 15-foot side yard setback requirement for an existing mobile home; that Delmar Homes is interested in purchasing the property; that they want to subdivide the parcel; that the existing dwelling is non-conforming; and that they plan to sell the property.

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 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until March 20, 2006.** Vote carried 5 – 0.

Case No. 9415 – James D. Kandler – south of Road 312, .2 mile west of Road 297, being Lot 2 within Oak Orchard.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. James Kandler was sworn in and testified requesting a 4.5-foot variance from the required 10-foot side yard setback requirement, a 1.7-foot variance from the required 10-foot side yard setback requirement and an 8.3-foot variance from the required 10-foot side yard setback requirement for a proposed addition; that he wants to raise the dwelling; that there will be a 2-car garage underneath the

dwelling; that the existing dwelling is non-conforming; that by raising the dwelling it will meet the flood zone requirements; that the only new encroachment to the property will be the proposed steps; and that the neighbors support the application.

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.

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

Case No. 9416 – Jerry Stansberry – west of Route One, northeast of Quillen Road, being Lot 25 within Suburban Development Corporation.

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

Mr. Rickard presented the case. Jerry Stansberry was sworn in and testified requesting a 1.1-foot variance from the required 10-foot side yard setback requirement and a 1.1-foot variance from the required 5-foot rear yard setback requirement for a proposed dwelling; that the Board approved the same variances in 2003; that she never began construction; that she is simply re-applying for the same variances; and that she is ready to begin construction.

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.

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. 9417 – Beverly Hogate – south of Route 54, east of Roosevelt Avenue, being Lot 26 within Cape Windsor development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Beverly Hogate and Joe Henderson were sworn in and testified requesting a 4.7-foot variance from the required 10-foot side yard setback requirement, a 9-foot variance from the required 10-foot side yard setback requirement and a 9-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that the previous unit has been removed; that the proposed location has been approved by Cape Windsor's Homeowner's Association; that the proposed unit

will be on a 6-course block foundation; that the unit will meet the flood zone regulations; and that the variance will not be out of character with the neighborhood.

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

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Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the variances be **granted since it meets the standards for granting a variance**.
Vote carried 5 – 0.

Case No. 9418 – Bay Forest LLC – east of Road 347, 2,200 feet east of Road 346, within Whites Neck development.

A special use exception to place manufactured home type structures as sales offices.

Mr. Rickard presented the case. David Dombert was sworn in and testified requesting a special use exception to place manufactured home type structures as sales offices; that they will have 3-units for sales offices; that there will be one for each builder; that the offices will be relocated to the model homes once completed; that the units measure 24' x 56'; that there will be adequate parking and the site will be landscaped; and that the units will be needed for approximately 1-year.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted for a period of one (1) year, since it will have no substantial effect to the neighborhood**. Vote carried 5 – 0.

Case No. 9419 – Michael and Sandy Stone – south of Route 54, north of Breakwater Run, being Lot 149, Phase II within Keenwick Sound development.

A variance from the front yard setback requirement for a through lot.

Mr. Rickard presented the case. Sandy Stone was sworn in and testified requesting a 20-foot variance from the required 40-foot front yard setback requirement for an existing shed; that the shed measures 10' x 16'; that they were not aware their property was considered to have two front yard setback requirements; that the shed cannot be placed anywhere else on the property and comply with the setback requirements; and that there are other sheds within the development with variances.

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 and since there have been other variances granted in the development**. Vote carried 5 – 0.

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Case No. 9420 – Douglas and Patricia Lodge – south of Bay Shore Drive, southeast of New Mexico Avenue, being Lot 29, 31 and 33, Section I, Block M within North Shores development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Douglas Lodge was sworn in and testified requesting a 14.2-foot variance from the required 30-foot front yard setback requirement for a proposed screen porch; that he was approved for this variance in October 2003; that he let the approval lapse; and that he plans to begin construction now.

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**. Vote carried 5 – 0.

Case No. 9421 – Darrell Long – south of Route 54, west of Tyler Avenue, being Lot 39, Block 5 within Cape Windsor development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Darrell Long was sworn in and testified requesting a 6.5-foot variance from the required 10-foot side yard setback requirement for an existing shed and a 1.2-foot variance from the required 5-foot side yard setback requirement for a set of steps; that the shed measures 7'x 9'; that he replaced an existing shed; that the shed is not attached to the dwelling; that there is no other location on the property for the shed; that the doors do not cross over the neighbor's property line when open; and that he can relocate the doors if they are a problem.

Mr. Rickard stated that the office received 1 letter in opposition to 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 case be **tabled until March 20, 2006**. Vote carried 5 – 0.

Case No. 9422 – Jonathan and Kathy Zeleznick – south of Road 358, north of Bow Street, being Lot 17, Section 2 within Holly Ridge Terrace development.

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

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Mr. Rickard presented the case. Shirley Price was sworn in and testified requesting a 6.8-foot variance from the required 30-foot front yard setback requirement for an existing dwelling, a 16.8-foot variance from the required 30-foot front yard setback requirement for an existing deck, a 2.6-foot variance from the required 5-foot side yard setback requirement and a 3.3-foot variance from the required 5-foot rear yard setback requirement for an existing shed; that the survey done for settlement showed the encroachment; that a Certificate of Compliance was issued for the dwelling; that the shed can be moved into compliance; that she believes the deck was built soon after the dwelling was completed; and that she does not know if permits were obtained for the deck and sheds.

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 with the stipulation that the shed be moved into compliance**. Vote carried 5 – 0.

Case No. 9423 – Charles R. Davis – northwest of Route 24, 300 feet southwest of Randall Street.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Charles Davis was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for a proposed detached pole shed; that the proposed pole shed will measure 24' x 40'; that the existing garage will be removed; that the existing septic system prevents him from meeting the setback requirement; that the proposed pole shed will be in line with his existing driveway; that the proposed pole shed is needed to store his boat and trailer; and that his neighbor's are in support of the application.

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. McCabe, and carried unanimously that the variance be **granted since it meets the standards for granting a variance**.
Vote carried 5 – 0.

Case No. 9424 – Omnipoint Communications – south of Route 26, 50 feet west of Route 17.

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A special use exception to place a telecommunications tower and a variance from the maximum height requirement and a variance from the setback requirement.

Mr. Rickard presented the case. Kevin Reisner and Robert Santiago were sworn in with Stephanie Hansen, Attorney, present on behalf of the application and testified requesting a special use exception to place a telecommunications tower, a 30-foot variance from the required 150-foot maximum height requirement for a tower and a 19-foot variance from the required 1/3 of the height setback requirement for a tower; that a 150-foot tower exists; that they want to extend the height of the tower to 180-foot; that T-Mobile currently has antennas at 120-foot; that there are 3 other carriers on the tower; that they need to extend the height to close a gap in coverage in the area; that the tower was built in 2000 prior to the Zoning Ordinance addressing towers; that the tower is non-conforming; that the existing tower is designed to allow for height extension; that the tower has no lighting; that there will be no changes to the existing compound; that the extension would allow for 5-carriers to collocate on the tower; and that the Applicant does not own the tower.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception and variances be **granted with the stipulation that the tower have soft lighting installed at 75-foot and at the top of the tower which changes to a strobe light in inclement weather since it will have no substantial effect to the neighborhood and since it meets the standards for granting a variance**.
Vote carried 5 – 0.

The Board recessed for 5-minutes.

Case No. 9425 – Matthew and Carol Savino – northeast of Road 331A (Possum Point Road), northwest of Road 331B, being Lot 4 plus extension within Possum Point development.

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

Mr. Rickard presented the case. Louis Jobin was sworn in and testified requesting a 4.5-foot variance from the required 5-foot side yard setback requirement for and existing shed, a 17-foot variance from the required 40-foot front yard setback requirement for an existing shed and outside shower, and a 2.5-foot variance from the required 3.5-foot maximum height requirement for an existing fence; that he is representing the Applicant; that the existing fence was erected to block the view of his

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property; that the new shed measures 8' x 10'; that the existing garage cannot be moved due the existing septic system; and that he does not know the exact length of the fence.

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.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **left open to allow the Applicant to provide how much of a variance is needed for the fence**. Vote carried 5 – 0.

Case No. 9426 – Nancy Farrelly Allen – southeast of Route 24 northeast of Meadow Branch Drive, within Hollywoods Park development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Nancy Allen and Lawrence Allen were sworn in and testified requesting a 13-foot variance from the required 15-foot side yard setback requirement for a proposed detached garage; that the proposed garage will measure 32' x 32'; that the right-of-way created by the County creates the need for the variance; that the property also slopes to the rear of the proposed location; that they submitted a drawing; and that the neighbor's support the application.

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 5 – 0.

Case No. 9427 – Barbara and Charles Allers, Jr. – north of Route 54 south of Swann Drive, being Lot 8 within Swann Point development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Charles Allers, Jr. was sworn in and testified requesting a 6.5-foot variance from the required 20-foot front yard setback requirement for an existing shed; that he obtained the building permit for the shed; that he measured from the road and not the property line; and that the development has no objection to the application.

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

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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. 9428 – Robert M. and Grace A. Beacham – east of Dune Road across from Bayberry Road, 270 feet east of Route One, being Lot 26, Block A within Middlesex Beach development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Gregory Hastings and Robert Bunting were sworn in and testified requesting a 5-foot variance from the required 30-foot front yard setback requirement for a proposed dwelling; that the existing dwelling is 25-foot from the property line; that the existing dwelling meets the setback requirements for Middlesex Beach; that the majority of the dwellings in the development are setback 25-feet; and that they submitted drawings.

Mr. Rickard 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. McCabe, 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.

OLD BUSINESS

Case No. 9353 – Cingular Wireless, LLC – south of Road 78, 190 feet northwest of Road 490A.

A special use exception to place a telecommunications tower and a variance from the maximum height and lighting requirements.

The Board discussed the case which has been tabled since December 19, 2005.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the case be **re-opened to require that a Section 106 Study of Natural Preservation of 1966 be submitted by the Applicant and that a copy of the study be sent to Mr. Berl.**
Vote carried 5 – 0.

Meeting Adjourned 10:00 p.m.